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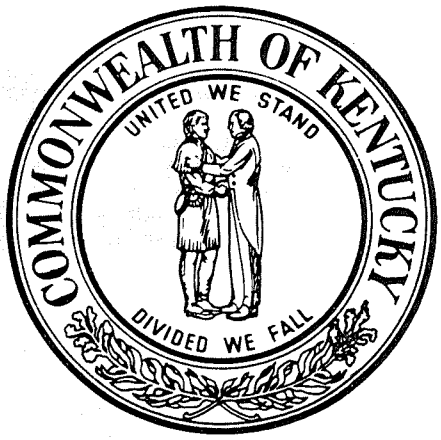

Administrative Regulation Review Subcommittee, Nov. Agenda.....1285
Regulation Review Procedure.....1287

Emergency Regulations Now In Effect:
Local Government.....1288
Fish and Wildlife.....1288
Education.....1293
Human Resources.....1294

As Amended:
Board of Elections.....1320
Kentucky Employees' Retirement.....1320
Local Government.....1326
Fish and Wildlife.....1329
Justice.....1333
Transportation.....1335
Education.....1340
Housing, Buildings and Construction.....1342
Human Resources.....1345

Amended After Hearing:
Human Resources.....1347

Proposed Amendments Received through October 15, 1991:
Finance and Administration Cabinet.....1352
Board of Physical Therapy.....1379
Fish and Wildlife Resources.....1381
Natural Resources & Environmental Protection - Water.....1388
Corrections.....1403
Workforce Development.....1407
State Racing Commission.....1408
Housing, Buildings and Construction.....1415
Human Resources.....1425

Proposed Regulations Received Through October 15, 1991:
Auditor of Public Accounts.....1692
Military Affairs - Disaster and Emergency Services.....1697
Local Government.....1723
Finance and Administration Cabinet.....1724
Board of Landscape Architects.....1726
Human Resources.....1729

Oct. Minutes of the Administrative Regulation Review Subcommittee.....1785
Other Committee Reports.....1790

CUMULATIVE SUPPLEMENT
Locator Index - Effective Dates.....E2
KRS Index.....E11
Subject Index.....E19

MEETING NOTICE: The next meeting of the Administrative Regulation Review Subcommittee is **tentatively** scheduled on November 6-7, 1991. See **tentative** agenda on pages 1285-1287 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 - November 6, 1991 @ 2 p.m.
Room 327, State Capitol

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY

Teacher Scholarship Loan Program

11 KAR 8:030. Teacher Scholarships. (Found deficient by ARRS, September 4, 1991)

TOURISM CABINET
Department of Fish and Wildlife Resources

Fish

301 KAR 1:085. Mussel shell harvesting. (Found deficient by the Interim Joint Committee on Agriculture and Natural Resources, 7-31-91)

Game

301 KAR 2:140. Seasons for wild turkey.

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

Public Water Supply

401 KAR 8:010. Definitions for Title 401 Chapter 8.
401 KAR 8:020. Public and semi-public water supplies - general provisions.
401 KAR 8:070. Public notification.
401 KAR 8:150. Disinfection and filtration.
401 KAR 8:200. Microbiological and turbidity monitoring.

Department for Surface Mining Reclamation and Enforcement

General Provisions

405 KAR 7:015. Documents incorporated by reference. (Deferred from October)
405 KAR 7:020. Definitions of terms used in 405 KAR Chapter 7 through 24. (Amended After Hearing) (Deferred from October)
405 KAR 7:030. Applicability. (Deferred from October)
405 KAR 7:035. Exemption for coal extraction incidental to the extraction of other minerals. (Amended After Hearing) (Deferred from October)
405 KAR 7:080. Small operator assistants. (Deferred from October)

Permits

405 KAR 8:010. General provisions for permits. (Amended After Hearing) (Deferred from October)
405 KAR 8:020. Coal exploration. (Deferred from October)
405 KAR 8:030. Surface coal mining permits. (Amended After Hearing) (Deferred from October)
405 KAR 8:040. Underground coal mining permits. (Amended After Hearing) (Deferred from October)

Bond and Insurance Requirements

405 KAR 10:200. Kentucky bond pool. (Deferred from October)

Performance Standards for Surface Mining Activities

405 KAR 16:180. Protection of fish, wildlife, and related environmental values. (Amended After Hearing) (Deferred from October)
405 KAR 16:190. Backfilling and grading. (Deferred from October)
405 KAR 16:200. Revegetation. (Amended After Hearing) (Deferred from October)
405 KAR 16:210. Postmining land use capability. (Deferred from October)

Performance Standards for Underground Mining Activities

405 KAR 18:180. Protection of fish, wildlife, and related environmental values. (Amended After Hearing) (Deferred from October)
405 KAR 18:190. Backfilling and grading. (Deferred from October)
405 KAR 18:200. Revegetation. (Amended After Hearing) (Deferred from October)
405 KAR 18:220. Postmining land use capability. (Deferred from October)

Special Performance Standards

405 KAR 20:010. Coal exploration. (Deferred from October)

EDUCATION AND HUMANITIES CABINET
Department of Education

Office of Commissioner

701 KAR 5:020. Elementary and secondary education hearing officer.

Office of Chief State School Officer

Education Innovation Incentive Committee

702 KAR 7:065. Designation of agent to manage high school interscholastic athletics.

Office of Learning Programs Development

Health and Physical Education Programs

704 KAR 4:020. Comprehensive school health.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
TENTATIVE AGENDA - November 7, 1991 @ 10 a.m.
Room 327, State Capitol

DEPARTMENT OF PERSONNEL

Classified
101 KAR 2:045. Applications, qualifications and examinations. (Found deficient by ARRS, 11-7-90)

DEPARTMENT OF LOCAL GOVERNMENT

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

FINANCE AND ADMINISTRATION CABINET
Department of Administration

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

GENERAL GOVERNMENT CABINET
Kentucky Board of Pharmacy

Board of Pharmacy
201 KAR 2:010. Schools approved by the board.
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. (Deferred from October)
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. (Not Am. After Hearing)
201 KAR 30:110. Appraiser roster, transmission, fees, deletions, notification, and hearing. (Not Amended After Hearing)
201 KAR 30:120. Temporary appraisal permits. (Not Amended After Hearing)
201 KAR 30:130. Standards for education approval - fees. (Not Amended After Hearing)

DEPARTMENT OF AGRICULTURE

Ginseng
302 KAR 45:010. Ginseng, general provisions. (Deferred from October)

CORRECTIONS CABINET

Office of the Secretary
501 KAR 6:060. Northpoint Training Center.
501 KAR 6:090. Frankfort Career Development Center.
501 KAR 6:140. Bell County Forestry Camp.

TRANSPORTATION CABINET
Department of Vehicle Regulation

Division of Motor Carriers
601 KAR 1:116. Restricted taxicab certificate.

LABOR CABINET
Department for Workplace Standards

Labor Standards; Wages and Hours
803 KAR 1:070. Executive, administrative, supervisory or professional employees; salesmen.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance

Credit Life Insurance and Credit Health Insurance
806 KAR 19:030. Refunds, unearned premium; computation.

Public Service Commission

Utilities
807 KAR 5:023. Control of drug use in gas operations.

Department of Housing, Buildings and Construction

Kentucky Building Code
815 KAR 7:010. Administration and enforcement
815 KAR 7:025. Kentucky building code. (Repeals 815 KAR 7:020.)
815 KAR 7:080. Licensing of fire protection sprinkler contractors.
Plumbing
815 KAR 20:020. Parts or materials list.
815 KAR 20:050. Installation permits.

CABINET FOR HUMAN RESOURCES

Administration

900 KAR 1:007. Repeal 900 KAR 1:006.

Department for Health Services

Sanitation

902 KAR 10:140. On-site sewage disposal system installer certification program standard. (Deferred from September)

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) (Public Hearing Held in September)

902 KAR 20:066. Operation and services; programs day health care.

902 KAR 20:072. Operation and services; ambulatory care clinics.

902 KAR 20:117. Health care ground transportation services. (Repeals 902 KAR 20:115 and 20:120.)

902 KAR 20:270. Mobile health services.

Department for Health Services

Controlled Substances

902 KAR 55:060. Requirements for distribution of small amounts of controlled substances without manufacturer's or wholesaler's licenses.

Department for Social Insurance

Public Assistance

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

904 KAR 2:360 & E. Transitional and at-risk child care.

Department for Medicaid Services

Medicaid Services

907 KAR 1:540 & E. Eligibility requirements for the hospital indigent care assurance program (HICAP).

ADMINISTRATIVE REGULATION REVIEW PROCEDURE

Filing and Publication

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

Public Hearing

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

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

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

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

Review Procedure

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

EMERGENCY ADMINISTRATIVE REGULATIONS NOW IN EFFECT

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

STATEMENT OF EMERGENCY
109 KAR 13:010E

KRS 65.905 requires each local government (each city, county and special district) to complete a uniform financial information report. KRS 695.905 also requires the Department of Local Government to coordinate and combine efforts with the United States Bureau of the Census in the development of the format of the report, to prescribe the format of the report by administrative regulation, and to distribute the form to each local government no later than 120 days prior to the required submission date of February 1. Due to delays encountered in coordinating the format of the report with the U.S. Bureau of Census and in required printing of the form, it is necessary to promulgate this emergency administrative regulation prescribing the format of the report to meet the statutory deadline. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on October 3, 1991.

WALLACE G. WILKINSON, Governor
LEE TROUTWINE, Commissioner

DEPARTMENT OF LOCAL GOVERNMENT

109 KAR 13:010E. Uniform financial information report.

RELATES TO: KRS 65.900 to 65.925
STATUTORY AUTHORITY: KRS 65.905
EFFECTIVE: October 4, 1991
NECESSITY AND FUNCTION: KRS 65.906 requires the Department of Local Government to prescribe the format of the uniform financial information report. This administrative regulation prescribes the format that shall be used for the report. This administrative regulation also describes the mechanism for initiating the penalty provisions of KRS 65.920 for failure to submit the report annually.

Section 1. (1) The County Uniform Financial Information Report, Fiscal Year 1990-91, form F-65 (KY-2), dated August 7, 1991, is hereby incorporated by reference.

(2) The City Uniform Financial Information Report, Fiscal Year 1990-91, form F-65 (KY-3), dated August 1, 1991, is hereby incorporated by reference.

(3) The Special Taxing Districts Uniform Financial Information Report, Fiscal Year 1990-91, form F-65 (KY-5), dated September 3, 1991, is hereby incorporated by reference.

(4) The appropriate form will be provided to each county, city, and special district by the Department of Local Government. Other interested parties may inspect and obtain copies of the forms at the offices of the Department of Local Government, 1024 Capital Center Drive, Frankfort, Kentucky 40601, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.

Section 2. (1) Each county, city and special district which has not completed and submitted a uniform financial information report to the Department of Local Government by February 1 of each year shall be notified by mail of its noncompliance. The notice to a county or city shall also advise it of the possible suspension of its road aid moneys pursuant to KRS 65.920. A list of all noncomplying counties, cities and special districts shall be sent to the Legislative Research Commission, the Kentucky League of Cities, the Kentucky Association of Counties, area development districts, and such other state agencies which may have an interest.

(2) Each county and city which has not completed and submitted a uniform financial information report by March 1 of each year shall be notified by mail of the suspension of its road aid moneys pursuant to KRS 65.920. A list of all noncomplying counties, cities and special districts shall be sent to the Legislative Research Commission, the Kentucky League of Cities, the Kentucky Association of Counties, area development districts, and such other state agencies which may have an interest. Specific notice shall be sent to the Transportation Cabinet and the Finance and Administration Cabinet to suspend payments of road aid moneys to the listed counties and cities.

(3) Each county, city and special district which submits an incomplete or incorrect report shall be notified in writing and shall be given thirty (30) days to complete or correct the report.

(4) The Department of Local Government shall notify the Transportation Cabinet and the Finance and Administration Cabinet to resume payment of road aid moneys upon submission of a complete and correct report by the affected county or city.

LEE TROUTWINE, Commissioner
APPROVED BY AGENCY: October 3, 1991
FILED WITH LRC: October 4, 1991 at 2 p.m.

STATEMENT OF EMERGENCY
301 KAR 2:220E

Migratory bird hunting season frameworks are established annually by the U.S. Fish and Wildlife Service. Under federal law, states which wish to establish migratory bird hunting seasons must do so within the federal frameworks. Development of the federal regulations involves consideration of harvest and population status data, coordination with state wildlife agencies, and public involvement. Consequently, federal migratory bird hunting regulations are promulgated less than six weeks before the opening dates of the hunting season. An ordinary administrative regulation will not suffice because of insufficient time to accomplish the required state procedures during the short period between promulgation of federal hunting regulations and the opening of the hunting season will preclude timely effectiveness of the administrative regulation.

The emergency regulation will be replaced by an ordinary administrative regulation.

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

TOURISM CABINET
Department of Fish and Wildlife Resources

301 KAR 2:220E. Hunting seasons for migratory birds.

RELATES TO: KRS 150.010, 150.015, 150.025, 150.170, 150.175, 150.235, 150.240, 150.305, 150.330, 150.340, 150.360, 150.600, 150.603, 150.630, 150.990
STATUTORY AUTHORITY: KRS 13A.350, 150.025
EFFECTIVE: October 11, 1991
NECESSITY AND FUNCTION: This regulation pertains to the seasons and limits for the taking of specified migratory birds, to the associated permitting and harvest reporting requirements, and to restrictions in the use of blinds and pits. It is necessary for the continued protection and conservation of the migratory birds listed herein, and to insure a permanent and continued supply of the wildlife resource. The framework of this regulation falls within the seasons and bag limits prescribed by the U.S. Fish and Wildlife Service. The function of this regulation is to provide for the prudent taking of migratory birds within reasonable limits based upon an adequate supply. This amendment is necessary to change season dates and hunting rules.

Section 1. Definitions. (1) "Blind" means any form of concealing enclosure, including a pit or an anchored, stationary, or drifting boat from which hunting occurs.
(2) "Permanent blind" means any blind which is in place more than twenty-four (24) hours.
(3) "Commercial waterfowl hunting area" means any area of land or water used in whole or in part for the taking of migratory waterfowl where a monetary charge is made for hunting.
(4) "Commercial guide" means any individual who accepts monetary considerations for receipt of services in assisting another individual or group in the taking of fish or wildlife.
(5) [(4)] "Noncommercial waterfowl hunting area" means any area used in whole or in part for the taking of migratory waterfowl where no monetary charge is made.
(6) [(5)] "Waterfowl" means all species of ducks, coots, mergansers and geese.

Section 2. Seasons and Zones for Gun, Archery and Falconry [and Archery]. (1) Sora rails, Virginia rails, common moorhens, and purple gallinules: October 5 through October 28 and November 28 through January 5 [November 22 through January 20].
(2) Ducks, coots and mergansers:
(a) Eastern duck zone: December 7 through January 5 east of a boundary beginning at the Kentucky-Tennessee border along I-65 north to Bowling Green, northwest along the Green River Parkway to Owensboro, southwest along U. S. Bypass 60, north along U.S. 231 to the Indiana border. [November 22 through November 25 and December 12 through January 6.]
(b) Western duck zone: November 28 through December 1 and December 11 through January 5. This zone consists of the area to the west of the boundary described in [paragraph (a) of this subsection.
(c) Falconry (eastern and western duck zones): October 22 through January 31.
(3) Geese.
(a) Eastern goose zone: December 13 through January 31 [November 22 through November 25 and December 1 through January 31], east of a boundary beginning at the Kentucky-Tennessee border at Fulton, Kentucky, extending north along the Purchase Parkway to I-24, East on I-24 to U.S. 641, north on U.S. 641 to U.S. 60, northeast on U.S. 60 to the Henderson County line then south, east and northerly along the Henderson County line to the Indiana border. [to U.S. 41 and then north on U.S. 41 to the Kentucky-Indiana border].
(b) Western goose zone: November 28 through January 31, unless harvest quotas are met as described in subparagraphs 1 through 4 of this paragraph. This zone consists of the area to the west of the boundary described in paragraph (a) of this subsection. For the purpose of controlling the goose harvest, the western goose zone is subdivided into the Ballard reporting area and associated counties and the Henderson-Union reporting area and associated counties. [Seasons within the western zone are specified as follows:]
[1. Canada goose season: November 22 through November 25 and December 1 through January 31, unless harvest quotas are met as described below.]
1. [a.] Ballard reporting area. This reporting area lies within the following boundary: starting at the northwest city limits of Wickliffe in Ballard County to the middle of the Mississippi River, and thence north along the Mississippi to the low water mark of the Ohio River along the Illinois shore to the Ballard-McCracken County line; thence along the county line south to state road 358; thence south along state road 358 to its junction with U.S. Highway 60 at LaCenter; thence following U.S. 60 southwest to the northeast city limits of Wickliffe. Should it be determined that the quota of 28,000 Canada geese will be filled prior to January 31, the goose hunting season shall close in the Ballard reporting area. Notice shall be given a minimum of twenty-four (24) hours in advance of the time and date of closing.
2. [b.] Counties associated with the Ballard reporting area. The counties associated with the Ballard reporting area are those portions of Ballard (excluding Ballard reporting area), McCracken, Graves, Carlisle, Hickman, Fulton and Marshall counties in the western goose zone, shall remain open for seven (7) days after the closure of the Ballard reporting area or until January 31, whichever occurs first.
3. [c.] Henderson-Union reporting area. This reporting area includes Henderson and that portion of Union County [those portions of Henderson and Union Counties] within the western goose zone. Should it be determined that the quota of 8,200 Canada geese will be filled prior to January 31, the goose hunting season shall close in the Henderson-Union reporting area. Notice shall be given a minimum of twenty-four (24) hours in advance of the time and date of closing.
4. [d.] Counties associated with the Henderson-Union reporting area. The counties associated with the Henderson-Union reporting

area are those portions of Lyon, Crittenden and Livingston counties in the western goose zone shall remain open for seven (7) days after the closure of the Henderson-Union reporting area or until January 31, whichever occurs first.

(c) Falconry.

1. Fulton County: November 28 through February 15.

2. Remainder of state: October 22 through January 31.

[2. Season for goose species other than Canada geese (snow and blue geese, white-fronted geese, and brant): November 22 through November 25 and December 1 through January 31, or whenever the Canada goose season closes, whichever occurs first.]

Section 3. Limits for Gun, Archery and Falconry [and Archery].

(1) Gun and archery.

(a) [(1)] Ducks. The daily bag limit is three (3) and shall include no more than two (2) mallards (no more than one (1) hen mallard [or one (1) black duck]), two (2) wood ducks, one (1) black duck, one (1) redhead, and one (1) pintail of either sex. No canvasbacks shall be taken. The possession limit is double the daily bag.

(b) [(2)] Coots. The daily bag limit is fifteen (15) and the possession limit is thirty (30).

(c) [(3)] Mergansers. The daily bag limit is five (5) of which no more than one (1) shall be a hooded merganser. Possession limit is double the daily bag limit.

(d) [(4)] Geese.

1. [(a)] The bag limit is seven (7) with no more than three (3) Canada geese and two (2) white-fronted geese in the western goose zone or two (2) [one (1)] Canada geese [goose] and two (2) white-fronted geese in the eastern goose zone.

2. [(b)] The possession limit is double the daily bag limit.

(e) [(5)] Sora and Virginia Rails. The bag and possession limits are twenty-five (25) singly or in the aggregate.

(f) [(6)] Common Moorhens and Purple Gallinules. The bag and possession limits are fifteen (15) and thirty (30), respectively, singly or in the aggregate of the two (2) species.

(2) Falconry. The bag and possession limits are three (3) and six (6) respectively, of any legal species listed in this regulation, singly or in aggregate.

Section 4. Hunting [Shooting] Hours. One-half (1/2) hour before sunrise to sunset for all species listed in this regulation except as specified in Section 7 [8] of this regulation. [Shooting hours for waterfowl in the Ballard reporting area are one-half (1/2) hour before sunrise to sunset November 22 through November 25 and January 27 through January 31 except hunting shall end at 3 p.m. daily from December 1 through January 26.]

Section 5. Shotshell Restrictions. The following restrictions apply to species listed in this regulation. Lead shot is prohibited for the taking of ducks, geese, coots and mergansers as listed in [301 KAR 3:080] and 301 KAR] 2:044E. No [lead shot larger than BB or] steel shot larger than F shall be in possession while hunting the species listed in this regulation.

[Section 6. Falconry Season. October 22 through January 31. All legal species listed in this regulation may be taken by falconry.

(1) Falconry limits. The bag and possession limits are three (3) and six (6), respectively, of any legal species listed in this regulation, singly or in the aggregate.

(2) Hunting hours for falconry. The hunting hours shall conform with the shooting hours stated in Sections 4 and 8 of this regulation.]

Section 6. [7.] Wildlife Management Area Blind Regulations. The following restrictions apply to all wildlife management areas except those excluded in Section 7 [8] of this regulation.

(1) Permanent blinds are not permitted. Decoys and temporary blinds shall be removed at the end of each hunting day.

(2) No blind shall be established less than 200 yards from any other blind or waterfowl refuge areas.

(3) No more than four (4) persons shall occupy a single blind at any one time.

(4) Designated recreation areas and access points are closed to hunting of all species listed in this regulation.

Section 7. [8.] Exceptions for Specified Wildlife Management Areas and Counties. Other sections or regulations apply unless specified below. Pit and blind restrictions described in this section and Section 10 [11] of this regulation shall not apply to periods of the falconry season as described in Section 4 [6] of this regulation that do not coincide with waterfowl gun hunting seasons.

(1) Ballard Wildlife Management Area, except the Miller Tract, located in Ballard County.

(a) Species, seasons and bag limits.

1. Geese: December 10 [4] through January 31 or until the Ballard Reporting Area quota is reached.

2. Ducks, coots and mergansers: December 11 [12] through January 5 [6].

3. Daily bag limits.

a. Canada geese. The daily bag limit on Ballard Wildlife Management Area is three (3) [two (2)] per day.

b. Ducks, coots and mergansers. Same as state bag limits.

4. No hunting is permitted on Sunday, Monday, Christmas and New Year's day [Sundays or Mondays or on Christmas and New Year's Day].

5. No more than three (3) persons shall occupy a single blind at the same time.

(b) General rules. Waterfowl hunters shall have no more than ten (10) shells in their possession. Any hunter under the age of eighteen (18) years shall be accompanied by an adult. Any person whose transportation to and from blinds is furnished by the department shall have his gun encased. Hunting shall be by advanced application or as otherwise authorized.

(c) Shooting hours: one-half (1/2) hour before sunrise to 12 noon.

(2) Swan Lake Wildlife Management Area located in Ballard County.

(a) Closed areas. Swan Lake, adjacent wetlands and uplands as marked by signs are closed from October 15 through March 15 as described in 301 KAR 4:050.

(b) Open areas. The Upper Blenderman Tract,

located to the north of Holloway Landing Road and marked by signs, is open to hunting of all legal species listed in this regulation.

(3) Paintsville Lake Wildlife Management Area in Johnson and Morgan counties and Dewey Lake wildlife Management Area in Floyd County are open to hunting of all legal species listed in this regulation.

(4) Land Between the Lakes Wildlife Management Area, located in Lyon and Trigg Counties.

(a) Closed areas. Long Creek Pond, the eastern one-third (1/3) of Smith Bay, and the eastern two-thirds (2/3) of Duncan Bay are closed to all activity from November 1 through March 15 as indicated by signs and buoys. The Environmental Education Center and Energy Lake are closed to hunting of all species listed in this regulation.

(b) LBL permit. An annual LBL hunting permit is required for hunting of all legal species listed in this regulation on all shoreline areas along Kentucky and Barkley Lakes from the water's edge to twenty-five (25) yards above elevation 359' and inland areas. Waterfowl hunting from shoreline areas along Lake Barkley is allowed according to subsection (4) of this section. No hunting of any species listed in this regulation is permitted on inland areas during quota gun deer hunt days as listed in 301 KAR 2:111. Permanent blinds are not permitted on inland areas nor along the Kentucky Lake shoreline area. Decoys and temporary blinds shall be removed at the end of each hunting day.

(5) Lake Barkley Wildlife Management Area located in Trigg, Lyon, and Livingston Counties.

(a) Closed areas. Refuge areas shall be closed to all hunting, fishing, boating and molesting of all species listed in this regulation during the dates designated in this subsection and on signs posted along the boundaries. Refuges and closing dates are as follows: November 1 through February 15 within an area including a row of islands on the west side of the main channel as marked by buoys and signs between river mile 51 (Hayes Landing Light) and river mile 57.3 (Crooked Creek Light), excluding Taylor and Jake Fork Bays as marked by buoys and signs. Within the refuge area, that area west of a line from the north point of the mouth of Fulton Bay to the south point of the mouth of Honker Bay will remain closed through [until] March 15 as marked by buoys and signs. Boating is allowed but hunting is prohibited within 200 yards of the area surrounded by a levee and located between river mile 68.4 and river mile 70.4 from [during the period] October 15 through March 15.

(b) Blinds. Permanent blinds shall remain within ten (10) yards of the assigned numbered blind marker within the two (2) areas described as follows:

1. Beginning at the mouth of Donaldson Creek and proceeding south along the east side of the old Cumberland River channel as marked by buoys, to a point due west of the boat ramp at Linton, then east to the Linton boat ramp, then north along the east shore of Barkley Lake to the mouth of Donaldson Creek;

2. Beginning at the Pryor's Creek Light extending south along the western shore of Barkley Lake to the boat ramp at the end of Land Between the Lakes Road 204 thence to the west side of the Cumberland River Channel, marked with buoys, to river mile 73.5, thence north along the west side of the Cumberland River channel, marked with buoys, to the Pryor Creek Light. All other blinds within this described area shall be temporary.

(6) Sloughs Wildlife Management Area located in Henderson and Union Counties.

(a) Grassy Pond-Powell's Lake Unit. Hunting is permitted only from permanent blinds constructed by the department. Hunters shall remove all personal property from blinds or the vicinity of blinds daily.

(b) Jenny Hole-Highland Creek Unit. Hunting shall be allowed from permanent blinds constructed by the department and at any other above ground site provided there is a minimum of 200 yards between hunters or hunting parties. Hunters shall remove all personal property from blinds or the vicinity of blinds daily.

(c) Shooting hours: one-half (1/2) hour before sunrise to 2 p.m.

(d) When the Ohio River reaches a level that requires boat access to the units, hunting shall be allowed from boats spaced 200 yards apart, without regard to the department blinds.

(e) Sauerheber Unit.

1. On the Crenshaw and Duncan Tracts, waterfowl hunting shall be allowed only on Thursdays through Sundays and from permanent blinds constructed by the department. Use of the constructed blinds shall be by drawing unless the person(s) drawn do not occupy the blind by the opening of legal shooting hours.

2. Waterfowl hunting only shall be allowed on the Crenshaw and Duncan II tracts during the waterfowl season. The Crenshaw and Duncan II tracts shall be closed to all other hunting from October 15 through March 15.

3. Waterfowl hunters shall have no more than fifteen (15) shells in their possession when hunting on the Crenshaw and Duncan tracts.

(4) The remainder of the Sauerheber Unit, including the Wood Tract, located between mile marker four (4) and six (6) on state road 268 and bounded by the Ohio River on the north and Tram Road on the east is closed to all hunting, fishing, boating and trespassing from October 15 through March 15. [On the Crenshaw and Duncan Tracts - waterfowl hunting shall be allowed only on Thursdays through Sundays and from permanent blinds constructed by the department. Use of the constructed blinds shall be by drawing unless the person(s) drawn do not occupy the blind by the opening of legal shooting hours. The remainder of the Sauerheber Unit, including the Wood Tract, located between mile marker 4 and 6 on state road 268 and bounded by the Ohio River on the north and Tram Road on the east is closed to all hunting, fishing, boating and trespassing between October 15 and March 15.]

[(f) Waterfowl hunting only shall be allowed on the Crenshaw and Duncan II tracts during the waterfowl season. The Crenshaw and Duncan II tracts shall be closed to all other hunting from October 15 through March 15.]

(7) Ohio River Waterfowl Refuge located in Livingston County shall be closed to all hunting from October 15 through March 15. This area includes the Kentucky portion of the Ohio River from Smithland Lock and Dam upstream to a power line crossing the river at approximately river mile 911.5 and [including] Stewart Island.

(8) The portion of Westvaco Wildlife Management Area located in Carlisle and Hickman counties. The area south of Highway 1217 (also known as Fish Lake or Lower River Road) is closed from October 15 through March 15.

(9) [(8)] Hunting of all species listed in this regulation is not permitted on the

following areas:

(a) Ohio River in the vicinity of the Ballard Wildlife Management Area located in Ballard County, from a point fifty (50) yards upstream from Dam 53, downstream to a point fifty (50) yards below the downstream boundary of the Ballard Wildlife Management Area.

(b) The portion of Grayson Wildlife Management Area located in Carter and Elliott counties: the Camp Webb Refuge Area, the area north of Rosedale Point, Deer Creek Fork west of 1496, and within fifty (50) yards of the state park shoreline. All other portions are open.

(c) Beaver Creek Wildlife Management Area located in Pulaski and McCreary Counties.

(d) Cane Creek Wildlife Management Area located in Laurel County.

(e) Robinson Forest Wildlife Management Area located in Breathitt, Perry and Knott Counties.

(f) Redbird Wildlife Management Area located in Leslie and Clay Counties.

(g) Mill Creek Wildlife Management Area located in Jackson County.

(h) Beech Creek Wildlife Management Area located in Clay County.

(10) [(9)] Bath, Rowan, Menifee and Morgan Counties, including Cave Run Lake, are closed to goose hunting. Breech and muzzle-loading shotguns may be used for duck hunting along the shore line portion of Cave Run Lake bordering the Pioneer Weapons Wildlife Management Area.

(11) [(10)] Ohio County south of Rough River, Muhlenburg County, except for the portion south of U.S. Highway 62 and west of State Route 181, Butler County west of State Route 79, Hopkins County north of State Route 70, south of U.S. Highway 41A, east of State Route 614 and State Route 109, and south of the Western Kentucky Parkway, Christian County north of State Route 80, Bell County south of Route 119 and east of Route 25E, Pulaski and McCreary Counties east of U.S. Highway 27 and Laurel, Clay, Whitley, Perry, Knott and Breathitt Counties are closed to goose hunting. In addition all designated goose refuge lakes within the western Kentucky coalfields are closed to all waterfowl hunting.

(12) [(11)] Yellowbank Wildlife Management Area in Breckinridge County. A twenty-five (25) acre wetland designated by signs and painted boundary markers is closed to the public from October 15 through March 15.

(13) [(12)] Lake Cumberland, Pulaski County.

(a) Wesley Bend, the area bounded to the north, west and south by Fishing Creek and to the east by Beech Grove Road and Fishing Creek Road is closed to the public from October 15 through March 15.

(b) Yellowhole, the area bounded to the east and north by Fishing Creek to the west by Fishing Creek Road and the south by Hickory Nut Road is closed to the public from October 15 through March 15.

(14) [(13)] Blind restrictions for Barkley Lake, Barren Lake, Green River Lake, Nolin River Lake, Paintsville Lake, Rough River Lake, Buckhorn Lake and Taylorsville Lake Wildlife Management Areas.

(a) Permanent blinds shall be registered on a permit issued by the U.S. Army Corps of Engineers. Applicants may designate one (1) other person as a partner for registration. No more than two (2) nontransferable permits shall be issued for each permanent blind. Only one (1) permit shall be issued per hunter per area. Permittees who have not constructed a blind at the designated location by November 20 shall forfeit their permit.

(b) Blinds not occupied by permittees by the opening of shooting hours of any day shall be available for use by other hunters on a first come - first served basis for the remainder of that day.

(c) Permittees shall not lock blinds so as to prevent use by other hunters in the absence of the permittee.

(d) Permanent blinds shall be removed within thirty (30) days of the close of waterfowl season unless extension of that period is approved.

(e) Permittees shall be selected by drawing at Barkley Lake, Barren Lake, Green River Lake, Paintsville Lake and Taylorsville Lake Wildlife Management Areas. Applicants for blind permits shall present a current Kentucky hunting license to the registration clerk at the time of the drawing. Sites which become available by forfeiture shall be assigned to another applicant according to the following procedure: five (5) additional names shall be drawn at each area (or the number of remaining names if less than five (5) are present) and any forfeited blinds shall be assigned to those people in the order they were drawn.

(15) [(14)] White City Wildlife Management Area located in Hopkins County. Waterfowl shooting hours are from one-half (1/2) hour before sunrise to 2 p.m.

(16) [(15)] Taylorsville Lake Wildlife Management Area, located in Anderson, Nelson and Spencer Counties. That portion east of Van Buren Boat Ramp as marked by buoys and signs is closed to all hunting, fishing, boating, and trespassing during the period from the first Monday following the quota deer hunt in November [24] through March 1.

(17) [(16)] Fulton County shall remain open to Canada goose hunting through February 15, 1992 [4], unless closed prior to this date under the provisions of Section 2 of this regulation.

Section 8. [9.] Ballard and Henderson-Union Reporting Area Waterfowl Hunting Permit Requirements. It is unlawful for any person to hunt waterfowl within the Ballard or Henderson-Union Reporting Areas without first obtaining the appropriate waterfowl hunting permit or waterfowl harvest register forms as specified in subsections (1), (2) and (3) of this section.

(1) Commercial waterfowl hunting areas.

(a) A commercial waterfowl hunting area permit issued by the department shall be obtained by any person operating a commercial waterfowl hunting area. An annual fee shall be charged for each commercial waterfowl hunting area permit. These permits shall expire at the end of waterfowl hunting season.

(b) Persons operating more than one (1) commercial waterfowl hunting area shall obtain a permit for each individual area. A land holding divided by a public road may be operated as a commercial waterfowl hunting area under one (1) permit. Whenever a farm unit is divided by land owned by others, a separate permit shall be required for each tract of land operated as a commercial waterfowl hunting area.

(2) Noncommercial waterfowl hunting areas.

(a) Any person controlling the waterfowl hunting rights and privileges on a noncommercial waterfowl hunting area shall obtain a free

migratory goose hunting area permit which shall expire at the end of waterfowl hunting season.

(b) The holder of a free migratory goose hunting area permit may be the landowner, his tenant or any person to whom these individuals have assigned exclusive control of goose hunting rights or privileges, in writing, on forms provided by the department.

(c) The permittee shall display the permit openly on the property for which it was issued and provide the permit for inspection by agents of the department and the U.S. Fish and Wildlife Service.

(3) Ohio and Mississippi River waterfowl hunters. Persons hunting geese on the Ohio or Mississippi Rivers or their overflow areas within the Ballard and Henderson-Union Reporting Areas shall carry on their person a waterfowl harvest register form provided by the department. When hunting in a party, one (1) hunter of the party may possess the goose harvest reporting form provided the names of all members of the party are written on the form.

(4) Obtaining permits and harvest reporting forms. Persons desiring commercial waterfowl hunting area permits, migratory goose hunting area permits, or a season supply of waterfowl harvest register forms for the Ballard Reporting Area may apply by writing to the Ballard County Wildlife Management Area, Route 1, LaCenter, Kentucky 42056, and for the Henderson-Union Reporting Area shall apply by writing to the Sloughs Wildlife Management Area, 9956 Hwy. 268 [RR 2, Box 183A], Corydon, Kentucky 42406.

Section 9. [10.] Ballard and Henderson-Union Reporting Area Recordkeeping and Reporting Requirements. (1) Commercial waterfowl hunting area permit holders.

(a) The permittee shall maintain and keep an accurate and complete daily hunter register and waterfowl harvest record in duplicate on the hunting area on forms provided by the department.

(b) The permittee shall, during the waterfowl season, close the register at the end of shooting hours each Wednesday and deliver by the following Monday either through mail or hand delivery the original completed daily register and waterfowl harvest record to the address indicated on the form. The permittee shall hold duplicate copies of these completed forms at the place of registration and make these and current register and harvest records available for inspection by agents of the department and the U.S. Fish and Wildlife Service.

(c) A permittee is responsible for any violation of permit requirements or violations of other regulations committed on the premises under permit unless he immediately reports such violations to a conservation officer.

(2) Migratory goose hunting area permit holders.

(a) At all times during the waterfowl season, the permittee shall make available on the premises under permit the daily hunter registration forms as provided by the department.

(b) The permittee shall require all waterfowl hunters to enter their names and the date on the register and report form prior to each time they hunt on any permit area and to record, prior to leaving the permitted premises, the numbers and kinds of geese taken.

(c) The permittee shall, during the waterfowl season, close the register at the end of shooting hours each Wednesday and deliver by the following Monday either through mail or hand delivery the original completed daily register and waterfowl harvest record to the address indicated on the form. The permittee shall hold duplicate copies of the forms for a period of two (2) months after the end of the waterfowl season and make these and current register and harvest records available for inspection by agents of the department and the U.S. Fish and Wildlife Service.

(3) Hunter requirements.

(a) Persons hunting waterfowl on commercial or noncommercial waterfowl hunting areas in the Ballard or Henderson-Union Reporting Areas shall:

1. Prior to hunting, enter their name, address, and the date of the hunt on the daily register form made available by the waterfowl hunting area operator.

2. Before leaving the premises, enter on the waterfowl harvest register form the numbers and kinds of geese taken.

(b) Persons hunting geese on the Ohio or Mississippi Rivers or their overflow areas within the Ballard and Henderson-Union Reporting Areas shall:

1. Prior to hunting, enter on the waterfowl harvest register form their name and address, or the names and addresses of all hunting party members if only one (1) hunter is carrying the form for the party, and the date.

2. At the end of each day's hunting, enter on the waterfowl harvest register form the number and kinds of geese taken.

3. Mail or hand deliver the completed original waterfowl harvest register so it is received by no later than Monday of each week, to the address indicated on the form.

Section 10. [11.] General Rules Concerning Waterfowl Hunting in the Ballard Reporting Area.

(1) It is unlawful to hunt waterfowl except from a blind, unless waterfowl hunting is conducted in flooded, standing timber.

(2) It is unlawful to establish or use any blind within 100 yards of any other blind.

(3) It is unlawful to establish or locate any blind within fifty (50) yards of any property line.

(4) No more than five (5) persons shall occupy a single blind at the same time.

(5) A hunter shall possess only one (1) shotgun while occupying a blind.

Section 11. [12.] Waterfowl Stamp Requirements. Individuals hunting waterfowl shall possess appropriate state and federal waterfowl stamps as stipulated in KRS 150.330 and 150.603.

DON R. McCORMICK, Commissioner
DAVID H. GODBY, Chairman
RONALD E. GENTRY, Secretary
APPROVED BY AGENCY: October 11, 1991
FILED WITH LRC: October 15, 1991 at 10 a.m.

STATEMENT OF EMERGENCY
702 KAR 3:220E

The corresponding ordinary administrative regulation clarifying the fee waiver process mandated by KRS 160.330 was subjected to a public hearing and, as a result, cannot go into effect until November, 1991. Consequently, this emergency administrative regulation needs to be

put into effect at the beginning of the 1991-92 school year, when most fee waiver requests must be considered in local school districts. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on July 9, 1991.

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

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of School Administration & Finance

702 KAR 3:220E. Guidelines for waiver of school fees.

RELATES TO: KRS 160.330
STATUTORY AUTHORITY: KRS 160.330
EFFECTIVE: September 18, 1991
NECESSITY AND FUNCTION: KRS 160.330 provides that local school districts shall establish, consistent with State Board for Elementary and Secondary regulations, a process to waive fees for qualifying students and a procedure for notice of such. This regulation provides guidelines for the waiver of school fees by local districts.

Section 1. [Beginning with the 1990-91 school year,] Local school districts shall establish a process by which to waive any applicable fees charged by the district for pupils who qualify for free or reduced price lunches, including a process by which at least all such students shall be informed of the fee waiver provisions. Districts that do not charge fees to any students shall not be subject to these requirements.

Section 2. Local school districts shall adopt specific policies and procedures whereby, at the beginning of the school year or at the time of enrollment, all or at least qualifying pupils and their parents shall be given clear and prominent written notice of the fee waiver process, including the applicable income guidelines. Such policies and procedures shall also insure that the written notice of the fee waiver process shall include a form that parents shall use to request waiver of applicable fees.

Section 3. Local districts shall keep records for documentation and compliance purposes, which shall be made available to the Department of Education upon request. These records shall include:
(1) The number of pupils receiving free lunches and reduced price lunches;
(2) The number of pupils who request that fees be waived and the number of pupils for who fees are waived;
(3) Copies of any forms, notices or instructions used by schools in the collection or waiver of fees.

Section 4. Mandatory waiver of fees shall [not] apply to all charges, direct or indirect, which would otherwise be required for participation in the following school-sponsored courses, activities, programs, events or services:
(1) Charges and deposits collected by a school for use of school property, including but not limited to, locks, towels, laboratory equipment and special workbooks;
(2) Charges for field trips, any portion of which fall within the school day;
(3) Charges or deposits for uniforms or equipment related to intramural sports, music, or fine arts programs;
(4) Special supplies or fees required for a particular class;
(5) Graduation fees required for participation;
(6) Special education fees;
(7) School records fees;
(8) School health service fees;
(9) General activities fees;
(10) Vocational education fees;
(11) Driver's education fees; and
(12) Any other fees not exempt under Section 5 of this regulation.

Section 5. Mandatory waiver of fees shall not apply to the following:
(1) [those fees charged and applicable to] Activities or rental of property taking place or for exclusive use outside the normal six (6) hour school day (and any local district extension of such) and having no impact upon graduation from or credit for any instructional course(s) included in or authorized by the "Program of Studies for Kentucky Schools, Grades K-12", incorporated by reference in 704 KAR 3:304; and [, nor shall mandatory waiver apply to any fees beyond those charged]
(2) Costs for materials, equipment, or supplies beyond those necessary for full credit for instructional courses and essential for meeting student performance objectives.

Section 6. Local districts shall provide written notice of approvals and denials of fee waivers. Any denial shall contain the specific grounds for denial and shall afford the opportunity for a personal meeting with appropriate district personnel to discuss the validity of the denial.

JOSEPH W. KELLY, Chairman
APPROVED BY AGENCY: September 12, 1991
FILED WITH LRC: September 18, 1991 at 3 p.m.

STATEMENT OF EMERGENCY
904 KAR 2:015E

This emergency administrative regulation implements the SFY 1991-92 rate increase of $15 per month for the personal care standard for state supplementation recipients. This increase will help alleviate the affect of high-rising costs incurred by personal care homes for the care of these recipients. This emergency administrative regulation adds SFY 1991-92 rate increase of the personal care standard as required by CHR, V. Additional Budget Items, 1990-92 Final Enacted Budget Memorandum, Volume II, Page 261. Payments for eligibility determinations, made on or after July 1, 1991, will be at the increased rate. This emergency administrative regulation shall be replaced by an ordinary administrative regulation.

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

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

904 KAR 2:015E. Supplemental programs for the aged, blind and disabled.

RELATES TO: KRS 205.245, 20 CFR 416.2095, 20 CFR 416.2096

STATUTORY AUTHORITY: KRS 194.050, Cabinet for Human Resources, v. Additional Budget Items, 1990-92 Final Enacted Budget Memorandum, Vol. II, p. 261

EFFECTIVE: September 24, 1991

NECESSITY AND FUNCTION: The Cabinet for Human Resources is responsible under Title XVI of the Social Security Act as amended by Public Law 92-603 to administer a state funded program of supplementation to all December, 1973, recipients of aid to the aged, blind and disabled, referred to as AABD, disadvantaged by the implementation of the Supplemental Security Income Program, referred to as SSI. KRS 205.245 provides not only for the mandatory supplementation program but also for supplementation to other needy aged, blind and disabled persons. The cabinet shall operate a supplement program for certified personal care homes (PCH) which accept state supplementation recipients and have a thirty-five (35) percent mentally ill or mentally retarded (MI or MR) population in all of the PCH's occupied licensed personal care beds. Personal care services are described in 902 KAR 20:036. This regulation sets forth the provisions of the supplementation program.

Section 1. Mandatory State Supplementation. Mandatory state supplementation payments shall be equal to the difference between the AABD payment for the month of December, 1973, plus any other income available to the recipient as of that month and the total of the SSI payment and other income. Also included are those former aged, blind or disabled recipients ineligible for SSI due to income but whose special needs entitled them to an AABD payment as of December, 1973. Mandatory payments shall continue until the needs of the recipient as recognized in December, 1973, have decreased or income has increased to the December level.

(1) The mandatory payment is increased only when income as recognized in December, 1973, decreases, the SSI payment is reduced but the recipient's circumstances are unchanged, or the standard of need utilized by the department in determining optional supplementation payments for a class of recipients is increased.

(2) In cases of man and wife, living together, income changes after September, 1974, will result in increased mandatory payment only if total income of the couple is less than December, 1973, total income.

Section 2. Optional State Supplementation. Optional state supplementation is available to those persons meeting technical requirements and resource limitations of the aged, blind or disabled medically needy program as contained in 907 KAR 1:011 and 907 KAR 1:004 (except when specified in 904 KAR 2:015) who require special living arrangements and who have insufficient income to meet their need for care. Special living arrangements include residence in a personal care home as defined in 902 KAR 20:036 or family care home as defined in 902 KAR 20:041 or situations in which a caretaker must be hired to provide care other than room and board. A supplemental payment is not made to or on behalf of an otherwise eligible individual when the caretaker service is provided by the spouse, parent (of an adult disabled child or a minor child), or adult child (of an aged or disabled parent) who is living with the otherwise eligible individual. When this circumstance exists and a person living outside the home is hired to provide caretaker services, the supplemental payment may be made. Application for SSI, if potential eligibility exists, is mandatory.

Section 3. Resources Considerations. In determining countable resources and the effect of resources on eligibility, the following policies are applied.

(1) Consider resources according to policies for the medically needy as contained in 907 KAR 1:004, except as noted in subsection (2) of this section.

(2) The upper limit for resources for an individual and for a couple is set at $1,700 and $2,550, respectively, effective January 1, 1986; at $1,800 and $2,700, respectively, effective January 1, 1987; at $1,900 and $2,850, respectively, effective January 1, 1988; and at $2,000 and $3,000, respectively, effective January 1, 1989.

(3) Resources determined in accordance with subsection (1) of this section to be in excess of excluded amounts must be considered countable resources when determining whether the individual or couple exceeds the upper limits specified in subsection (2) of this section. If resources exceed the upper limits, the individual or couple is ineligible.

Section 4. Income Considerations. Establish the amount of income according to policies for the medically needy in 907 KAR 1:004. In determining the amount of optional supplementation payment, total net income of the applicant or recipient, or applicant or recipient and spouse, including any payments made to a third party in behalf of an applicant or recipient, is deducted from the standard of need with the following exceptions:

(1) Income of the ineligible spouse is conserved for the needs of the ineligible, non-SSI spouse or minor dependent children in the amount of one-half (1/2) of the SSI standard for an individual for each person adjusted by deduction of sixty-five (65) dollars and one-half (1/2) of the remainder from monthly earnings of spouse. Income of the eligible individual is not conserved for the needs of the ineligible spouse or minor dependent children. When conserving for the needs of the minor dependent children, income of the children shall be appropriately considered so that the amount conserved does not exceed the allowable amount. When the eligible individual and spouse each have earnings, the earnings shall be combined prior to the application of the earnings disregard of sixty-five (65) dollars and one-half (1/2) of the remainder.

(2) If one (1) member of a couple is institutionalized and the SSI spouse maintains a home, income in the amount of the SSI standard for one (1) is conserved for the spouse.

Section 5. Standard of Need. (1) The standard, based on living arrangement, from which income as computed in Section 4 of this regulation is deducted to determine the amount of optional payment is as follows:

(a) For eligibility determinations for personal care homes made on or after July 1, 1991: not less than $705 [690, effective January 1, 1991];

(b) Family care home: not less than $510, effective January 1, 1991;

(c) Caretaker.

1. Single individual, or eligible individual with ineligible spouse (one who is not aged, blind, or disabled): not less than $440, effective January 1, 1991;

2. Married couple, both eligible (aged, blind, or disabled), with one (1) requiring care: not less than $638, effective January 1, 1991;

3. Married couple, both eligible and both requiring care: not less than $682, effective January 1, 1991.

(2) In couple cases, both eligible, the couple's income is combined prior to comparison with the standard of need, and one-half (1/2) of the deficit is payable to each.

(3) The standard includes forty (40) dollars personal needs allowance which shall be retained by the client.

Section 6. Temporary Stay in a Medical Institution. A recipient of optional or mandatory state supplementation shall have continuation of state supplementation benefits during a temporary stay in a hospital, psychiatric hospital, skilled nursing facility or intermediate care facility.

Section 7. Residency. (1) To be eligible, an applicant or recipient shall be a citizen of the United States, or an alien legally admitted to this country or an alien who is residing in this country under color of law. An alien shall have been admitted for permanent residence. The applicant or recipient shall also be a resident of Kentucky. Generally, this means the individual shall be residing in the state for other than a temporary purpose; however, there are exceptions with regard to applicants for or recipients of a state supplementary payment and institutionalized individuals. The residency criteria specified in federal regulations at 42 CFR 435.403 shall be applicable except as specified in Section 6 of this regulation.

(2) Supplemental payments may be made to Kentucky residents residing outside the state only when the individual has been placed in the other state by this state. In these situations, the other requirements for eligibility shown in other sections of this regulation shall be applicable, except that with regard to the requirement shown in Section 6 of this regulation, the licensure shall be in accordance with a similar licensure act of the other state. If there is no similar licensure act in the other state, the payment may be made only if this state determines that, except for being in another state, the facility meets standards for licensure under the provisions of KRS 216B.010 to 216B.131. To be eligible for a supplemental payment while placed out-of-state the individual shall require the level of care provided in the out-of-state placement, there shall be no suitable placement available in Kentucky, and the placement shall be preauthorized by staff of the Department for Social Insurance.

(3) When determining residency, ability of the individual to indicate intent (to become a Kentucky resident) shall be considered if the individual is institutionalized. The individual is considered incapable of indicating intent if:

(a) His I.Q. is forty-nine (49) or less or he has a mental age of seven (7) or less, based on tests acceptable to the department; or

(b) He is judged legally incompetent; or

(c) Medical documentation, or other documentation acceptable to the state, supports a finding that he is incapable of indicating intent.

(4) An individual is institutionalized if he is residing in a facility providing some services other than room and board. Personal care facilities are considered to be institutions.

(5) For any noninstitutionalized individual under age twenty-one (21) whose eligibility for a supplemental payment is based on blindness or disability, his state of residence is Kentucky if he is actually residing in the state.

(6) For any noninstitutionalized individual age twenty-one (21) or over, his state of residence is Kentucky if he is residing in the state and has the intention to remain permanently or for an indefinite period (or, if incapable of indicating intent, is simply residing in the state).

(7) For any institutionalized individual living in Kentucky who is under age twenty-one (21) or who is age twenty-one (21) or older and became incapable of indicating intent before age twenty-one (21), the state of residence is Kentucky if:

(a) The state of residence of the individual's parents, or his legal guardian if one has been appointed, is Kentucky; or

(b) The state of residence of the parent applying for the supplemental payment on behalf of the individual is Kentucky, when the other parent lives in another state and there is no appointed legal guardian.

(8) For any institutionalized individual living in Kentucky who became incapable of indicating intent at or after age twenty-one (21), the state of residence is Kentucky if he was living in Kentucky when he became incapable of indicating intent. If this cannot be determined, the state of residence is Kentucky unless he was living in another state when he was first determined to be incapable of indicating intent.

(9) For individuals subject to determinations of residency pursuant to subsections (7) and (8) of this section, the state of residency is Kentucky when the individual is residing in Kentucky, and a determination of residency applying those criteria does not show the individual to be a resident of another state.

(10) For an individual subject to a determination of residency pursuant to subsections (7) and (8) of this section, the state of residence is Kentucky when Kentucky and the state which would otherwise be the individual's state of residency have entered into an interstate residency agreement providing for reciprocal residency status; i.e., when a similarly situated individual in either state would by written agreement between the states be considered a resident of the state in which he is actually residing.

(11) For other institutionalized individuals

(i.e., those individuals who are both age twenty-one (21) or over and capable of indicating intent), the state of residence is Kentucky if the individual is residing in Kentucky with the intention to remain permanently or for an indefinite period.

(12) Except in subsections (3) through (11) of this section, any individual placed by the cabinet in an institution in another state may, with appropriate preauthorization, be considered a resident of Kentucky, and any individual placed in an institution in Kentucky by another state may not be considered a resident of Kentucky.

(13) An individual receiving a mandatory state supplemental payment from Kentucky shall be considered a resident of Kentucky so long as he continues to reside in Kentucky. An individual receiving a mandatory or optional supplemental payment from another state shall not be considered a resident of Kentucky.

(14) An individual eligible for and receiving a supplemental payment in October, 1979, shall be considered a Kentucky resident through July 4, 1984, even if he does not meet the residency requirements specified in this section, so long as the individual continues to reside in Kentucky and his receipt of supplementary payments has not since October, 1979 been interrupted by a period of ineligibility.

(15) Except in the preceding provisions of this section, a former Kentucky resident who becomes incapable of indicating intent while residing out of this state may be considered a Kentucky resident if he returns to this state and he has a guardian, parent or spouse residing in this state. This individual may not be considered a Kentucky resident on the basis of this subsection whenever, subsequent to that time, he leaves this state to reside in another state except when the provisions of subsection (11) of this section are met. An individual leaving the state may, however, reestablish Kentucky residency by returning to the state if he has a guardian, parent or spouse residing in this state.

(16) No aged, blind, or disabled person shall be eligible for state supplementation while residing in a personal care home or family care home unless such home is licensed under KRS 216B.010 to 216B.131.

Section 8. Mentally Ill or Mentally Retarded Supplement. Certified PCH may qualify for quarterly supplement payments of fifty (50) cents per diem for each state supplementation recipient in their care as of the first calendar day of each qualifying month. In order to qualify, PCH shall meet the following criteria:

(1) The PCH shall be licensed in accordance with KRS 216B.010 to 216B.131.

(2) The PCH shall care for residents who have a primary or secondary diagnosis of mental retardation (such as mild or moderate, or other ranges of retardation whose needs can be met in a personal care home) or mental illness (excluding such diagnoses as organic brain syndrome, senility, chronic brain syndrome, Alzheimer's). An individual whose medical history includes a previous hospitalization in a psychiatric facility shall meet the criteria of mental illness, regardless of the present diagnosis.

(3) The PCH shall care for a thirty-five (35) MI or MR percent population in all of its occupied licensed PCH beds.

(4) The PCH shall not be eligible for payments during the time it is rated by the Office of Inspector General as "conditional". Rating requirements are specified in KRS 216.550 and 900 KAR 2:030.

(5) The PCH shall have a licensed nurse or certified medication technician (CMT) on duty for at least four (4) hours during the first or second shift. The PCH may not decrease licensed nurse or CMT staffing hours in effect prior to July 1990, as a result of this minimum requirement.

(6) The PCH shall file an application with the Department for Social Insurance (DSI) by the tenth working day of the first month of the calendar quarter to be eligible for payment in that quarter. Quarters shall begin in January, April, July and October. Once certified, eligibility continues as long as criteria continues to be met.

(7) For state fiscal year (SFY) 1991 implementation only, PCH interested in being certified for the MI or MR supplement shall file a letter of intent with DSI by July 31, 1990. To assure adequate time for the MI or MR training and certification process for both the cabinet and the PCH, the letter of intent shall secure money for the first and second quarters of SFY 1991.

(8) The PCH shall provide DSI with its tax identification number and address annually and with a monthly report of all residents of the PCH (including resident's social security number) who were residents of the PCH on the first day of the month. In order to maintain confidentiality, the PCH shall annotate the monthly listing with a star which indicates a resident has a MI or MR diagnosis and note with a check mark those residents who receive state supplementation but are not mentally ill or mentally retarded. A star and a check mark shall indicate the resident is both MI or MR and a recipient of state supplementation. The monthly report shall be used for certification, payment, and audit purposes. The monthly report shall be postmarked to DSI by the fifth working day of the month. For implementation in SFY 1991, facilities which file a timely letter of intent with DSI shall file the monthly reports for July and August, 1990, on or before August 15, 1990.

(9) The PCH shall notify DSI when its MI or MR percentage goes below thirty-five (35) percent for all personal care residents. Facilities may be randomly audited to verify percentages and payment accuracy.

Section 9. Training. The PCH licensed nurse or CMT shall attend MI or MR training provided through the Department for Mental Health and Mental Retardation Services. Other staff may be trained in order to assure the facility always has at least one (1) certified staff employed for certification purposes.

(1) MI or MR training shall be provided through a one (1) day workshop. Training will cover at least the following:

(a) Importance of proper medication administration.

(b) Side affects and adverse medication reactions especially with regard to psychotropics.

(c) Signs and symptoms of an acute onset of a psychiatric episode.

(d) Characteristics of each major diagnosis,

for example, paranoia, schizophrenia, bi-polar disorder, mental retardation, etc.

(e) Guidance in the area of supervision versus patient rights for the MI or MR population.

(f) How to provide necessary activities to meet the needs of mentally ill or mentally retarded residents.

(2) Initial training shall include the licensed nurse or CMT and may include the owner or operator. These individuals shall be trained in the quarter during which the application is filed. For implementation in SFY 1991 only, the initial training shall take place in the quarter during which the letter of intent is filed or the following quarter. To assure that a certified staff member is always employed at the facility, a maximum of five (5) may be trained during a year (one (1) additional staff member in each of the quarters following the initial training). If staff turnover results in the loss of the licensed nurse or CMT and five (5) staff have been trained, the PCH shall request in writing to DSI an exemption of the five (5) staff rule. The PCH shall have on staff a licensed nurse or CMT who has received the MI or MR training or is enrolled in the next scheduled MI or MR training workshop at the closest location.

(3) The Department for Mental Health and Mental Retardation Services will provide a certificate to direct care staff who complete the workshop.

(4) DSI shall pay twenty-five (25) dollars for each staff member receiving training up to the maximum of five (5) staff per year, in accordance with 904 KAR 2:050.

Section 10. MI or MR Certification. The Office of the Inspector General, Division of Licensing and Regulation, shall visit PCH to certify their eligibility to participate in the MI or MR supplement. The PCH's initial MI or MR certification may be separate from the annual survey. However, after the initial MI or MR certification, the certification shall be in effect until the subsequent licensure survey, which can be greater than or less than twelve (12) months.

(1) Written notification to DSI from the PCH shall be postmarked within five (5) working days after staff have completed the training workshop. DSI shall notify the Division of Licensing and Regulation that the facility is ready to be certified.

(2) The Division of Licensing and Regulation shall review records, observe and interview residents and staff during the certification process. The Division of Licensing and Regulation shall review records to assure the following criteria is met:

(a) Certification is on file at the PCH to verify staff training by the Department for Mental Health and Mental Retardation Services.

(b) The PCH's certified staff have trained all other direct care staff through in-service training or orientation regarding the information obtained at the MI or MR training workshop. The PCH shall maintain documentation of attendance at the in-service training for all direct care staff.

(c) Activities are being regularly provided and meet the needs of the residents. When residents do not attend group activities, activities shall also be designed to meet the needs of individual residents, for example, reading or other activity which may be provided on an individual basis. Individualized care plans are not required to meet this criteria.

(d) Medication administration meets licensure requirements and licensed nurse or CMT demonstrates a knowledge of psychotropic drug side affects.

(3) The Division of Licensing and Regulation shall be provided the MI or MR training package to assure survey staff are aware of what has been taught for MI or MR certification purposes.

(4) The Division of Licensing and Regulation shall also review the PCH copy of the listing submitted to DSI prior to performing their record review during the MI or MR certification process.

(5) If thirty-five (35) percent MI or MR population is met on the day of the visit, the PCH shall be deemed to have an ongoing qualifying percentage effective with month of request for certification. This certification shall be in effect until next annual survey which can be greater than or less than twelve (12) months. The PCH is responsible for notifying DSI, within ten (10) working days, when the MI or MR population goes below thirty-five (35) percent of all occupied personal care beds in the facility.

(6) The Office of the Inspector General, Division of Licensing and Regulation, shall provide a form to DSI monthly identifying certified PCH eligible for MI or MR supplement. This information shall be provided by the fifth working day of each month for the prior month.

(7) The Office of Inspector General, Division of Licensing and Regulation, shall inform DSI monthly of PCH which receive a conditional rating. This information shall be provided by the fifth working day of each month for the prior month.

Section 11. Hearings and Appeals. Applicants or recipients of benefits under programs described herein who are dissatisfied with any action or inaction on the part of the cabinet shall have the right to a hearing under 904 KAR 2:055.

MIKE ROBINSON, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: July 11, 1991
FILED WITH LRC: September 24, 1991 at 4 p.m.

STATEMENT OF EMERGENCY
904 KAR 2:016E

This emergency administrative regulation removes the Transitional Child Care (TCC) Program in order to include it in 904 KAR 2:360 which is a newly created regulation. This regulation will include non-AFDC child care programs and will include the At-risk Child Care Program which will be implemented on September 16, 1991. 904 KAR 2:016 and 904 KAR 2:360 will be promulgated at the same time. This emergency administrative regulation shall be replaced by an ordinary administrative regulation.

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

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

904 KAR 2:016E. 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)
EFFECTIVE: September 24, 1991
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 FT	Special Needs PT	Infants FT	Infants PT	Toddlers FT	Toddlers PT
Licensed	$10	10	9	6	9	6
Certified	$ 9	9	8	5	8	5
Unregulated	$ 8	8	7	4	7	4

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

BARREN RIVER AREA DEVELOPMENT DISTRICT #4

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

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

LINCOLN TRAIL AREA DEVELOPMENT DISTRICT #5

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

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

KENTUCKIANA REGIONAL PLANNING AND DEVELOPMENT AGENCY AREA DEVELOPMENT DISTRICT #6

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

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

NORTHERN KENTUCKY AREA DEVELOPMENT DISTRICT #7

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

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

BUFFALO TRACE AREA DEVELOPMENT DISTRICT #8

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

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

GATEWAY AREA DEVELOPMENT DISTRICT #9

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

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

FIVCO AREA DEVELOPMENT DISTRICT #10

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

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

BIG SANDY AREA DEVELOPMENT DISTRICT #11

	Special Needs		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

KENTUCKY RIVER AREA DEVELOPMENT DISTRICT #12

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

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

CUMBERLAND VALLEY AREA DEVELOPMENT DISTRICT #13

	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	$ 9	6	10	7
Certified	$ 8	5	9	6
Unregulated	$ 7	4	8	5

LAKE CUMBERLAND AREA DEVELOPMENT DISTRICT #14

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

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

BLUEGRASS AREA DEVELOPMENT DISTRICT #15

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

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

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

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

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

3. No restrictions on other education and training activities.

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

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

(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 24, 1991 at 4 p.m.

STATEMENT OF EMERGENCY
904 KAR 2:110E

This emergency administrative regulation implements the Office of Refugee Resettlement action transmittal letter requiring states to reduce the period of eligibility for refugee cash assistance and refugee medical assistance from twelve (12) months to eight (8) months. This is effective October 1, 1991. This emergency administrative regulation revises the current language of the regulation to comply with the drafting requirements of Section 13A of the Kentucky Revised Statutes. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler for the October 1991 filing.

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

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

904 KAR 2:110E. Refugee assistance.

RELATES TO: KRS 194.050, 8 CFR 207.1, 208.2, 209.1-.2, 212.5, 245.1-.6; 34 CFR 690.2(1)-(6), 668.2-.4; 45 CFR 400.40-.104, 400.140-.156

STATUTORY AUTHORITY: KRS 194.050, 8 CFR 207.1, 208.2, 209.1-.2, 212.5, 245.1-.6; 34 CFR 690.2(1)-(6), 668.2-.4; 45 CFR 400.40-.104, 400.140-.156

EFFECTIVE: September 24, 1991

NECESSITY AND FUNCTION: The Cabinet for Human Resources is authorized by KRS 194.050 to administer programs to qualify for the receipt of federal funds providing cash and medical assistance to eligible Kentucky residents. This regulation establishes eligibility criteria and types and amounts of assistance for refugees residing in Kentucky.

Section 1. Definitions. (1) "Refugee" is any person of any nationality who:

(a) Because of persecution or fear of persecution due to:

1. Race;
2. Religion;
3. Nationality;
4. Membership in a particular social group; or
5. Political opinion;

(b) Fled from their country or the country where the person habitually resides;

(c) Cannot return there because of fear of persecution due to:

1. Race;
2. Religion;
3. Nationality;
4. Membership in particular social group; or
5. Political opinion; and

(d) Has been granted status by the United States Department for Immigration and Naturalization Service (INS) as:

1. Refugee;
2. Asylee;
3. Parolee;
4. Voluntary departure;
5. Permanent resident alien;
6. Conditional entrant;
7. Amerasian immigrant; or
8. Cuban-Haitian entrant.

(2) "Refugee Resettlement Program (RRP)" is the program for refugees who shall:

(a) Have been United States residents for not more than eight (8) [twelve (12)] months beginning with the month a refugee entered the United States; and

(b) Meet one (1) of the following status criteria of the INS:

1. A person from any country who has parolee status as a refugee or asylee;
2. A person admitted from any country with conditional entrant status;
3. A person from any country admitted as a refugee;
4. A person from any country who has been granted asylum status;
5. A person admitted as an Amerasian immigrant; or
6. A person from any country who previously held one (1) of the above statuses whose status has been adjusted to permanent resident alien.

Section 2. Application. Each refugee household requesting assistance shall:

(1) Complete an application; and

(2) Provide information necessary to determine eligibility in accordance with the procedural requirements of the cabinet.

Section 3. Eligibility Criteria. The applicant shall meet the following conditions of eligibility for receipt of cash and medical assistance under the Refugee Resettlement Program:

(1) Alien or citizenship status. The applicant shall be:

(a) A refugee; or

(b) A child of a recipient of refugee assistance who is:

1. A United States citizen by birth within the United States; and
2. Eligible while the refugee parent remains eligible for refugee assistance.

(2) Exclusion from other assistance programs. The applicant shall be ineligible for:

(a) Aid to Families with Dependent Children (AFDC); and

(b) Medical Assistance Program.

(3) Residence. The applicant shall be a Kentucky resident as specified in 904 KAR 2:006, Technical requirements; AFDC.

(4) Income and resource limits. The applicant

shall meet the financial eligibility standards of:
(a) Aid to Families with Dependent Children in 904 KAR 2:016, Standards for need and amount; AFDC; or
(b) The AFDC-related Medical Assistance Program in 904 KAR 1:004, Resource and income standard of medically needy if the application is for medical assistance only.
(5) Employability and social services. For receipt of cash assistance the applicant shall:
(a) Participate in any available and appropriate social service program providing job or language training in the area in which the refugee resides; and
(b) Register for employment with the state employment office, unless exempt under one (1) of the following criteria:
1. A child under age sixteen (16);
2. A child age sixteen (16) through seventeen (17), if enrolled as a full-time student at the high school level or the equivalent level of vocational or technical school;
3. An individual who has a medically determined temporary illness or injury with recovery anticipated within ninety (90) days;
4. An individual who has a medically determined physical or mental incapacity which is expected to exist longer than ninety (90) days;
5. An individual age sixty-five (65) or over;
6. An individual whose presence is required in the home to care for another member of the household who has been medically determined unable to care for himself and for whom alternate care arrangements are not feasible;
7. A mother or other caretaker relative of a child under age six (6);
8. A mother, if the father is required to register; and
9. A woman who is medically verified to be in the third trimester of pregnancy.
(6) Job search.
(a) For receipt of cash assistance, the applicant shall participate in job search unless exempt under the criteria specified in subsection (5)(b) of this section.
(b) Job search shall begin:
1. The sixth month after the refugee entered the United States; or
2. At the time the refugee is determined eligible for refugee cash assistance if the refugee has resided in the United States for at least six (6) months at the time of the determination.
(c) Job search shall continue for eight (8) consecutive weeks.
(d) A minimum of two (2) job contacts per week shall be completed and recorded for monitoring purposes.
(e) Job contacts may be made:
1. In person;
2. By mail; or
3. By telephone.
(f) If a nonexempt refugee fails to complete the job search requirements, sanctions specified in subsection (7)(b) of this section shall apply.
(7) Cooperation requirement.
(a) For receipt of cash assistance, the refugee shall not without good cause:
1. Refuse an appropriate offer of employment;
2. Terminate employment; or
3. Refuse to participate in an available and appropriate social service program.
(b) Any refugee not meeting this requirement shall be ineligible for a period of:
1. Three (3) months for the first occurrence; and
2. Six (6) months for subsequent occurrence.
(c) Good cause criteria is specified in 904 KAR 2:016, Section 4(4)(a).
(8) Student status. For receipt of cash assistance, the refugee shall not be:
(a) A full-time student;
(b) Carrying a full-time workload; and
(c) In an institution of higher education other than a correspondence school.
(9) Time limitation. The period of eligibility is limited to eight (8) [twelve (12)] months after entry into the United States.
(10) Newborns.
(a) A child born to a woman receiving medical assistance under the Refugee Assistance Program is eligible for medical assistance if:
1. The child has not reached his first birthday;
2. He resides in the household of the woman; and
3. The woman remains eligible for medical assistance.
(b) In this situation, an application is deemed to have been made and the child found eligible for medical assistance as of the date of birth.

Section 4. Benefit Levels. (1) Cash assistance shall be the same as for AFDC in 904 KAR 2:016, standards for need and amount; AFDC, except that the thirty (30) dollars plus one-third (1/3) disregard of earned income does not apply.
(2) Extended medical benefits.
(a) A refugee cash assistance case discontinued due to new or increased earned income shall be eligible for medical assistance for up to four (4) months.
(b) The four (4) months shall begin with the first month of cash assistance ineligibility due to earned income.
(c) Months for which recoupment is appropriate, due to earned income, shall be considered as part of the four (4) month period.
(3) Medical benefits.
(a) Medical assistance benefits shall include all benefits available to Medicaid recipients.
(b) In addition, children eligible for medical assistance under the refugee assistance program are eligible for coverage of:
1. Hepatitis B immune globulin (HBIG); and
2. Hepatitis B virus (HBV) vaccine inoculations.
(c) Costs incurred for these inoculations will be covered by the Refugee Assistance Program.
(4) Payments.
(a) Payment of benefits depends upon the availability of federal funds.
(b) If federal funds are insufficient or are not provided to the state in a timely manner, payments may be:
1. Reduced;
2. Suspended; or
3. Terminated.

Section 5. Recoupment. Action shall be taken to recoup cash assistance overpayments in accordance with 904 KAR 2:016, Section 10, Recoupment.

Section 6. Time and Manner of Payment. Time and manner of payment shall be in accordance with 904 KAR 2:050, Time and manner of payments.

Section 7. Right to a Fair Hearing. Any individual has a right to request and receive a fair hearing in accordance with 904 KAR 2:055, Hearings and appeals.

Section 8. Material Incorporated by Reference. (1) Forms necessary to participate in mandatory job search are incorporated effective October 1, 1990.

(2) This material is available to be inspected and copied at the Department for Social Insurance, 275 East Main Street, Frankfort, Kentucky 40621.

MIKE ROBINSON, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: September 18, 1991
FILED WITH LRC: September 24, 1991 at 4 p.m.

STATEMENT OF EMERGENCY
904 KAR 2:360E

This emergency administrative regulation introduces a new regulation which includes non-AFDC child care programs. The newly published federal regulations at 45 CFR 257 provides the states with the opportunity to provide an optional child care program to low income citizens through the Title IV-A At-risk Child Care Program. The proposed rules for this program were published on June 25, 1991. In order to provide these child care benefits to Kentucky's low income citizens as soon as possible, the Cabinet for Human Resources submitted a state plan which was approved in July 1991. The At-risk Program shall be effective September 16, 1991 and will provide child care assistance to working, non-AFDC families who are at risk of becoming AFDC recipients. This regulation will also contain the Transitional Child Care (TCC) Program which is being removed from 904 KAR 2:016. The sliding fee scale which indicates the amount of parent contribution toward child care in the TCC and At-risk Programs has been revised to allow for more gradual increases in parent fees and allows a family to have small increases in earning without an increase in child care expenses. This emergency administrative regulation shall be replaced by an ordinary administrative regulation.

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

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

904 KAR 2:360E. Transitional and at-risk child care.

RELATES TO: 45 CFR 256, 257
STATUTORY AUTHORITY: KRS 194.050
EFFECTIVE: September 24, 1991
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 24, 1991 at 4 p.m.

STATEMENT OF CONSIDERATION
905 KAR 2:080E

This emergency regulation establishes the procedures for implementing the child day care services provided by the Department for Social Services and shall pursuant to KRS 199.892 enable the cabinet to qualify to receive federal funds under the child care development block grant. It is necessary to promulgate these emergency regulations to coordinate the implementation of a full range of child care services provided under the social services block grant, child care and development block grant, at-risk child care and transitional child care programs. This emergency regulation shall be replaced by an ordinary administrative regulation. The ordinary regulation was filed with the Regulations Compiler on or about October 15, 1991.

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

CABINET FOR HUMAN RESOURCES
Department for Social Services

905 KAR 2:080E. Child day care services.

RELATES TO: KRS 199.892 through 199.896, 45 CFR Part 98, 256, 257, PL 99-457 Part H, 94-142.2
STATUTORY AUTHORITY: KRS 194.050, 199.892
EFFECTIVE: October 8, 1991
NECESSITY AND FUNCTION: KRS 194.050 provides that the Secretary for the Cabinet for Human Resources shall adopt regulations necessary to operate programs and fulfill the responsibilities vested in the Cabinet for Human Resources. In accordance with KRS 199.892, to enable the Cabinet for Human Resources to qualify to receive federal funds under the child care and development block grant, and pursuant to KRS 194.050, the Department for Social Services has drafted procedures that shall enable the provisions of child day care services to be implemented.

Section 1. Definitions. (1) "At-risk child care (ARCC)" means child care assistance provided through the state to non-AFDC families who need care in order to work and who may otherwise be at risk of becoming dependent upon AFDC.

(2) "Attending a job training or educational program" means regular and scheduled participation in a program offering appropriate skills training or education, if postsecondary, consistent with employment goals.

(3) "Certificate" means a payment mechanism provided by DSS and used by a family to secure day care from the provider of choice.

(4) "Child care and development block grant (CCDBG)" means child care assistance provided to families through the state to improve the affordability, quality and availability of child care services for a low income family to work or attend training or educational programs.

(5) "Child protective cases" means cases registered for services in which the case file contains case documentation that substantiates child abuse, neglect, dependency or exploitation. This category may include services to prevent abuse, neglect, dependency or exploitation, including multiproblem families.

(6) "Day care" means the provision of essential child care for a portion of a day on a regular basis and is designed to supplement, but not substitute for, the parent's responsibility for the child's protection, development and supervision.

(7) "Dedicated child care workers (DCW)" means the Department for Social Services staff who work strictly with the day care program. The dedicated child care worker provides services to families through the following federally funded programs: social services block grant (SSBG), child care and development block grant (CCDBG), at-risk child care (ARCC), and transitional child care (TCC).

(8) "Dependent care disregard" means a method of providing child care for AFDC and medical assistance recipients with earned income and food stamp recipients with earned income or in training or educational programs which are preparatory to employment by deducting child care expenses from the gross income, thus allowing the AFDC recipient to retain more income to pay child care expenses. In cases where recipients are receiving assistance under more than one (1) program, the highest disregard shall be used.

(9) "Eligibility requirements" means that for a family to qualify for child day care funds, except in those instances where day care is provided under SSBG for child protective cases, a family shall meet both need and income status criteria.

(10) "Employment" means public or private, full- or part-time, permanent or temporary work, including self-employment.

(11) "Family" means one (1) or more adults and children related by blood or law, including stepparents, residing in the same residence.

(12) "Licensed child day care facility" means a facility as governed by KRS 199.894.

(13) "Physical or mental incapacity" means a child under the age of eighteen (18) who has multiple or severe problems diagnosed by a physician or qualified professional, that prevent the child from caring for himself or herself for a part of the day.

(14) "Priorities" mean that the client groups identified for receipt of day care are ranked in chronological order by priority.

(15) "Provider" means a person, including a volunteer, who works in a Type I or Type II day care facility, certified small family day care home, unregulated home or registered home.

(16) "Purchase of care" means the purchase of child day care services from state licensed facilities, certified registered homes or other eligible provider for authorized children.

(17) "Registered provider" means a provider that is registered with the Department for Social Services as a provider of child care services through the child care and development block grant (CCDBG) or at-risk program (ARCC)

(18) "Small family day care home (SFDCH)" means a home or dwelling unit which voluntarily meets the minimum standards set by the cabinet, with a certified provider, where care is provided for no more than three (3) children, who are unrelated by blood, marriage or adoption to the family child care provider.

(19) "Social services block grant (SSBG)" means child care assistance provided by licensed or certified providers that is reimbursed by the department for families receiving protective and preventive services, including multiproblem families, and low income working parents.

(20) "Special needs child" means a child who has multiple or severe problems, and the severity of the disability requires ongoing specialized care as defined under PL 99-457 Part H or 94-142.2.

(21) "Transitional child care (TCC)" means child care assistance that is provided by the department to families whose eligibility for AFDC has ceased due to earnings from employment, or as a result of the loss of income disregards due to the expiration of the time limit according to the federal regulation on AFDC. The purpose of TCC is to help prevent welfare dependency or potential welfare dependency.

(22) "Type I day care facility" means a facility other than a dwelling unit which regularly receives four (4) or more children for day care; or a facility, including a dwelling unit, which regularly provides day care for thirteen (13) or more children. If preschool children of any day care staff receive care in the facility, they shall be included in the number for which the facility is licensed.

(23) "Type II day care facility" means a home or dwelling unit which regularly provides care apart from parents for four (4), but not more than twelve (12) children. The provider's own preschool children shall be included in the number for which the home is licensed.

(24) "Unregulated provider" means a child care provider who is not subject to be licensed, certified or registered by the state or federal government. Families receiving day care funds through the SSBG may not use unregulated care, however, unregulated care may be used by families receiving TCC or ARCC funds. Relative care as provided through the ARCC program, which is not required to be registered, shall be deemed unregulated.

(25) "Waiting list" means a list maintained by district DSS staff once funds are depleted in a district. The list is based on the availability of district day care funds. TCC families shall not be placed on a waiting list due to the uncapped funding source.

(26) "Without regard to income" means that SSBG child day care services for child protective cases shall be provided or purchased without regard to family income. In situations where the court is involved, parents may be ordered to pay for part or all of the cost of day care for their child. Voluntary payments by parents may be accepted

Section 2. Lead Agency Responsibilities. The Department for Social Services, as the lead agency, shall administer the CCDBG program directly, or through contracts or agreements and shall retain overall responsibility for the administration of the program and shall:

(1) Determine the basic usage and priorities for expenditures;

(2) Promulgate regulations governing the administration of the plan;

(3) Submit reports required by the federal government;

(4) Ensure the program complies with the CCDBG plan and federal requirements;

(5) Oversee the expenditure of funds;

(6) Monitor programs and services; and

(7) Comply with federal requirements in a complaint compliance hearing or appeal hearing.

Section 3. Eligibility. A child shall be eligible for services if he:

(1) Is under the age of thirteen (13) or is under the age of eighteen (18) and:

(a) Is physically or mentally incapable of caring for himself; or

(b) Is under court supervision;

(2) Resides with a family whose income does not exceed:

(a) Sixty (60) percent of the states median income for a family of the same size at time of application; or

(b) Seventy-five (75) percent of the states median income for a family of the same size at the time of reauthorization; or

(c) Receives, or needs to receive protective services under SSBG;

(3) Resides with parents who are working or attending a job training or educational program except under CCDBG;

(4) Other eligibility conditions or priority requirements including childhood development and before and after school care services, may be established in addition to subsection (1) through (5) of this section and Section 5(4) of this regulation as long as they shall not:

(a) Discriminate against children on the basis of:

1. Race;
2. National origin;
3. Ethnic background;
4. Sex;
5. Religious affiliation; or
6. Handicap.

(b) Limit parental rights as governed by Section 4 of this regulation; or

(c) Violate provisions of Section 5(4) of this regulation.

(5) The DCW shall verify the client's eligibility for services and complete the DSS-1A, Application for Services, herein incorporated by reference.

Section 4. Parental Rights and Responsibilities. (1) Parents of an eligible child who receive or are offered child care services shall be offered a choice:

(a) To enroll the child with an eligible child care provider that has a grant or contract, selected by the parent to the maximum extent practicable; or

(b) To receive a child care certificate, the DSS-76, Day Care Services Agreement and Child Care Certificate, herein incorporated by reference, which shall:

1. Be issued to the parent;
2. Be of value commensurate with the value of child care services provided in paragraph (a) of this subsection;
3. If chosen by the parent, may be used for child care services provided by a sectarian organization or agency;
4. Not be considered a contract or grant to the provider but assistance to the parent; and
5. Allow parents to choose from a variety of child care categories in compliance with federal regulations governing child day care programs including:

a. Licensed child care facilities;
b. Certified child care facilities (SFDCH);
c. Unregulated child care facilities; or

d. Registered child care facilities.

(2) Providers of child care services shall afford parents unlimited access to their children and to the provider during normal hours of operation and whenever the child is in the care of the provider.

(3) The cabinet shall:

(a) Maintain a record of substantiated parental complaints; and

(b) Make information regarding parental complaints available to the public upon request.

(4) The cabinet shall make available to the parents and general public, consumer education about parental options relating to child care services including:

(a) Licensing and regulatory requirements; and

(b) Complaint procedures.

Section 5. State and Provider Requirements. (1) The cabinet shall assure that providers of child care services:

(a) Shall comply with licensing and regulatory requirements as governed by 905 KAR 2:010 and 905 KAR 2:070;

(b) That are not required to be licensed or certified as governed by 905 KAR 2:010 and 905 KAR 2:070 shall be registered with the cabinet prior to payment under the block grant using the DSS-77, Day Care Billing Statement, herein incorporated by reference except under TCC and relative provided care under AARC; and

(c) Under CCDBG, nonrelative providers registered with the cabinet shall become certified as governed by 905 KAR 2:070.

(2) The cabinet has established maximum child day care payments as follows:

PURCHASE AREA DEVELOPMENT DISTRICT #1

	Special Needs		Infants		Toddlers	
Providers	FD	PD	FD	PD	FD	PD
Licensed	$10	10	10	7	10	7
Certified	$ 9	9	9	6	9	6
Unregulated	$ 8	8	8	5	8	5

	Preschool		School Age	
Providers	FD	PD	FD	PD
Licensed	$10	7	10	7
Certified	$ 9	6	9	6
Unregulated	$ 8	5	8	5

PENNYRILE AREA DEVELOPMENT DISTRICT #2

	Special Needs		Infants		Toddlers	
Providers	FD	PD	FD	PD	FD	PD
Licensed	$10	10	10	7	9	6
Certified	$ 9	9	9	6	8	5
Unregulated	$ 8	8	8	5	7	4

	Preschool		School Age	
Providers	FD	PD	FD	PD
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	
Providers	FD	PD	FD	PD	FD	PD
Licensed	$10	10	9	6	9	6
Certified	$ 9	9	8	5	8	5
Unregulated	$ 8	8	7	4	7	4

	Preschool		School Age	
Providers	FD	PD	FD	PD
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	
Providers	FD	PD	FD	PD	FD	PD
Licensed	$12	12	12	9	10	7
Certified	$11	11	11	8	9	6
Unregulated	$10	10	10	7	8	5

	Preschool		School Age	
Providers	FD	PD	FD	PD
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	
Providers	FD	PD	FD	PD	FD	PD
Licensed	$10	10	10	7	9	6
Certified	$ 9	9	9	6	8	5
Unregulated	$ 8	8	8	5	7	4

	Preschool		School Age	
Providers	FD	PD	FD	PD
Licensed	$ 9	6	8	5
Certified	$ 8	5	7	4
Unregulated	$ 7	4	6	3

KIPDA AREA DEVELOPMENT DISTRICT #6

	Special Needs		Infants		Toddlers	
Providers	FD	PD	FD	PD	FD	PD
Licensed	$13	13	13	10	13	10
Certified	$12	12	12	9	12	9
Unregulated	$11	11	11	8	11	8

	Preschool		School Age	
Providers	FD	PD	FD	PD
Licensed	$11	8	11	8
Certified	$10	7	10	7
Unregulated	$ 9	6	9	6

NORTHERN KENTUCKY DEVELOPMENT DISTRICT #7

	Special Needs		Infants		Toddlers	
Providers	FD	PD	FD	PD	FD	PD
Licensed	$12	12	12	9	12	9
Certified	$11	11	11	8	11	8
Unregulated	$10	10	10	7	10	7

Providers	Preschool FD	Preschool PD	School Age FD	School Age PD
Licensed	$12	9	11	8
Certified	$11	8	10	7
Unregulated	$10	7	9	6

BUFFALO TRACE DEVELOPMENT DISTRICT #8

Providers	Special Needs FD	Special Needs PD	Infants FD	Infants PD	Toddlers FD	Toddlers PD
Licensed	$10	10	8	5	8	5
Certified	$ 9	9	7	4	7	4
Unregulated	$ 8	8	6	3	6	3

Providers	Preschool FD	Preschool PD	School Age FD	School Age PD
Licensed	$ 8	5	8	5
Certified	$ 7	4	7	4
Unregulated	$ 6	3	6	3

GATEWAY AREA DEVELOPMENT DISTRICT #9

Providers	Special Needs FD	Special Needs PD	Infants FD	Infants PD	Toddlers FD	Toddlers PD
Licensed	$10	10	8	5	8	5
Certified	$ 9	9	7	4	7	4
Unregulated	$ 8	8	6	3	6	3

Providers	Preschool FD	Preschool PD	School Age FD	School Age PD
Licensed	$ 8	5	8	5
Certified	$ 7	4	7	4
Unregulated	$ 6	3	6	3

FIVCO AREA DEVELOPMENT DISTRICT #10

Providers	Special Needs FD	Special Needs PD	Infants FD	Infants PD	Toddlers FD	Toddlers PD
Licensed	$10	10	10	7	10	7
Certified	$ 9	9	9	6	9	6
Unregulated	$ 8	8	8	5	8	5

Providers	Preschool FD	Preschool PD	School Age FD	School Age PD
Licensed	$10	7	9	6
Certified	$ 9	6	8	5
Unregulated	$ 8	5	7	4

BIG SANDY AREA DEVELOPMENT DISTRICT #11

Providers	Special Needs FD	Special Needs PD	Infants FD	Infants PD	Toddlers FD	Toddlers PD
Licensed	$10	10	10	7	10	7
Certified	$ 9	9	9	6	9	6
Unregulated	$ 8	8	8	5	8	5

Providers	Preschool FD	Preschool PD	School Age FD	School Age PD
Licensed	$10	7	10	7
Certified	$ 9	6	9	6
Unregulated	$ 8	5	8	5

KENTUCKY RIVER AREA DEVELOPMENT DISTRICT #12

Providers	Special Needs FD	Special Needs PD	Infants FD	Infants PD	Toddlers FD	Toddlers PD
Licensed	$11	11	11	8	11	8
Certified	$10	10	10	7	10	7
Unregulated	$ 9	9	9	6	9	6

Providers	Preschool FD	Preschool PD	School Age FD	School Age PD
Licensed	$ 9	6	9	6
Certified	$ 8	5	8	5
Unregulated	$ 7	4	7	4

CUMBERLAND VALLEY AREA DEVELOPMENT DISTRICT #13

Providers	Special Needs FD	Special Needs PD	Infants FD	Infants PD	Toddlers FD	Toddlers PD
Licensed	$10	10	10	7	10	7
Certified	$ 9	9	9	6	9	6
Unregulated	$ 8	8	8	5	8	5

Providers	Preschool FD	Preschool PD	School Age FD	School Age PD
Licensed	$ 9	6	10	7
Certified	$ 8	5	9	6
Unregulated	$ 7	4	8	5

LAKE CUMBERLAND AREA DEVELOPMENT DISTRICT #14

Providers	Special Needs FD	Special Needs PD	Infants FD	Infants PD	Toddlers FD	Toddlers PD
Licensed	$10	10	9	6	9	6
Certified	$ 9	9	8	5	8	5
Unregulated	$ 8	8	7	4	7	4

Providers	Preschool FD	Preschool PD	School Age FD	School Age PD
Licensed	$ 9	6	9	6
Certified	$ 8	5	8	5
Unregulated	$ 7	4	7	4

BLUEGRASS AREA DEVELOPMENT DISTRICT #15

Providers	Special Needs FD	Special Needs PD	Infants FD	Infants PD	Toddlers FD	Toddlers PD
Licensed	$12	12	12	9	12	9
Certified	$11	11	11	8	11	8
Unregulated	$10	10	10	7	10	7

Providers	Preschool FD	Preschool PD	School Age FD	School Age PD
Licensed	$11	8	11	8
Certified	$10	7	10	7
Unregulated	$ 9	6	9	6

(3) The cabinet shall assess a fee which the family shall pay to the provider for the cost of child day care based on the following sliding scale:

Income Range (Monthly)		FAMILY SIZE Fee per day per family			
		2	3	4	5
0	399	0.10	0.10	0.10	0.10
400	499	0.20	0.20	0.20	0.20
500	599	0.25	0.25	0.25	0.25
600	699	0.40	0.30	0.30	0.30
700	799	1.00	0.35	0.35	0.35
800	899	2.00	0.60	0.40	0.40
900	999	3.25	1.15	0.45	0.45
1,000	1,099	4.50	2.25	0.80	0.50
1,100	1,199	6.00	3.50	1.60	0.55
1,200	1,299	7.50	5.00	3.10	0.90
1,300	1,399	8.00	6.00	4.60	1.60
1,400	1,499		7.00	6.10	2.65
1,500	1,599		7.75	7.00	4.05
1,600	1,699		8.25	7.85	5.50
1,700	1,799			8.35	7.10
1,800	1,899			8.80	8.35
1,900	1,999			9.30	9.30
2,000	2,099			9.55	9.75
2,100	2,199				10.25
2,200	2,299				10.70
2,300	2,399				11.00
2,400	2,499				
2,500	2,599				
2,600	2,699				
2,700	2,799				

Income Range (Monthly)		FAMILY SIZE Fee per day per family		
		6	7	8*
0	399	0.10	0.10	0.10
400	499	0.20	0.20	0.20
500	599	0.25	0.25	0.25
600	699	0.30	0.30	0.30
700	799	0.35	0.35	0.35
800	899	0.40	0.40	0.40
900	999	0.45	0.45	0.45
1,000	1,099	0.50	0.50	0.50
1,100	1,199	0.55	0.55	0.55
1,200	1,299	0.60	0.60	0.60
1,300	1,399	1.00	0.65	0.65
1,400	1,499	2.00	0.70	0.70
1,500	1,599	3.05	1.25	0.75
1,600	1,699	4.50	2.30	0.80
1,700	1,799	6.25	3.50	1.50
1,800	1,899	7.50	5.20	2.50
1,900	1,999	8.80	7.00	3.80
2,000	2,099	9.75	8.50	5.30
2,100	2,199	10.25	10.00	7.10
2,200	2,299	10.70	10.70	8.90
2,300	2,399	11.25	11.25	10.80
2,400	2,499	11.75	11.75	11.75
2,500	2,599	12.25	12.25	12.25
2,600	2,699	12.60	12.75	12.75
2,700	2,799		12.90	13.00

* For family size above eight (8), the family fee shall not increase.

(a) Except fees shall not be assessed in:

1. A child protective case under SSBG; or
2. An AFDC, medical assistance or food stamp case where clients are receiving dependent care disregard.

(b) The DCW shall determine the maximum daily reimbursement rate and parent fee, not to exceed rates as specified in subsection (2) of this section and monitor the payment to the child care provider. If the parent fails to pay the fee the DCW shall:

1. Develop a plan with the parent to pay the fee; or
2. In TCC cases report nonpayment to DSI if the client refuses to pay.

(c) The DCW shall advise the client to report family and financial changes that may affect authorization of payments. Reauthorizations shall be determined:

1. Every six (6) months; and
2. Upon receipt of reported changes.

(4) The Cabinet for Human Resources shall, except for SSBG protective service cases, establish priorities for child care services as follows with a ninety (90) day waiting list for approved clients maintained at each local office:

(a) Children with special needs;

(b) Job opportunity and basic skills program or TCC participants who have children ineligible for child care payments under the program;

(c) Families who lose eligibility in another child care program; and

(d) Other low income working parents or parents attending training or educational programs.

(5) The Department for Social Services shall exchange TCC client specific information to the Department for Social Insurance within ten (10) days of discovery.

(a) The DCW shall report the following changes in client information to the local DSI office:

1. Termination of client's job;
2. A child left home;
3. A child moved into the home or a newborn was reported;
4. Client's address changes;
5. An absent parent returns to the home;
6. Client failed to cooperate in paying the fee;
7. Case terminated; or
8. Overpayment or underpayment of TCC benefits.

(b) The DCW shall report the following changes in client information to the Division for Child Support Enforcement:

1. TCC case approval for payments;
2. A child left the home;
3. Payments cease for a child;
4. Client's address changes; or
5. Except for reapprovals for the AFDC program, discontinuances.

(6) The DCW shall terminate day care services when:

(a) DSI determines the client has lost eligibility for TCC benefits; or

(b) Due to need or income criteria, clients lose eligibility. If due to program policy changes the DCW shall:

1. Reassess the families so clients may be given ten (10) days notice of their eligibility, if they do not meet the new criteria after their authorization period expires;
2. Send written notices explaining new eligibility criteria with a notice of intended action.

(7) The day care worker shall notify the client of their rights as governed by 905 KAR 1:320, Fair hearing.

Section 6. Material Incorporated by Reference. (1) Forms necessary for the implementation of child day care services are herein incorporated by reference.

(2) Material incorporated by reference may be inspected and copied at the Department for Social Services, CHR Building, 6th Floor, 275 East Main Street, Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m.

LARRY MICHALCZYK, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: September 26, 1991
FILED WITH LRC: October 8, 1991 at 2 p.m.

STATEMENT OF EMERGENCY
907 KAR 1:540E

This emergency administrative regulation is being promulgated to establish eligibility requirements for the Hospital Indigent Care Assurance Program. This action must be taken on an emergency basis to implement state legislation mandates in a timely manner. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation will be filed with the Regulations Compiler on or about September 1, 1991.

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

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:540E. Eligibility requirements for the Hospital Indigent Care Assurance Program (HICAP).

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050, 205.575
EFFECTIVE: September 24, 1991
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 24, 1991 at 4 p.m.

REGULATIONS AS AMENDED BY PROMULGATING AGENCY AND REVIEWING SUBCOMMITTEE

COMPILER'S NOTE: Unless otherwise noted, the regulations contained in this section of the Administrative Register have been amended by the promulgating agency and the Administrative Regulation Review Subcommittee at its October 7-8, 1991 meeting, and will become effective after the second legislative committee review.

GENERAL GOVERNMENT CABINET
State Board of Elections
(As Amended)

31 KAR 4:070. Recanvass Procedures.

RELATES TO: KRS 117.305, 118.425
STATUTORY AUTHORITY: KRS 117.015(1), 118.425(3)
NECESSITY AND FUNCTION: The purpose of this regulation is to set reporting standards for those elections where a recanvass is requested and received in a timely manner.

Section 1. (1) The Official Recanvass of Count and Record of Election Totals form, SBE 49A, July, 1991, which is incorporated by reference, shall be used by the county board of elections to report all recanvassed votes. This form, SBE 49A, may be obtained from the State Board of Elections, Room 71, The Capitol, Frankfort, Kentucky 40601, which is open Monday through Friday, 8 a.m. to 4:30 p.m.

(2) The county board of elections shall state the county making the report, the date of the report, the date of the election, the office for which the recanvass is being made, the names of each candidate in the office being recanvassed, and the machine votes, absentee votes and total votes for each candidate. The report shall be signed by each member of the county board of elections.

Section 2. (1) The county board of elections shall file its recanvass report, SBE 49A, on the Thursday before the third Monday after the election for those vote totals reported to the Secretary of State.

(2) The county board of elections shall file its recanvass report, SBE 49A, on the Thursday before the third Monday after the election for the vote totals reported to the county clerk.

(3) The original of the recanvass report, SBE 49A, shall be filed with the Secretary of State when the candidate was voted for as specified by KRS 118.425(3) and shall be filed with the county clerk when the candidate was voted for as specified by KRS 118.425(2). [by: the state at large, by a district greater than one (1) county, or by a city whose boundaries extend beyond those of a single county, or was a candidate for a member of Congress or the General Assembly.]

(4) [(2)] The county board of elections shall file the yellow copy of the recanvass report, SBE 49A, of vote totals reported to the Secretary of State and the county clerk with the county clerk. [on forms supplied by the State Board of Elections with the county clerk.]

Section 3. (1) In a general election the county board of elections shall check and tabulate the votes of the candidate requesting a recanvass and each opposing candidate seeking the same office.

(2) In a partisan primary election the county board of elections shall check and tabulate the votes of the candidate requesting a recanvass and each opposing candidate of the same political party seeking the same office.

(3) In a nonpartisan election the county board of elections shall check and tabulate the votes of the candidate requesting a recanvass and each opposing candidate seeking the same office.

BREMER EHRLER, Secretary of State
APPROVED BY AGENCY: July 15, 1991
FILED WITH LRC: July 15, 1991 at noon

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems
(As Amended)

105 KAR 1:120. Participation of agencies.

RELATES TO: KRS 78.530 through 78.532, 78.535
STATUTORY AUTHORITY: KRS 61.645(9)(e)
NECESSITY AND FUNCTION: The statutes provide for participation of local government entities in the County Employees Retirement System (CERS). This administrative regulation sets out the procedures and requirements for participation.

Section 1. Definitions. (1) "Alternate plan" means the plan under which the employer purchases service credit for its employees by paying the actuarial cost of the service in a lump sum or by annual installments.

(2) "Standard plan" means the plan under which the employer does not purchase service credit for its employees.

Section 2. Before an agency may participate in CERS, the retirement system shall determine that it meets the definition of county in KRS 78.510 and that the agency is qualified to establish and maintain a governmental plan as defined in 26 USC 414(d) and 29 USC 1002(32) [governmental entity as defined in the Internal Revenue Code].

Section 3. For participation under the alternate plan, the agency shall request an actuarial study through the retirement system to determine the cost of purchasing past service for all eligible employees at least ninety (90) days prior to the agency's desired participation date. The agency shall provide the information required by the actuary in writing or in the form of compatible magnetic media and shall pay the cost of the study and any revisions to the study to the actuary.

Section 4. The agency shall adopt an appropriate order that shall establish a participation date and the method of participation. The participation date shall be the first day of any month on or following the date the order is adopted and the method of participation shall be the alternate plan or the standard plan.

Section 5. The agency shall designate an individual to be responsible for reporting wages and employer and employee contributions to the retirement system. The retirement system shall provide forms, instruction and information concerning retirement statutes and regulations to the individual.

Section 6. The board shall review the agency's participation request at the first quarterly board meeting after the agency has reported contributions for a trial period of three (3) or more months. The board may deny participation if the agency fails to comply with retirement statutes governing participation of employees and reporting of contributions during the trial period. The board may deny participation by the agency if fewer than fifty (50) percent of its employees elect to participate in CERS. If the agency is phasing out another retirement plan or if the agency can provide justification for a lower election rate by its employees, the board may allow participation by an agency with fewer than fifty (50) percent of its employees electing to participate in CERS. If the board denies the agency's participation request, the contributions paid to the retirement system during the trial period shall be refunded to the employer and its employees.

Section 7. The annual installment to amortize the cost of the employees' service under the alternate plan shall not be less than ten (10) percent of the total annual payroll for nonhazardous employees and fifteen (15) percent of the total annual payroll for hazardous employees included in the alternate plan. The payment shall be due each year on the first day of the month in which participation began.

JOHN D. ROBEY, CHAIRMAN
APPROVED BY AGENCY: August 7, 1991
FILED WITH LRC: August 8, 1991 at 10 a.m.

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems
(As Amended)

105 KAR 1:130. Hazardous duty coverage.

RELATES TO: KRS 61.592, 78.545(31)
STATUTORY AUTHORITY: KRS 61.645(9)(e)
NECESSITY AND FUNCTION: The statute allows agencies participating in the Kentucky Retirement Systems to request hazardous position coverage for employees. This administrative regulation sets out the procedures and forms for requesting hazardous position coverage.

Section 1. <u>If an agency eligible to participate in the County Employees Retirement System chooses to provide hazardous duty coverage to all eligible employees, the agency</u> [An agency participating in the County Employees Retirement System] shall adopt an appropriate order to pay the required contributions and provide hazardous coverage to all eligible employees. The effective date of hazardous position coverage in the order shall be the first day of any month following the date of the quarterly meeting of the Board of Trustees which occurs after adoption of the appropriate order.

Section 2. An agency or department participating in the Kentucky Employees Retirement System may provide hazardous position coverage upon authorization by the cabinet secretary or governing board. The cabinet secretary or board chairman shall make the request for hazardous position coverage in writing. The effective date of hazardous position coverage shall be the first day of any month following the quarterly meeting of the Board of Trustees which occurs after the date of the request.

Section 3. The agency or department shall complete and submit the Form HP-1, dated July 1991, incorporated by reference. The form shall be signed by the head of the agency or department and by an individual who can attest that sufficient funds have been budgeted for the employer contributions.

Section 4. The agency or department shall submit a description of the duties of each position for which hazardous coverage is requested.

Section 5. The agency or department shall complete and submit a Form HP-2, dated July 1991 provided by the retirement system for each employee in a position for which the coverage has been requested.

Section 6. If the agency elects to pay the cost of providing hazardous coverage for current employees for past service in positions approved for hazardous coverage, the agency shall request and pay for an actuarial study to determine the cost.

Section 7. The forms required by this administrative regulation are incorporated by reference and are available from Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky between the hours of 8 a.m. and 4:30 p.m. Monday through Friday.

JOHN D. ROBEY, Chairman
APPROVED BY AGENCY: August 7, 1991
FILED WITH LRC: August 8, 1991 at 10 a.m.

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems
(As Amended)

105 KAR 1:140. Contribution reporting.

RELATES TO: KRS 16.505 to 16.652, 61.510 to 61.705, 78.510 to 78.852
STATUTORY AUTHORITY: KRS 61.645(9)(e)
NECESSITY AND FUNCTION: Employers participating in the Kentucky Employees Retirement System, County Employees Retirement System and State Police Retirement System are required to report creditable compensation and contributions to the retirement systems and other information that the Board of Trustees may require. This regulation sets out the reporting requirements for all participating agencies.

Section 1. Each employer shall report the creditable compensation and contributions of its employees at least once per month on the Summary of Wages Earned, Form 3, dated June 1991, or in

a [the] format acceptable to [determined by] the retirement system. Employers who report on magnetic diskette or tape may report on a semimonthly basis. Employers shall report only the creditable compensation earned during the period for which the report is prepared and shall report only the employee and employer contributions on the basis of this creditable compensation.

Section 2. If creditable compensation in excess of actual compensation is reported, the employer shall request a refund of the excess employer and employee contributions. The retirement system shall remit the excess employer and employee contributions to the employer in the form of checks made payable to the employer and employee. The employer shall distribute the employee's check to the employee if the amount is due the employee or shall redeposit the check into the account from which the funds were drawn.

Section 3. If creditable compensation less than actual creditable compensation paid is reported, the employer shall report the deficiency by pay period to the retirement system along with the employer and employee contributions owed as a result of the deficiency. The employer may report the additional creditable compensation by letter or other form which shall include:

(1) The Social Security number, name and gross creditable compensation of the employee by pay period.

(2) The total employer and employee contributions required on the additional creditable compensation and the computation of both amounts.

(3) The signature of the individual authorized by the agency to report contributions to the retirement system.

Section 4. If an expense allowance is paid to a county official by the state, the state shall withhold the employee contributions applicable to the amount and remit it to the retirement system on behalf of the county. The county shall report the employer contributions on the Expense Allowances Quarterly Report, Form 3-E dated July 1991.

Section 5. An employer may change the name or address of an employee on its reports. The employer shall submit within thirty (30) days of the change a letter or personnel document effecting the change signed by a personnel or payroll official.

Section 6. Each employer shall provide to the retirement system, upon request and in the form prescribed by the retirement system, information relating to all employee wages, employment status or other employment related information. Upon request, each employer shall make all relevant records related to its employees available to the retirement system during regular working hours.

Section 7. The forms required by this regulation are incorporated by reference and may be obtained from the retirement office at Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky between the hours of 8 a.m. and 4:30 p.m. Monday through Friday.

JOHN D. ROBEY, CHAIRMAN
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FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems
(As Amended)

105 KAR 1:160. Sick leave plans.

RELATES TO: KRS 16.505 to 16.652, 61.510 to 61.705, 78.510 to 78.852
STATUTORY AUTHORITY: KRS 61.645(9)(e)
NECESSITY AND FUNCTION: KRS 78.616 provides for retirement service credit for unused sick leave for members of the County Employees Retirement System. This regulation provides the requirements for participation in the program by individual county agencies, the calculation of the service credit and the payment of the cost of the credit by the employer.

Section 1. Definitions. (1) "Alternate plan" means the sick leave program described in KRS 78.616(5).

(2) "Standard plan" means the sick leave program as described in KRS 78.616(1), (3) and (4).

Section 2. An agency participating in the County Employees Retirement System may provide a sick leave program under KRS 78.616 by adopting an order appropriate to the agency and by completing and filing the form for the sick leave program provided by the retirement system.

(1) Only one (1) sick leave program under KRS 78.616 shall be offered to the employees of an agency.

(2) The agency shall certify to the retirement system that the program shall be universally administered.

(3) The agency shall pay all costs of the program.

(4) The agency shall certify to the retirement system the number of hours that constitutes a regular working day for employees of the agency.

(5) If the agency has no retirement sick leave program, it may choose the standard plan or it may choose the alternate plan. If the agency adopted the standard plan prior to July 1988, it may choose to adopt the alternate plan. Once a sick leave program is adopted, the agency shall continue to offer a sick leave program to its employees.

Section 3. If the agency adopts the standard plan, upon a member's retirement:

(1) The agency shall certify the unused sick leave credit which the member has accumulated on the Sick Leave Authorization, Form 24, dated April 1984.

(2) The retirement system shall determine the number of days of credit and divide the number of days by twenty-one (21) which shall be the average number of working days in a month. If the remainder is equal to or greater than eleven (11), the member shall receive credit for an additional month. The cost of the credit, determined by the formula described in KRS 61.552(9), for up to six (6) months of service shall be paid by the agency within thirty (30) days of notification by the retirement system.

(3) If the total accumulated sick leave is greater than six (6) months, the member may

purchase some or all of the additional months by paying the cost, determined by the formula described in KRS 61.552(9), to the retirement system before his retirement date.

Section 4. Agencies adopting the alternate plan, shall also certify the maximum number of sick leave days that an employee may accumulate prior to retirement. Upon a member's retirement:

(1) The agency shall compensate the member for all accumulated sick leave up to the maximum allowed. The rate of compensation for each day shall be based on the daily salary rate calculated from the member's current rate of pay.

(2) When notified by the retirement system, the agency shall withhold employer and employee contributions from the member's sick leave compensation and shall remit the contributions along with the sick leave certification form. The contributions and compensation shall not be reported with the regular payroll.

(3) If the member has one (1) or more months of service credit as determined in Section 3 [2], the service shall be added to the member's total service credit.

(4) Compensation and service shall also be included in the member's final compensation as follows:

(a) The member's sick leave credit in months and the compensation for those months shall be included in the last fiscal year used in his final compensation until the service credit in the fiscal year has reached twelve (12) months.

(b) When service credit in the last fiscal year has reached twelve (12) months, the remaining months of service and compensation shall be included in the first fiscal year used in his final compensation until service credit in the fiscal year has reached twelve (12) months.

(c) When service credit in both the last and first fiscal years used in his final compensation have reached twelve (12) months, the remaining months and compensation shall be used in lieu of the member's service and salary in the first fiscal year of the members final compensation. The salary replaced shall be the monthly average of the member's actual salary in the fiscal year.

Section 5. The forms required by this administrative regulation are incorporated by reference and may be obtained from the retirement office at Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky between the hours of 8 a.m. and 4:30 p.m. Monday through Friday.

JOHN D. ROBEY, Chairman
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FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems
(As Amended)

105 KAR 1:170. Membership form requirements.

RELATES TO: KRS 16.505 to 16.652, 61.510 to 61.705, 78.510 to 78.852
STATUTORY AUTHORITY: KRS 61.645(9)(e)
NECESSITY AND FUNCTION: KRS 16.530, 61.526 and 61.540 require a member of the Kentucky Employees Retirement System, County Employees Retirement System or State Police Retirement System to file information with the Board of Trustees as a condition of membership. This regulation establishes the information required for membership.

Section 1. An employee eligible for participation on the date his agency first participates shall complete an Election or Rejection Form, Form 2, dated July 1991, designating his desire to participate in or waive participation and benefits in the retirement system. The original form shall be kept on file in the retirement office.

Section 2. Within thirty (30) days of participation, an employee who is required to participate or who elects to participate shall complete a Membership Form, Form 1, dated December 1989. The membership form shall be kept on file in the retirement office.

Section 3. The employee may also complete a Beneficiary Designation Form, Form 35, dated July 1991 which shall be sent to the retirement office. If a designation of beneficiary form is not completed, if no beneficiary is named or if an improper beneficiary is named, the member's estate shall be the beneficiary until the member files a different designation with the retirement system.

Section 4. (1) If the employee is simultaneously eligible to participate in more than one (1) of the Kentucky Retirement Systems, the employee may elect to participate in only one (1) system and waive participation in and any rights to benefits from the employment in the other system during the period of simultaneous employment.

(2) The employee shall notify the retirement system in writing of his intent to exercise this right under KRS 61.545(3). Upon receipt of the notification, the retirement system shall provide the employee with an estimate of the benefits that may be forfeited by the employee **and** the Simultaneous Employment Choice of Systems Form, Form 26, dated February 1991, necessary for making an election.

(3) If the employee does not complete and return the form, the employee shall participate in both systems simultaneously and his service shall be prorated between the systems based on his ratio of his creditable compensation in each system to his total creditable compensation from all systems.

(4) If the employee submits the completed form, the employer that participates in the system in which the employee rejected participation shall be notified that it shall not report creditable compensation or contributions on the employee for the period of simultaneous employment. If contributions were reported prior to receipt of the form, the employer and employee contributions shall be refunded to the employer and employee and all service credit under that system shall be deleted from the employee's account for the period of simultaneous employment.

Section 6. Upon termination of employment, an employee who is not vested for monthly benefits may request a refund of his account by completing and returning an Application for Refund, Form 25, dated July 1989.

Section 5. The forms required by this regulation are incorporated by reference and may be obtained from the retirement office at Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky between the hours of 8 a.m. and 4:30 p.m. Monday through Friday.

JOHN D. ROBEY, Chairman
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FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems
(As Amended)

105 KAR 1:200. Retirement procedures and forms.

RELATES TO: KRS 16.505 to 16.652, 61.510 to 61.705, 78.510 to 78.852
STATUTORY AUTHORITY: KRS 61.645(9)(e)
NECESSITY AND FUNCTION: This administrative regulation sets out the procedures for application for and receipt of retirement benefits by members of the Kentucky Retirement Systems.

Section 1. The member shall submit a Notification of Retirement, Form 6, dated January 1991, to the retirement systems prior to his desired effective retirement date. The member shall designate the beneficiary of his retirement allowance on the form. The form shall be dated and the employee's signature shall be witnessed.

Section 2. The retirement system shall estimate the member's retirement allowance based on the salary reported to the system and information that may be supplied by the member or his employer. The payment options and amounts available to the member shall be printed on the Estimated Retirement Allowance, Form 6A, dated July 1991, and provided to the member with a place to designate his choice of payment options.

Section 3. The member shall designate a desired payment option and sign and date the form. The member's signature shall be witnessed and the form returned to the retirement office. If the member is retiring under early retirement provisions, the member may return the form within six (6) months of his retirement date and retain the effective date of retirement shown on the form. If the member fails to return the form within six (6) months of his retirement date, the member's notification of retirement shall be considered void and he shall be required to submit a new notification of retirement.

Section 4. The member shall provide the retirement system a copy of his birth certificate and, if a survivorship payment option is selected, a copy of the birth certificate of the beneficiary named on his notification of retirement. If a birth certificate is not available, the retirement system may accept other proof of age accompanied by a letter stating that a birth certificate is not available. The retirement system may accept one (1) or more of the following as proof of age of the member or his beneficiary: age record of the Social Security Administration, hospital record, baptismal record, marriage license, birth certificate of child or military discharge.

Section 5. The retirement system shall provide an Authorization for Deposit Form, Form 107, dated June 1983, to the member to have his monthly retirement allowance deposited to his account in a financial institution. The member and his financial institution shall provide the information and authorizations required for the electronic transfer of funds from the state treasurer's office to the designated financial institution.

Section 6. The retirement office shall provide a Form 103, dated July 1991, to the member to certify service with another agency participating in the Kentucky Retirement Systems for which he may be eligible to purchase credit prior to retirement. The retirement office shall provide the member with the cost of purchasing the service and an estimate of the benefits attributable to the additional service **credit** [prior]. The member shall have the right to purchase the service credit within thirty (30) days **following** [of] his retirement date.

Section 7. The retirement office shall provide forms effective July 1991 necessary for the selection of medical insurance coverage for himself and his spouse and dependents under the group insurance plan or to waive the right to insurance coverage at the time of retirement. Members who fail to submit the forms within thirty (30) days **following** [of] their effective retirement date shall not be eligible for benefits under the insurance plan until the following open enrollment period.

Section 8. The retirement office shall provide an Income Tax Withholding Preference, Form 17, dated October 1989, to the member to request that federal income taxes be withheld or not withheld from his retirement allowance.

Section 9. The retirement office shall provide a Death Benefit Designation, Form 36, dated June 1991, to the member to designate a beneficiary for the death benefit provided by the Kentucky Retirement Systems.

Section 10. The forms required by this administrative regulation are incorporated by reference and are available from Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky between the hours of 8 a.m. and 4:30 p.m. Monday through Friday.

JOHN D. ROBEY, Chairman
APPROVED BY AGENCY: August 7, 1991
FILED WITH LRC: August 8, 1991 at 10 a.m.

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems
(As Amended)

105 KAR 1:215. Administrative hearing.

RELATES TO: KRS 16.505 to 16.652, 61.510 to 61.705, 78.510 to 78.852
STATUTORY AUTHORITY: KRS 61.645(9)(e)
NECESSITY AND FUNCTION: The statutes provide that an affected person aggrieved by a decision

of the Board of Trustees, which is not a determination relating to disability retirement benefits, may appeal the decision to Franklin Circuit Court. There exists a need for an administrative appeal process for these individuals prior to the filing of an appeal in court. This regulation establishes the administrative appeal process.

Section 1. Definition. "Affected person" means a member, retired member or recipient as defined in KRS 16.505, 61.510 and 78.510.

Section 2. When the system takes action which substantially impairs an affected person's benefits or rights under KRS 16.505 to 16.652, 61.510 to 61.705 or 78.510 to 78.852, except action which relates to entitlement to disability benefits, the system shall notify the affected person of the opportunity to request a hearing. The notification shall be contained in the notice of action. An affected person may request a hearing by submitting such request in writing within thirty (30) days after the date of the notice of the opportunity to request a hearing. The request for hearing shall be filed with the general manager of the system at its office in Frankfort. The request for hearing shall contain a short and plain statement of the basis for request.

Section 3. Failure of the affected person to request a formal hearing within the period of time specified shall preclude the affected person from **requesting a hearing at a later time** [proceeding any further with his cause of action. This section shall not limit the affected person's right to appeal to a court].

Section 4. Upon request, the system shall schedule a hearing to be held not more than sixty (60) days after the request for a hearing has been received by the system unless otherwise agreed. The notice of hearing shall be served as described in Section 20 of this regulation and shall include a statement of the time, place and nature of the hearing.

Section 5. The system may, either through review of its records or conference with the affected person, recommend a favorable determination prior to scheduling a hearing. Upon notification of a favorable determination, the affected person may withdraw the hearing request or request that the hearing be scheduled.

Section 6. Any party to a hearing may be represented by counsel, make oral or written argument, offer testimony, orally or by deposition, cross-examine witnesses, introduce direct testimony from an expert approved by the hearing officer through a written report, or take any combination of these actions. Witness testimony may be given by deposition in lieu of personal appearance. An impartial hearing officer appointed and paid by the board shall preside at the hearing, keep order and conduct the hearing. Oaths and affirmations shall be administered by the hearing officer or court reporter. The hearing officer shall permit any party to represent himself. Failure to appear without good cause or failure to comply with any prehearing or interlocutory order of the hearing officer shall be grounds for a default.

Section 7. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. When necessary to ascertain facts not reasonably susceptible of proof under judicial rules of evidence, evidence not admissible thereunder may be admitted, except where precluded by statute, if it is of a type commonly relied upon by reasonable and prudent persons in the conduct of their affairs. Hearing officers shall give effect to the rules of privilege recognized by law. Objections may be made and shall be noted in the record. When a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form. Upon request, parties shall be given an opportunity to compare any copy with the original. A party may conduct cross-examinations required for a full and true disclosure of the facts. Notice may be taken of generally recognized technical or scientific facts within the system's specialized knowledge. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The system's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence.

Section 8. Each formal hearing shall be recorded, and a transcript made available on the motion of any party or by order of the hearing officer. Unless otherwise agreed, the party requesting the transcript shall provide payment for the original, and all others desiring copies shall pay the cost thereof. When certified as a true and correct copy of the testimony by the system, the transcript shall constitute the official transcript of the evidence.

Section 9. The hearing officer shall prepare findings of fact and conclusions of law based on the evidence appearing in the record as a whole and make a recommendation.

Section 10. The hearing officer shall, within thirty (30) days of the close of the formal hearing make a report and a recommended order to the board. The report and recommended order shall contain the appropriate findings of fact and conclusions of law. If the board finds upon written request of the hearing officer that additional time is needed, then the board may grant a reasonable extension. The hearing officer shall mail postage prepaid, a copy of his report and recommended order to all parties. The parties may file within fourteen (14) days of mailing of the hearing officer's report and recommended order exceptions to the report and recommended order. There shall be no other or further submissions.

Section 11. The board shall consider the report and recommended order and any exception filed and pass upon the case within a reasonable time. The board may remand the matter to the hearing officer, adopt the report and recommended order of the hearing officer as the system's final order, or issue their own final order.

Section 12. The system shall mail the final decision of the board to the affected person or

his legal representative. If any extension of time is granted by the board for a hearing officer to complete his report, the system shall notify the affected person or his legal representative at the time of the granting of the extension.

Section 13. The board shall not grant extensions of time to the hearing officer for more than thirty (30) days for any one (1) extension, and no more than two (2) such extensions shall be granted.

Section 14. A final order of the board shall be based on substantial evidence appearing in the record as a whole and shall set forth the decision of the board and the facts and law upon which the decision is based.

Section 15. There shall be no exparte communications between the parties or representatives of the parties and the hearing officer regarding an affected person.

Section 16. Formal hearings shall be held at the system's office in Frankfort unless another location is determined by the hearing officer.

Section 17. All requests for a hearing pursuant to this section shall be made in writing.

Section 18. The board may establish an appeals committee whose members shall be appointed by the chairman and who shall have the authority to act upon the recommendations and reports of the hearing officer pursuant to this section on behalf of the board.

Section 19. Any affected person aggrieved by a final order of the board may seek judicial review after all administrative appeals have been exhausted by filing suit in the Franklin Circuit Court within the time period prescribed in KRS 61.645(14). [No new or additional evidence shall be introduced in that proceeding and the court shall hear the case upon the record as attested.]

Section 20. Any proposed order or order shall be served by one (1) of the following methods:

(1) The system may place a copy of the document to be served in an envelope, and address the envelope to the affected person to be served at the address of the affected person existing in the system files or at the address set forth in written instructions furnished by the affected person or his legal representative. The system shall affix adequate postage and place the sealed envelope in the United States mail as certified mail return receipt requested. The system shall forthwith enter the fact of mailing in the record and make entry when the return receipt is received. If the envelope is returned with an endorsement showing failure of delivery, that fact shall be entered in the record. The system shall file the return receipt or returned envelope in the record. Service by certified mail is complete upon delivery of the envelope. The return receipt shall be proof of the time, place, and manner of service.

(2) The system may cause the document, with necessary copies, to be transferred for service to any person authorized by the board or by any statute or rule to deliver them, who shall serve the documents, and the return endorsed thereon shall be proof of the time and manner of service.

(3) The methods of service specified herein shall be supplemental to and shall be accepted as an alternative to any other method of service specified by other applicable law.

JOHN D. ROBEY, Chairman
APPROVED BY AGENCY: August 15, 1991
FILED WITH LRC: August 15, 1991 at noon

DEPARTMENT OF LOCAL GOVERNMENT
(As Amended)

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

RELATES TO: KRS 42.450 to 42.495
STATUTORY AUTHORITY: KRS 42.455(5)
NECESSITY AND FUNCTION: As directed by KRS 42.455(5) the Department of Local Government [Finance and Administration Cabinet], by this regulation, establishes [rules and] requirements relating to implementation of a system of grants from the Local Government Economic Assistance Fund (" [hereafter referred to as the] Fund") and, in addition, sets forth procedures for reporting with respect to Fund grants to the Department of Local Government [Finance and Administration Cabinet] as required by statute.

Section 1. [As used in this regulation, the terms,] "Local government," "local government unit," "recipient government" means [or similar descriptive terms, shall mean] the fiscal courts of coal-producing, coal-impact and mineral-producing counties, and the governing bodies of incorporated cities within such counties who may be eligible for fund grants.

[Section 2. Proposed Use Hearing. Commencing with fiscal year 1981, each recipient local government shall have at least one (1) public hearing annually to solicit proposals for grants from the fund. At the hearing, citizens of the recipient government shall have the opportunity to provide the executive authority written and/or oral comments and suggestions respecting the possible uses of grants from the fund. From this hearing actual proposed uses will be determined (hereafter referred to as the proposed use hearing).]

[(1) Each recipient shall notify the Finance and Administration Cabinet in writing of the date, time, and location of each proposed use hearing at least ten (10) days prior to the date it is held.]

[(2) Notice of the proposed use hearing shall be published in a newspaper of general circulation and made available to local radio and television stations serving the geographic area of the recipient no later than ten (10) days prior to the scheduled date of the proposed use hearing. This notice may appear concurrently with other legal notices placed by the recipient local government. The notice shall state the date, time, and location of the public hearing and the amount of money anticipated from the fund for the fiscal year. The notice shall include a statement that citizens who attend the proposed use hearing have the right to provide written and/or oral comments and to ask questions concerning proposals.]

[(3) The proposed use hearing may be held concurrently with other meetings for public purposes held by the recipient, provided the notice specifically identifies the fund.]

[(4)(a) The Finance and Administration Cabinet may waive the requirement for a proposed use hearing in any year for which the estimated amount to be received from the fund is less than $5,000, or if deemed in the best public interest.]

[(b) The recipient local government requesting a waiver shall state in writing the reasons for the waiver. The request shall be signed by the chief executive of the recipient government. The waiver shall be granted if it appears to be in the public interest.]

Section 2. [3.] Budget Hearings. Each [Commencing with] fiscal year, any [1981 each] recipient local government that proposes to expend[s] money from the fund in any fiscal year shall hold at least one (1) public hearing on specific proposed projects the government intends to fund (hereafter referred to as the budget hearing).

(1) At the budget hearing, all citizens of the recipient local government shall have a reasonable opportunity to provide written and oral comments, and to ask questions concerning the allocation of local government assistance funds.

(2) At least seven (7) [ten (10)] days prior to the budget hearing the recipient local government shall make available for public inspection during normal business hours, at the principal office of the local government, a summary of the [projects] proposed expenditures from [to be funded by] the fund. This summary shall be submitted as a part of the county's annual budget to the Department of Local Government [Finance and Administration Cabinet]. This summary shall identify each expenditure [project] according to eligible categories and [in the statute and shall contain a narrative description of each project,] the amount of money to be allocated to each category [and the relative priority of each project].

(3) A notice of the budget hearing shall be published in a newspaper of general circulation serving the geographic area of the recipient local government no later than seven (7) but not more than twenty-one (21) [ten (10)] days prior to the scheduled date of the hearing. The notice shall contain the following: Date, place and time of the public budget hearing; a statement of the amount anticipated from the fund for the fiscal year; the amount of such funds to be expended in each eligible category; a statement advising when and where a summary of projects and a summary of the entire budget for all income and expenditures of the recipient government is available for public inspection; a statement that citizens attending the public budget hearing have the right to provide written and/or oral comments and ask questions concerning the allocation of local government assistance funds.

(4) The public budget hearing may be held concurrently with budget hearings of the recipient local government provided the notice specifically identifies the fund and includes all information required by subsection (3) of this section.

Section 3. [4.] Annual Use Report. Each local government that receives grant money from the fund shall file an annual report with the Department of Local Government [Finance and Administration Cabinet] within sixty (60) days after the end of the fiscal year in which the funds were received.

[(1) The annual use report shall be on a part of the annual budget submitted to the Finance and Administration Cabinet and shall contain the following information: The status of each project funded in whole or in part by a grant from the fund; the amount of money from the fund actually expended on each project during the fiscal year; the manner in which each project affected local and regional plans.]

[(2)] The annual use report shall be certified by the chief executive official and contain a statement that the recipient government's general tax effort has not been reduced below the level of fiscal year 1980.

Section 4. [5.] Records. [Each recipient government shall maintain an official project file for each capital expenditure which shall be subject to inspection by the Finance and Administration Cabinet, the Attorney General or the Auditor of Public Accounts at any time from the date of grant approval and for a period of five (5) years after date of the final expenditure.]

[(1) The project file shall contain complete records and information including deeds, contracts, change orders; and documents which shall prove that the local government complied with any and all federal and state laws and regulations pertaining to bid advertisement and award, prevailing wage, nondiscrimination, licensing and permits and other such laws and regulations applicable to the expenditure.]

[(2)] The Department of Local Government [Finance and Administration Cabinet] shall **require that the generally accepted governmental auditing standards issued by the comptroller general of the United States** [establish uniform audit requirements which shall] be used by each recipient unit of local government required to submit an audit report under provisions of KRS 42.460.

[(3) Each recipient government shall maintain financial records for each expenditure which shall be subject to state initiated audit for a period of five (5) years after date of the final expenditure. Financial records shall include all earnings from investment of funds in accordance with KRS 42.455(4).]

(1) [(4)] **If an acceptable audit report has not been submitted to the Department of Local Government, additional funds from the fund may be transferred to the local government unit for a period not to exceed eighteen (18) months after the end of the fiscal year.** [No additional funds from the fund shall be transferred to the local government unit after the date required for submission to the Department of Local Government [Finance and Administration Cabinet], which is eighteen (18) months after the end of each fiscal year, until an acceptable audit report has been submitted to the Department of Local Government [Finance and Administration Cabinet].]

(2) [(5)] Each recipient government shall maintain a separate financial account for the receipt of any funds from the fund. Any expenditures or transfers shall be made from

this account. Financial records shall include all earnings from investment of funds in accordance with KRS 42.455(4).

[(6) Each recipient government shall submit to the Finance and Administration Cabinet, before the close of a fiscal year in which assistance has been granted under this Act, a copy of the agreement that an independent annual audit shall be conducted in accordance with KRS 42.460.]

[(7) Any grant proposal that includes a subgrant to another agency shall include an agreement executed by the recipient and the subgrantee which provides that:]

[(a) Thirty (30) days prior to the close of each fiscal year and upon completion of a project, the subgrantee shall furnish the entitlement recipient a report of all expenditures and all activities of any project funded by the subgrant.]

[(b) The subgrantee shall pay the cost of any audit of the subgrant required by the entitlement recipient.]

LEE TROUTWINE, Commissioner
APPROVED BY AGENCY: July 24, 1991
FILED WITH LRC: July 26, 1991 at 2 p.m.

DEPARTMENT OF LOCAL GOVERNMENT
(As Amended)

109 KAR 12:020. Application form; information required.

RELATES TO: KRS Chapter 64
STATUTORY AUTHORITY: KRS 64.140(1)
NECESSITY AND FUNCTION: This regulation sets forth the requirements for implementing the advancement procedure to be followed by a sheriff when requesting funds to defray expenses together with a list of documents to accompany the application.

Section 1. A sheriff desiring to receive advancements of funds from the State Treasury to defray the costs of operating his office **shall** [will] make application therefore in the form of a letter addressed to the Commissioner of the Department of Local Government [Secretary of the Finance and Administration Cabinet], Attention: Supervisor of County Fee Systems, Division of County and Municipal Accounting. The letter of application shall state **that**:

(1) [That] The fees received by the sheriff are insufficient to provide the necessary funds for the operation of the office.

(2) [That] The sheriff desires to receive advancements of funds from the State Treasury for the purpose of defraying the said office expenses.

(3) [That] The sheriff agrees to comply with the regulations of the department relating to sheriff's advancements in the event that he is granted an advance of monies for operating his office.

(4) [That] The documents filed with the application are true and correct statements of fact.

Section 2. The letter of application shall be signed by the sheriff, and his signature shall be notarized by a notary public in and for the Commonwealth of Kentucky.

Section 3. The following documents shall accompany the letter of application:

(1) A copy of the sheriff's settlement with the fiscal court of his county for the year immediately preceding the year in which the advance is made, certified as true and correct by the county court clerk. If the sheriff's settlement with the fiscal court has not been filed, the sheriff may substitute an affidavit setting out the actual fees of the office for the immediate preceding year.

(2) A copy of the last quietus from the state, certified by an authorized representative of the Revenue Cabinet, Commonwealth of Kentucky.

(3) A detailed statement of the sheriff's personal assets and liabilities.

(4) A detailed budget for the sheriff's office for the year in which the advancements are to be made. (This budget statement shall contain detailed breakdowns of monthly expenditures.)

(5) A detailed statement of the amount to be advanced in each month. (This statement must be approved by the fiscal court.)

(6) If a sheriff first requests an advance in a month other than January, he shall, in addition to the documents set out above, file an affidavit setting out his receipts for the year up to and including the last day of the previous month and his actual expenses to the last day of the same month.

(7) A bond in favor of the Commonwealth for an amount not to exceed the total advance requested for the year. The said bond shall be conditioned upon the full repayment by the sheriff of all monies advanced to him by the Commonwealth. This bond shall be in addition to the other bonds required by statute and if the bond is executed with a corporate surety, the premium thereon shall be an expense of the office. the bond shall be approved by the county court and prepared in duplicate, original [one (1) copy] to be filed with the department and one (1) copy with the county court clerk of the sheriff's county. No other official shall be a surety for a sheriff on his bond.

(8) Any other document, report, or information deemed necessary by the commissioner [secretary] to enable the department to adequately evaluate the advisability of making an advancement.

LEE TROUTWINE, Commissioner
APPROVED BY AGENCY: July 24, 1991
FILED WITH LRC: July 26, 1991 at 2 p.m.

DEPARTMENT OF LOCAL GOVERNMENT
(As Amended)

109 KAR 12:030. Initial advancement; procedure.

RELATES TO: KRS Chapter 64
STATUTORY AUTHORITY: KRS 64.140(1)
NECESSITY AND FUNCTION: The advance of funds procedure available to sheriffs is established by KRS 64.140. This regulation sets forth the considerations to be viewed by the supervisor of county fee systems [audit] before making his recommendations to the Commissioner of the Department of Local Government [Secretary of the Executive Department for Finance and Administration].

Section 1. Upon receipt of a letter of application for an advancement to a sheriff, the

supervisor of county fee systems shall examine the application and satisfy himself that the application and its supporting documents are in order. If he finds that the requests and supporting documents are in proper order, he shall [will] recommend to the Commissioner of the Department of Local Government [Secretary of the Finance and Administration Cabinet] that an advance be made. This recommendation shall [will] include a suggested amount to be advanced. In making his recommendation to the commissioner [secretary] the supervisor of county fee systems shall [will] be guided by the following considerations:

(1) If the first advance is requested for the month of January, the county fee systems [audit] supervisor shall [will] recommend that the department issue a warrant for the lesser of:

(a) The sheriff's request; or

(b) The estimated expenditures for the month of January as set out in the sheriff's budget; provided, however, that the monthly advance may not exceed the lesser of $30,000 or one-twelfth (1/12) of the sheriff's receipts for the previous year.

(2) If the first advance request is for a month other than the month of January, the county fee systems supervisor shall [will] add the expenses of the sheriff for the months of the year preceding the application as set out in the affidavit to the estimated expenses for the month the advance is requested, subtract the receipts of the office and recommend that a warrant be issued for the lesser of:

(a) The figure representing the difference between the sum of the aforementioned actual expenses and the estimated expenses for the month of the advance and the receipts of the office; or

(b) The amount requested; provided, however, that in no event shall the said recommendation exceed $30,000 or one-twelfth (1/12) of the sheriff's receipts of the previous year whichever is the lesser.

[Section 2. If the secretary approves the recommendation of the vounty fee systems supervisor, a secretary's order will be issued directing that the advancement be made, whereupon the cabinet will issue its warrant in the amount specified in the secretary's order.]

LEE TROUTWINE, Commissioner
APPROVED BY AGENCY: July 24, 1991
FILED WITH LRC: July 26, 1991 at 2 p.m.

DEPARTMENT OF LOCAL GOVERNMENT
(As Amended)

109 KAR 12:040. Subsequent advancements.

RELATES TO: KRS Chapter 64
STATUTORY AUTHORITY: KRS 64.140(1)
NECESSITY AND FUNCTION: KRS 64.140 provides for advancement to sheriffs. This regulation provides for subsequent advancements after the initial advancement and the amount a sheriff is entitled to.

Section 1. Having been granted an initial advancement, a sheriff may receive subsequent advancements upon filing with the Department of Local Government [Finance and Administration Cabinet] a request for the said advancement accompanied by an affidavit setting out the receipts and expenditures of the sheriff's office through the previous month.

Section 2. Upon receipt of the request the County Fee Systems Supervisor shall [will] add the actual expenditures to date to the estimated expenditures for the current month, subtract the actual receipts of the office, and cause a warrant to be issued for the lesser of:

(1) The difference; or

(2) The amount requested; provided however, that in no event shall the said warrant exceed the lesser of $30,000 or one-twelfth (1/12) of the sheriff's receipts for the previous year.

LEE TROUTWINE, Commissioner
APPROVED BY AGENCY: July 24, 1991
FILED WITH LRC: July 26, 1991 at 2 p.m.

TOURISM CABINET
Department of Fish & Wildlife Resources
(As Amended)

301 KAR 2:044. Taking of migratory wildlife.

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

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

(2) Woodcock: October 15 [1] through December 18 [4].

(3) Common snipe: October 15 [1] through December 18 [4].

(4) Wood duck: September 18 [12] through September 22 [16].

Section 2. Limits.

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

The possession limit is double the daily bag limit.

Section 3. Bag and Possession Limits. (1) After two (2) or more days of shooting, possession limits apply to transporting, but do not permit a double bag limit in the field.

(2) The above species (except doves) dressed in the field, or being prepared for

transportation, shall have one (1) fully feathered wing or head attached to the bird for identification purposes.

Section 4. Shooting Hours. (1) Doves: from 11 a.m. until sunset during the period September 1 through September 30 and October 5 [6] through October 28 [29]; from sunrise to sunset during the period November 30 [December 1] through December 5 [6].

(2) Common snipe and woodcock: from one-half (1/2) hour before sunrise to sunset.

(3) Wood duck: from one-half (1/2) hour before sunrise to sunset.

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

Section 6. Exceptions to Statewide Migratory Bird Seasons on Specified Wildlife Management Areas. Unless excepted below, all sections of this regulation apply to the following areas:

(1) Ballard Wildlife Management Area, located in Ballard County.

(a) Doves: September 1 through September 30; and October 5 [6] through October 13 only. Areas so designated by signs are closed. No firearms permitted on this area except during shooting hours.

(b) Woodcock and snipe: seasons closed.

(c) Wood duck: September 18 through September 22. Areas designated by signs are closed hunting.

(2) West Kentucky Wildlife Management Area, located in McCracken County.

(a) Doves: September 1 through September 30; and October 5 [6] through October 13 only.

(b) Woodcock and snipe: hunting permitted on tracts 2, 3, 6, and 7 only.

(c) All tracts designated by numbers followed by the letter "A" are closed to hunting.

(3) Central Kentucky Wildlife Management Area, located in Madison County.

(a) Doves: September 1 through September 30; and October 5 [6] through October 13 only.

(b) Woodcock and snipe: seasons closed.

(4) Land Between the Lakes Wildlife Management Area, located in Lyon and Trigg Counties.

(a) Doves: September 1 through September 30 and December 1 through December 5 [6] only.

(b) Woodcock and snipe: December 1 through December 5 [4] only.

(5) Fort Campbell Wildlife Management Area, located in Christian and Trigg Counties.

(a) Doves: postwide from September 1 through September 27 [21] and November 30 [December 1] through December 5 [6]. On designated areas [only] from September 28 [22] through September 30; October 5 through October 28 [October 6].

(b) Woodcock: postwide from November 28 [22] through December 13 [3 and January 3 through January 27]. On designated areas only from December 14 [4] through December 18 [31].

(c) Snipe: postwide from November 28 [22] through December 13 [3 and January 3 through January 31]. On designated areas only from December 14 [4] through December 18 [31].

(d) September wood duck: September 18 [13] through 22 [16] only. Hunting permitted during these permits in designated areas only.

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

(a) Doves: September 1 through September 30; and October 5 [6] through October 13 only.

(b) Wood duck: September 18 [12] through September 22 [16].

(7) Closed areas:

(a) The hunting of doves, woodcock, and common snipe is prohibited on Camp Webb Refuge Area, Grayson Lake.

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

(8) Dove hunter guidelines on wildlife management areas. The department shall establish hunter density guidelines for dove hunting fields on department property. **Upon entry, all hunters shall be advised that density guidelines may be exceeded and that they may be hunting at their own risk.** If those densities are reached, hunters shall be so advised and instructed that they may hunt at their own risk, disperse to other fields, or wait until hunter densities subside, when other hunters may be allowed to replace those leaving on a first-come, first-served basis. Any person behaving in an unsafe or uncooperative manner shall be immediately required to leave the premises.

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

Section 8. Use of Steel Shot. Only steel shot may be in possession when taking or attempting to take waterfowl statewide. [Except for the areas requiring use of steel shot identified in subsections (1) and (2) of this section, all provisions of 301 KAR 3:080, Prohibition of lead shot for waterfowl and dove hunting, apply.]

(1) Prohibition of lead shot for dove hunting. Lead shot is prohibited for the taking of doves on the Ballard, Swan Lake, Peal, Sloughs, Ohio River Islands, Duck Island and Kaler Bottoms Wildlife Management Areas. [Western steel shot zone. That area of Western Kentucky west of an eastern boundary described by the lines and/or roads as follows: The Purchase Parkway from Fulton, Kentucky, on the Kentucky-Tennessee border northeast to the Interstate 24 - Purchase Parkway junction; northeast on I-24 to the Lyon County line; then on a line including all of Lyon, Caldwell and Hopkins Counties to Fredonia; north from Fredonia on US 641 to US 60 at Marion; north on US 60 to the Union County line; northeast and north along the Union County Henderson County lines to the Indiana-Kentucky border north of Newman, Kentucky.]

(2) Possession of lead shot shells.

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

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

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

DON R. McCORMICK, Commissioner
DAVID H. GODBY, Chairman
RONALD E. GENTRY, Secretary

APPROVED BY AGENCY: August 7, 1991
FILED WITH LRC: August 8, 1991 at 10 a.m.

TOURISM CABINET
Department of Fish and Wildlife Resources
(As Amended)

301 KAR 2:195. Raptor propagation and falconry.

RELATES TO: KRS 150.010, 150.025, 150.180, 150.183, 150.290, 150.305, 150.320, 150.330, 150.360, Title 50 CFR Parts 13, 17, 21, 22
STATUTORY AUTHORITY: KRS 13A.350, Title 50 CFR Parts 13, 17, 21, 22
NECESSITY AND FUNCTION: This regulation pertains to the securing and use of birds of prey for breeding and hunting. It is necessary for the continuing protection and conservation of the birds of prey to insure a permanent and continued supply of this wildlife resource for the purpose of furnishing biological diversity, sport and recreation for present and future residents of the state. This regulation is also necessary to comply with corresponding federal regulations.

Section 1. Definitions. (1) "Legal hunting raptor" includes the great horned owl (Bubo virginianus) and all hawks and falcons of the families Falconidae and Accipiteridae, except those that are endangered or threatened. Under conditions described in Section 4(1)(c) of this regulation, golden eagles (Aquila chrysaetos) as well as threatened species, may be used for falconry.
(2) "Exotic raptors" means those species which have no subspecies occurring in the wild in the United States or Mexico. Any person holding a joint state/federal falconry permit may possess lawfully acquired exotic raptors in addition to the number of nonexotic raptors legally held.

Section 2. Articles Incorporated by Reference: Title 50 - Wildlife and Fisheries, Code of Federal Regulations (CFR), Part 13 - General Permit Procedures, Part 17, Subpart B, Section 17.11 - Endangered and Threatened Wildlife, Part 21 - Migratory Bird Permits and Part 22 - Eagle Permits, September 14, 1989. Copies of these documents are available for review weekdays from 8 a.m. - 4:30 p.m. in the offices of the Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601. Copies may be obtained from the U.S. Fish and Wildlife Service, 75 Spring Street, Atlanta, Georgia 30303.

Section 3. Hunting License, Falconry Permit Requirements and Transportation Permit Waiver. Wildlife may be taken within state hunting seasons and bag limits with any legal hunting raptor provided the falconer has in possession a valid state/federal falconry permit(s) and a valid Kentucky resident or nonresident hunting license. Licensed falconers may undertake intrastate transportation of any legally held raptor without possessing a transportation permit as required in 301 KAR 2:080.

Section 4. Classes of Falconry Permits, Sponsors, Application, Processing and Issuance, Examination Required, Duration of Permits and Fees. (1) Classes of falconry permits.

(a) Apprentice falconry permits. Apprentice falconers shall be at least fourteen (14) years of age and shall have a sponsor holding a general or master falconry permit. Applicants between the ages of fourteen (14) and sixteen (16) years shall provide a written consent form or letter from a parent or guardian. An apprentice may take and possess only one (1) nonexotic raptor, which shall be taken from the wild, and shall not take more than one (1) replacement from the wild during any twelve (12) month period which begins when the first replacement raptor is taken from the wild. Only an American kestrel (Falco Sparverius), red-tailed hawk (Buteo jamaicensis), red-shouldered hawk (Buteo Lineatus), or any exotic legal hunting raptor may be possessed or taken by an apprentice falconer. The red-tailed and red-shouldered hawks shall be first year (passage) age class birds, capable of flight. Any American kestrel which has left the nest and is capable of flight may be taken from the wild. There is no age restriction on exotic raptors. Apprentice falconers may buy and sell only exotic raptors.
(b) General falconry permits. General permittees shall be at least eighteen (18) years of age, have at least two (2) years experience in the practice of falconry at the apprentice level, and have complied with all reporting requirements of this regulation. A permittee at the general level may possess no more than two (2) nonexotic raptors and shall not take more than two (2) replacements from the wild during any twelve (12) month period which begins when any replacement raptor is taken from the wild. General permittees may take and possess any legal hunting raptor defined in this regulation.
(c) Master falconry permits. Master permittees shall have at least five (5) years experience in the practice of falconry at the general class level and have complied with all requirements of this regulation. A master permittee may possess no more than three (3) nonexotic raptors. No more than two (2) raptors for replacement birds shall be taken from the wild during any twelve (12) month period which begins when any replacement raptor is taken from the wild. A master permittee may take and possess any legal hunting raptor, but shall not take, in any twelve (12) month period, as part of the three (3) bird limitation, more than one (1) raptor listed as threatened in Title 50 CFR Part 17, Subpart B, Section 17.11, and then only when approved by the U.S. Fish and Wildlife Service and the Department of Fish and Wildlife Resources. Master falconers may replace any number of captive bred raptors a year provided the possession limit at one (1) time is not exceeded. Provided a permit has been issued by the department and in accordance with the Bald Eagle Protection Act and Title 50 CFR Part 22, Subpart B, Section 22.24, master permittees may take and possess golden eagles for falconry purposes. Master permittees shall not take any species listed as endangered by Title 50 CFR Part 17, Subpart B, Section 17.11, but may possess such species in accordance with the Endangered Species Act and implementing regulations.
(2) Sponsors. Sponsors shall hold a master or general falconry permit. A sponsor shall not have more than three (3) apprentices at any one (1) time. A sponsor withdrawing sponsorship shall notify the department in writing giving

reasons for withdrawal and shall notify the apprentice. If the apprentice does not have a new sponsor within thirty (30) days from the date of notification of withdrawal, his permit shall be deemed cancelled and his birds relocated.

(3) Application, processing and issuance. To obtain any class of joint state/federal falconry permit, an applicant shall complete **the** [a] standard falconry permit application form **(KYF – 1), hereby incorporated by reference**, as designated by the Department of Fish and Wildlife Resources and approved by the U.S. Fish and Wildlife Service, which is available from the Department of Fish and Wildlife Resources, and submit it to the Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601**, Monday through Friday, 8 a.m. to 4:30 p.m.** Accompanying the completed application shall be two (2) checks, one (1) payable to the Department of Fish and Wildlife Resources in the amount specified for a falconry permit in 301 KAR 3:021 and one (1) payable to the U.S. Fish and Wildlife Service in the amount specified in Title 50 CFR Part 13, Subpart B, Section 13.11. Also accompanying the application shall be an inventory of raptors which the applicant possesses at the time of application as specified in Section 6(1) of this regulation and Title 50 CFR Part 21, Subpart C, Section 21.28. Upon receipt of a completed application, inventory and fees, the application shall be forwarded to the appropriate state conservation officer who shall administer the required examination and inspect equipment and facilities. Should the equipment and facilities be adequate and the applicant pass the examination as specified in subsection (4) of this section, the state conservation officer shall certify such by affixing his signature on a letter of recommendation, and the Department of Fish and Wildlife Resources shall forward the application, certification, appropriate fee and test score to the U.S. Fish and Wildlife Service. The U.S. Fish and Wildlife Service may then issue the permit(s) according to the applicable terms and conditions of Title 50 CFR Parts 13, 21, or 22.

(4) Examination required. Applicants for all classes of falconry permits shall take an appropriate written examination and score no less than eighty (80) percent. The test shall be approved in accordance with Title 50 CFR Subpart C, Part 21.29(f) and shall be administered and supervised by the Department of Fish and Wildlife Resources at a designated site.

(5) Duration of permits. Permits shall be valid for a period of three (3) years from date of issuance.

(6) Fees. Falconry permit fees are as listed in 301 KAR 3:021.

Section 5. Facilities and Equipment. Facilities and equipment shall meet the minimum standards described in Title 50 CFR Part 21, Subpart C, Section 21.29. Facilities, equipment and raptors shall be made available at all times for inspection by authorized personnel of the Department of Fish and Wildlife Resources and the U.S. Fish and Wildlife Service.

Section 6. Marking. All peregrine falcons (Falco peregrinus), gyrfalcons (Falco rusticolus) and Harris hawks (Parabuteo unicinctus) shall be banded with markers supplied by the U.S. Fish and Wildlife Service at all times according to provisions of Title 50 CFR Part 21, Subpart C, Section 21.29.

Section 7. License Requirements and Conditions for Taking Raptors From the Wild. (1) License requirements. Holders of Kentucky falconry permits shall have in their possession a valid annual Kentucky hunting license before taking any raptor from the wild. Before taking a raptor from the wild, a nonresident shall have a Kentucky nonresident annual hunting license and joint state/federal permit(s) or individual state and federal falconry permit(s) from his home state and a special permit from the Department of Fish and Wildlife Resources. Application for such special permit(s) shall be made by writing the Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601, at least fifteen (15) days in advance of the date on which the permit is desired, and describing the nature of your request, your name, address, and status and number of your federal/state falconry permit.

(2) Conditions for taking raptors from the wild.

(a) Eyasses. Young birds not yet capable of flight (eyasses) may be taken only by a general or master falconer and only during the period May 12 through July 14. No more than two (2) eyasses shall be taken from the wild by the same permittee during this period. At least one (1) young shall be left in any nest from which raptors are taken.

(b) Passage birds. First year (passage) birds may be taken only during the period September 7 through December 31.

(c) Retrapping. Raptors may be retrapped only in accordance with Title 50 CFR Part 21, Subpart C, Section 21.29.

(d) Mature birds. Only American kestrels and great horned owls may be taken when over one (1) year old, except that any legal hunting raptor taken under a depredation or special purpose permit may be used for falconry by general and master falconers. All traps or other devices for taking raptors alive shall be tagged with the owners' name and address.

(e) All raptors taken from the wild shall be reported to the U.S. Fish and Wildlife Service as required in Title 50 CFR Part 21, Subpart C, Sections 21.28, 21.29 and 21.30 with a copy of the report being sent to the Department of Fish and Wildlife Resources in the same time frame.

Section 8. Raptors Acquired Before 1977. (1) A person possessing raptors legally acquired before January 1, 1977, and who fails to meet the permit requirements, shall be allowed to retain the raptors with a nonhunting raptor permit. These raptors shall not be replaced nor used for hunting. Facilities and equipment for holding them shall meet the standards in Section 5 of this regulation.

(2) A falconry permittee legally possessing raptors acquired before January 1, 1977, in excess of the number allowed under his class permit, shall be allowed to retain and hunt the extra raptors. No replacement shall occur, nor shall an additional nonexotic raptor be obtained, until the number in possession is at least one (1) less than the total number authorized by the class of permit held by the permittee.

Section 9. Importation, Trading or Transferring, Purchasing, Bartering or Selling, Temporary Care and Feathers of Raptors. (1) Importation. Holders of valid falconry permit(s) may transport any legally held raptor into or within the state of Kentucky without a transportation permit from the Department of Fish and Wildlife Resources as required in 301 KAR 2:080.

(2) Trading or transferring. Any class falconry permittee may trade or transfer a raptor to another permittee if the transaction occurs entirely within the state of Kentucky and no money or other consideration is involved. A permittee may trade or transfer a raptor to another permittee in an interstate transaction if the prior written approval of all states involved is obtained and no money or other consideration is involved in the transaction, except as allowed in Title 50 CFR Part 21, Subpart C, Section 21.28(d)(8). All such transactions shall be reported to the U.S. Fish and Wildlife Service as required in Title 50 CFR Part 21, Subpart C, Sections 21.28 and 21.30 with a copy of the report being sent to the Department of Fish and Wildlife Resources in the same time frame.

(3) Purchasing, bartering or selling. General and master class permittees may purchase, barter or sell any lawfully possessed raptor which is bred in captivity under authority of a raptor propagation permit issued pursuant to Title 50 CFR Part 21, Subpart C, Sections 21.28 and 21.30, subject to the following conditions:

(a) Any permittee who buys from, sells to or barters with any person in the United States or a foreign country shall meet the conditions specified in Title 50 CFR Part 21, Subpart C, Section 21.30(d)(5);

(b) Raptor propagation permittees who sell or barter raptors shall have a commercial propagation permit issued by the Department of Fish and Wildlife Resources according to provisions of 301 KAR 2:080;

(c) All transactions shall be reported to the U.S. Fish and Wildlife Service as required in Title 50 CFR Part 21, Subpart C, Sections 21.28 and 21.30 with a copy of the report being sent to the Department of Fish and Wildlife Resources in the same time frame.

(4) Temporary relocation of raptors. Raptors may be temporarily held for a permittee only by individuals who themselves are authorized to possess raptors, and subject to all other conditions in Title 50 CFR Part 21, Subpart C, Section 21.29(j)(4).

(5) Feathers. Molted feathers or feathers from birds that die in captivity, may be retained and exchanged by permittees only for imping purposes.

Section 10. Release of Raptors. No person shall intentionally release to the wild any species not native to Kentucky without first obtaining written permission from the commissioner. The marker from the released bird shall be removed and surrendered to the department. The marker from an intentionally released indigenous bird shall also be removed and surrendered to the department. A federal bird band shall be affixed to a captive bred raptor intentionally released to the wild.

Section 11. Raptor Propagation Requirements, Authorized Activities, Applications, Records, and Reports. (1) Raptor propagation requirements. No person shall breed or propagate raptors without obtaining the appropriate Kentucky pet and propagation permit as required in 301 KAR 2:080. A commercial pet and propagation permit authorizes the propagation and sale of raptors. A noncommercial permit authorizes only propagation. Permittees shall comply with all requirements, including permit application, of Title 50 CFR Part 21, Subpart C, Section 21.30.

(2) Authorized activities. All activities permitted by Title 50 CFR Part 21, Subpart C, Section 21.30 are authorized in Kentucky except as otherwise noted in this regulation.

(3) Applications, records, and reports. Copies of all raptor propagation applications, records, and reports required by the U.S. Fish and Wildlife Service in Title 50 CFR Part 21, Subpart C, Section 21.30, shall be submitted to the Department of Fish and Wildlife Resources on the same dates as required by Title 50 CFR Part 21, Subpart C, Section 21.30.

Section 12. 301 KAR 2:190 is hereby repealed.

DON R. McCORMICK, Commissioner
DAVID H. GODBY, Chairman
RONALD E. GENTRY, Secretary
APPROVED BY AGENCY: August 13, 1991
FILED WITH LRC: August 13, 1991 at 11 a.m.

JUSTICE CABINET
Office of the Secretary
(As Amended)

500 KAR 8:010. Certification of operators.

RELATES TO: KRS [186.565,] 15A.070, 189A.103(3)(6)

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 within 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 [company].
(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
(As Amended)

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 shall [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
APPROVED BY AGENCY: August 30, 1991
FILED WITH LRC: August 30, 1991 at 2 p.m.

COMPILER'S NOTE: The following regulation, 603 KAR 5:070, was amended by the promulgating agency and the Interim Joint Committee on Transportation, and became effective, on October 1, 1991.

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.

TRANSPORTATION CABINET
Motor Vehicle Commission
(As Amended)

605 KAR 1:190. Motor vehicle advertising.

RELATES TO: KRS 190.010 through 190.990
STATUTORY AUTHORITY: KRS 190.015, 190.020, 190.030, 190.040, 190.058, 190.073
NECESSITY AND FUNCTION: KRS 190.040(1)(i) prohibits a motor vehicle dealer from engaging in "false or misleading advertising"; this is the only statutory or regulatory language which attempts to provide any guideline or standard for dealer advertising. The Motor Vehicle Commission has received numerous inquiries and complaints concerning advertising by licensees. It is the objective of this regulation to define certain conduct which constitutes "false or misleading advertising". KRS 190.073 authorizes the Motor Vehicle Commission to "promulgate appropriate and reasonable regulations for the purpose of carrying out the provisions of this chapter." The purpose of this regulation is to provide for truthful and accurate advertising practices in the sale and lease of motor vehicles by licensed motor vehicle dealers.

Section 1. Definitions. In this section:
(1) "Advertising" means any oral, written or graphic statement which offers vehicles for sale or lease or which indicates the availability of vehicles, including any statements or representation made in a newspaper, pamphlet or circular, other publication, or on radio or television, or contained in any notice, handbill, sign, billboard poster, bill catalog, letter or business card.
(2) "Clear and conspicuous" means a statement, representation or term differing from other statements, representations or terms being made so as to be readily noticeable to the person to whom it is being disclosed either by its size, sound, length of time, color, placement in the ad, or other features [the like].
[(3) "Rebuilt motor vehicle" means a motor vehicle which has at any point in its history been issued a salvage or like title in any state and has subsequently qualified for a regular title through any process legally available in any state.]
(3) [(4)] "Demonstrator, official or executive vehicles": the word "demonstrator" means a vehicle of the current or preceding model year which has never been the subject of a retail sale, and which has been used by dealership personnel for demonstrating performance ability. "Executive" and "official" vehicles when so advertised shall have been used exclusively by executives of the dealer's franchiser.
(4) [(5)] "Bait advertising" means an alluring but insincere offer to sell or lease a product, to obtain leads to persons interested in buying merchandise of the type advertised and to switch consumers from the advertised product to another product for a higher price or on a basis more advantageous to the dealer. Advertising a new motor vehicle at a price which does not include all equipment listed as standard equipment by the manufacturer without disclosing such fact, or failing to disclose any such equipment for the purpose of advertising a low price and "baiting" the customer into charges above the advertised price is prohibited. No practice shall be pursued by the advertiser which will discourage the sale of the advertised product with the intent and purpose of selling other merchandise instead.

Section 2. Licensees shall not use [unfair,] misleading or bait advertising.

Section 3. Advertisements for the sale or lease of new and used vehicles placed [offered for sale] by a licensee shall clearly and conspicuously identify the dealership by including in the text of the advertisement either the word "dealer" or the business name as it appears on the dealer license.

Section 4. (1) Except as provided in subsection (2) of this section, if [Where] a specific new motor vehicle is advertised by a dealer as being for sale, that vehicle shall be:
(a) In the possession of the dealer;
(b) [and shall be willingly] Shown; and
(c) Sold as advertised, illustrated or described at the advertised price and terms, at the advertised address. [, except that the advertising of a specific new motor vehicle for sale when the advertised vehicle is not in stock on the date of the advertisement shall state "not in stock" or "order yours now" or other phrases of similar import which clearly indicate that the vehicle is not available for immediate delivery. Such advertisements]
(2) The advertisement for the sale or lease of a specific new motor vehicle that is not in stock on the date of the advertisement shall state:
(a) "Not in stock"; or
(b) "Order yours now"; or
(c) Other phrases of similar import that clearly indicate the vehicle is not available for immediate delivery; and
(d) Shall disclose a reasonable estimate of the period of time in which delivery will be made.
(3) If an advertisement pertains to one (1) specific vehicle only, this fact shall be disclosed in the advertisement. Listing a stock number is adequate disclosure.

Section 5. The following statements shall not be used in [any] advertising by a [any] dealer, unless such statements are absolutely true with no qualifications:
(1) Statements such as "write your own deal", "name your own price", "name your own monthly payments", "appraise your own car" or statements

with similar meaning.

(2) Statements such as "everybody financed", "no credit rejected", "we finance anyone", and other statements representing or implying that no prospective credit purchaser will be rejected because of his inability to qualify for credit.

(3) Statements representing that no other dealer grants greater allowances for trade-ins, however stated.

(4) Statements implying that because of its large sales volume a dealer is able to purchase vehicles for less than another dealer selling the same make of vehicles.

(5)(a) Retail advertising shall not state or imply that the dealer:

1. Is selling vehicles in a manner other than through normal retail channels;

2. [and shall not imply that a dealer] Has a special relationship or connection to the manufacturer that other dealers do not have.

(b) Terms such as "wholesale", "factory sale", "factory discount", "factory outlet", "factory branch" and similar terms used in connection with the manufacturer's name are examples of terms that imply that a dealer has a special relationship or connection to a manufacturer that other dealers do not have.

(6)(a) Claims such as "first", "largest", "biggest", shall **not** be **used unless they are valid at the time such claims are made.**

(b) If such claims are qualified with regard to area, location, time, or other limitations, upon the direction of the commission [able to be qualified as to validity (using valid source data) and the time period of the claim. At the direction of the licensor], the dealer shall incorporate within the advertisement the terms of such qualification.

Section 6. Since the amount of trade-in allowance will vary depending on the condition, model and age of a buyer's vehicle, no specific trade-in amount or range of amounts shall be used in advertising.

Section 7. An asterisk (*) may be used to give additional information about a word or term; however, use of one (1) or more footnotes or asterisks which, alone or in combination, contradict, confuse, materially modify or unreasonably limit a principal message of the advertisement shall not be used.

Section 8. Any disclosure appearing in [television] advertisements shall clearly and conspicuously feature all necessary information in a manner that can be read and understood or which can be heard and understood. The minimum duration of printed language in a television advertisement shall be five (5) seconds for every three (3) lines.

Section 9. When a motor vehicle advertisement contains an offer of a discount on a new vehicle, the amount of such discount shall be stated by reference to the actual dollar figure of the manufacturer's suggested retail price of the vehicle plus the retail price of dealer-added options.

Section 10. The words "free", "gift" or words of similar import may be used in advertising only when the advertiser is offering an unconditional gift.

Section 11. The manufacturer's suggested retail price (MSRP) dollar figure of a new motor vehicle when advertised in local media by a manufacturer, distributor or regional advertisement council or association shall include all costs and charges for the vehicle advertised including destination charges when those charges are uniform regardless of destination throughout the state; destination charges subject to variance within the state and dealer preparation charges may be excluded from such price, provided that the advertisement conspicuously states that such costs and charges are excluded. When the price of a vehicle is advertised in local media by a licensee, the vehicle shall be fully identified as to year, make, model and if new or used. In addition, the stated price shall include all charges which the customer must pay for the vehicle, including, but not limited to, "freight" or "destination charges", "dealer preparation", "dealer handling", "additional dealer profit", "additional dealer margin", and "undercoating or rustproofing" if the vehicle is already so equipped. The advertised price at which the dealer is advertising a particular motor vehicle shall be the price before consideration for a down-payment, a trade-in allowance, or other similar allowances.

Section 12. Where the words "list" or "sticker" or words of similar import are used in a new motor vehicle advertisement, they shall only refer to the actual dollar figure of the manufacturer's suggested retail price (MSRP) plus the retail price of dealer-added options.

Section 13. Whenever any advertisement relates to a lease, the advertisement shall clearly and conspicuously disclose that the advertisement is for the lease of a vehicle.

[Section 14. All advertising shall comply with Regulation Z of the Federal Truth in Lending Act and Federal Trade Commission Act.]

Section **14.** [15. A dealer offering to sell a motor vehicle which he knows is a rebuilt motor vehicle shall clearly and conspicuously disclose that information to a prospective purchaser for use.] A dealer offering to sell a demonstrator, program, official or executive vehicle shall clearly and conspicuously identify such former use. Demonstrators shall be offered for sale as such only by a dealer who holds a valid sales agreement or franchise for the sale of the same line make of motor vehicle. Vehicles advertised as official or executive vehicles shall not have been sold or leased to a retail customer prior to the appearance of the advertisement.

Section **15.** [16.] No reduced interest rate on motor vehicle financing shall be advertised if the cost thereof would be directly or indirectly borne by the buyer unless the advertisement discloses that that rate will affect the negotiated price of the vehicle to the buyer.

Section **16.** [17.] In any action under this **regulation** [section], truth shall be an absolute defense.

RAYMOND COTTRELL, SR., Chairman
APPROVED BY AGENCY: May 10, 1991
FILED WITH LRC: May 15, 1991 at 11 a.m.

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

704 KAR 3:006. Annual performance reports and standards of student, program, service, and operational performance.

RELATES TO: KRS 158.6453, 158.650 to 158.710
STATUTORY AUTHORITY: KRS 156.160, 158.6453, 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. **The continuous assessment program shall include but not be limited to at least one (1) of the following assessment strategies: performance tasks, portfolios, open-ended questions, and multiple choice questions.**

(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. **By October 1 of each year each school district shall be notified regarding their performance according to the previous year data.**

(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 2,999 [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.

COMPILER'S NOTE: The following regulation, 815 KAR 30:060, was amended by the promulgating agency and the Interim Joint Committee on Cities, and became effective on October 8, 1991.

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) **Upon application or prior to the issuance of the certificate,** 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 **reduce** [eliminate] [reduce] the experience requirements **by one-third (1/3)** [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)

ÜFOR OFFICE USE ONLYÜ
ÜRec'd (Date)_____Ü
ÜMoney Rec'd_____Ü
ÜApplication #_____Ü
ÜCertification #___Ü

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 Address _____
   Street/Box Office Number
   _____
   City County State Zip
8. Certificate to be issued in Company 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	Ü	Presented By	Ü	Date(s)
	Ü		Ü	
	Ü		Ü	
	Ü		Ü	
	Ü		Ü	

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.

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

902 KAR 13:080. Authorized procedures.

RELATES TO: KRS 211.960 to 211.968, 211.990(5)
STATUTORY AUTHORITY: KRS 211.964
NECESSITY AND FUNCTION: KRS 211.964 directs the Cabinet for Human Resources to adopt rules and regulations relating to emergency medical technicians (EMTs). The function of this regulation is to establish procedures which EMTs are authorized to perform.

Section 1. Authorized Certified EMT Procedures. (1) Except as otherwise provided in subsections (2) and (3) of this section, certified EMTs may perform any of the procedures as set forth in the "Basic Emergency Medical Technician: National Standard Curriculum," Third Edition, 1984, published by the United States Cabinet of Transportation, National Highway and Traffic Safety Administration, Washington, D. C. 20590, and in the accompanying text entitled "Emergency Care," Fifth Edition, 1990, published by The Brady Company, Prentice-Hall, Inc., Englewood Cliffs, N.J. 07632. A copy of both publications, included by reference as if fully incorporated herein, shall be on file in the office of the Emergency Medical Services Branch, Department for Health Services, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621, and shall be available for public inspection between 8 a.m. and 4:30 p.m., Monday through Friday.

(2) An EMT shall not [perform any of the following procedures]:

(a) Perform the initiation [administration] of intravenous (I.V.) fluid infusion, but may: [or plasma expanders, or both;]

1. Transport a stable patient with an I.V.

infusion entry point maintained patent by a heparin lock placement, to which no I.V. infusion fluid is attached;

2. Transport interfacility or facility to home a stable patient who has a preestablished peripheral I.V. infusion; and as authorized by local medical control may perform procedures for the maintenance and, if needed, discontinuation of the preestablished peripheral I.V. infusion according to the training requirements specified in 902 KAR 13:130 [030];

3. Transport a patient having a preestablished I.V. infusion who is encountered in a prehospital setting to the nearest appropriate medical facility based on local protocol, but may not discontinue the preestablished I.V. infusion; or shall not:

(b) Perform a cricothyrotomy;

(c) Relieve a tension pneumothorax through the use of needles;

(d) Insert an esophageal obturator airway or esophageal gastric tube airway;

(e) Perform external cardiac defibrillation except by use of automatic or semiautomatic defibrillation equipment authorized according to the requirements specified in 902 KAR 13:120; or [.]

(f) [(3) An EMT shall not] Use medical antishock trousers unless:

1. [(a)] He has completed a Kentucky emergency medical technician course during which the use of medical antishock trousers was taught after July 1, 1985; or

2. [(b)] He is currently certified as an emergency medical technician and completes the four (4) hour training session on the medical antishock trousers and successfully passes an examination administered by the cabinet consisting of both written and practical application examinations. The standards for such examinations shall be the same as for an EMT course. The training and examination shall be conducted by an EMT instructor or instructor trainer in accordance with the criteria set forth in the "Basic Emergency Medical Technician: National Standard Curriculum," Third Edition, 1984 and the standards and protocols of the Cabinet for Human Resources; or

3. [(c)] He has completed an emergency medical technician course in another state which included the use of medical antishock trousers and has taken and passed, as a part of his Kentucky challenge examination, an examination in the use of medical antishock trousers; and

4. [(d)] He uses medical antishock trousers in accordance with the standards and the protocol of the cabinet.

Section 2. EMT-defibrillation Pilot Program. An EMT who has [have] successfully completed the cabinet's ten (10) hour training course for the semiautomatic defibrillation pilot program and has [have] successfully passed an examination consisting of both written and practical application examinations, shall be authorized to perform defibrillation procedures in accordance with the standards and protocols established by the cabinet. Such authorization shall expire on June 30, 1991. Following June 30, 1991, the pilot program EMTs may perform automatic or semiautomatic defibrillation authorized according to the requirements specified in 902 KAR 13:120.

C. HERNANDEZ, M.D., Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 27, 1991
FILED WITH LRC: July 2, 1991 at 3 p.m.

REGULATIONS AMENDED AFTER PUBLIC HEARING HELD BY PROMULGATING AGENCY

CABINET FOR HUMAN RESOURCES
Commission for Health Economics Control in Kentucky
(Amended After Hearing)

902 KAR 20:006. Certificate of need process.

RELATES TO: KRS 216B.010 to 216B.130, 216B.990(1), (2)
STATUTORY AUTHORITY: KRS 13A.350, 216B.040, 216B.075
NECESSITY AND FUNCTION: KRS 216B.040 and KRS 216B.075 authorize the Commission for Health Economics Control in Kentucky to promulgate administrative regulations respecting application and review procedures and requirements for batching, issuing advisory opinions, cost escalations and progress reports. [This regulation incorporates sections of 902 KAR 20:127, Certificate of need hearings, making the regulation no longer necessary; therefore, 902 KAR 20:127, Certificate of need hearings, is hereby repealed.]

Section 1. Definitions. Except as otherwise provided, for purposes of this regulation, the following definitions shall apply:
(1) "Capital expenditure authorized" means the amount of the capital expenditure approved by the commission to implement the proposal.
(2) "Chairman" means the chairman of the Commission for Health Economics Control in Kentucky.
(3) "Cost escalation" means an increase in the capital expenditure authorized on a certificate of need which has not been obligated as prescribed in KRS 216B.015(28).
(4) "Cost overrun" means an increase in the capital expenditure authorized on a certificate of need which has been obligated without commission approval.
(5) "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) **If the hearing is conducted by a hearing officer,** [After the conclusion of the hearing,] the hearing officer [or the commission] shall prepare **and submit to the chairman** written findings of fact, conclusions of law and recommendations **after the conclusion of the hearing**.

(7) The chairman shall transmit a copy of the **hearing officer's** 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 to the hearing officer's written

findings of fact, conclusions of law and recommendations with the chairman within ten (10) days of the date of the hearing officer's written findings of fact, conclusions of law and recommendations.

(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.

[(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: October 4, 1991
FILED WITH LRC: October 8, 1991 at 9 a.m.

PROPOSED AMENDMENTS RECEIVED THROUGH NOON, OCTOBER 15, 1991

FINANCE AND ADMINISTRATION CABINET
(Proposed Amendment)

200 KAR 3:045. Monthly meal charges at mansions.

RELATES TO: KRS 42.035, 42.037
STATUTORY AUTHORITY: KRS 42.035, 42.037
NECESSITY AND FUNCTION: KRS 42.035 and 42.037 direct that reasonable amounts shall be deducted from the salary or other allowance, of the Governor and Lieutenant Governor for the consumption of food by them and their families. This regulation sets forth the maintenance charges to be paid by the Governor and the Lieutenant Governor relative to members of their families living at the respective mansions and maintenance charges to be paid by other state employees required by their regular duties to receive meals at the respective mansions. The amendment brings the regulation into compliance with KRS 13A.222(4)(c) as requested by the Interim Joint Committee on State Government.

Section 1. Monthly maintenance charges shall be paid by all persons receiving meals on a regular basis in the Executive Mansion and the Lieutenant Governor's Mansion. Payment shall be made bimonthly by means of a deduction from the salary paid on the regular payroll.

Section 2. The monthly maintenance charges to be paid by the Governor and Lieutenant Governor relative to the members of their respective families living at the respective mansions shall be as follows:
(1) The Governor, Lieutenant Governor, and adult members of their respective families, eighty (80) dollars each.
(2) Children twelve (12) years of age or older, forty-eight (48) dollars each.
(3) Children under twelve (12) years of age, thirty-six (36) dollars each.

Section 3. Except as provided in Section 4 of this regulation, the monthly maintenance charges to be paid by all other state employees, required by their regular duties to receive meals at the respective mansions, shall be as follows:
(1) Forty (40) dollars for one (1) meal;
(2) Sixty-two (62) dollars for two (2) meals;
(3) Eighty (80) dollars for three (3) meals.

Section 4. When the executive officer having use of the particular mansion is not regularly occupying it as a residence, monthly maintenance charges to be paid by state employees, required by their regular duties to receive meals at that [such] mansion, shall be as follows:
(1) Sixteen (16) dollars for one (1) meal;
(2) Twenty-five (25) dollars for two (2) meals;
(3) Thirty-two (32) dollars for three (3) meals.

L. ROGERS WELLS, JR., Secretary
APPROVED BY AGENCY: September 27, 1991
FILED WITH LRC: September 27, 1991 at 2 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1991 at 10 a.m., in Room 350, Capitol Annex Building, Frankfort, Kentucky 40207. Individuals interested in attending this hearing shall notify this agency in writing by November 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 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 of intent to attend the public hearing or written comments on the proposed administrative regulation to: Warren O. Nash, III, Attorney, Finance and Administration Cabinet, Room 376, Capitol Annex Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Warren O. Nash, III
(1) Type and number of entities affected: This amendment revises the regulation to bring it into compliance with KRS 13A.222(4)(c) and does not directly affect any agencies.
(a) Direct and indirect costs or savings to those affected: None
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: No change in reporting or paperwork requirements.
(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: 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? Yes. Amendment to regulation only revises language to bring it into compliance with KRS 13A.222(4)(c).

FINANCE AND ADMINISTRATION CABINET
(Proposed Amendment)

200 KAR 5:050. Central purchasing for political subdivisions.

RELATES TO: KRS Chapter 45A
STATUTORY AUTHORITY: KRS 45A.050 [45.365]

NECESSITY AND FUNCTION: KRS 45A.050 [45.365] provides for central purchasing for political subdivisions. This regulation establishes the guidelines to be followed by political subdivisions in order to utilize price contracts negotiated by the Commonwealth. The amendments to this regulation are for the purpose of bringing this regulation into compliance with the drafting requirements of KRS Chapter 13A and to clarify the provisions pertaining to eligible political subdivisions purchasing from state price contracts.

[Section 1. General. The Division of Purchases shall include in all price contracts for the purchase of materials or supplies made and entered into on and after June 18, 1970, a provision that, as approved by the Secretary of the Finance and Administration Cabinet, any political subdivision of this Commonwealth, including cities of all classes, counties, school districts or special districts, may participate in such contracts to the same extent as the agencies, boards and commissions of state government. Where political subdivisions are required by law to purchase materials or supplies by competitive bidding, such subdivisions must comply with the applicable statute before participating in the state's price contract unless such contract has been let by competitive bidding.]

[Section 2. Award of Price Contract. (1) Invitations to bid for and the award of price contracts shall be made by the Division of Purchases in accordance with the division's established practices and procedures pursuant to the authority of KRS 45.360, 45.370, and 45.390.]

[(2) Standards and specifications used in establishing price contracts shall be those promulgated or adopted by the Division of Purchases for use by all state agencies.]

[(3) The prices established for a price contract are firm for the duration of that contract; negotiation or bargaining by governmental units using the established prices as a base is prohibited.]

Section 1. [3.] Administration. (1) Each political subdivision desiring to participate in and use the Commonwealth's price contracts for the purchase of materials or supplies shall file written notice of its [such] desire with the Director of the [Manager,] Division of Purchases.

(2) The Division of Purchases shall [will] perform no administrative services for any participating political subdivision except as provided herein. Each political [such] subdivision shall issue its own purchase orders, accept its own deliveries, and make its own payments for goods received and accepted. Any circumstances requiring that the Division of Purchases assume some administrative responsibility relative to a purchase by a political subdivision shall be done only by prior agreement between or among the parties and administrative costs incurred by the division will be charged against the political subdivision involved.

(3) In the event of a dispute between any participating political subdivision and a vendor under any price contract which cannot be satisfactorily resolved between the parties to the dispute, the matter shall be referred to the Director, Division of Purchases for mediation.

(4) Any participating political subdivision which fails to promptly pay for materials or supplies purchased from state price contracts or otherwise abuse the use of state price contracts may, in the discretion of the Director of Purchases, [received and accepted shall] be barred from further participation in purchasing from state [that] price contracts [for the duration of its existence].

[(5) In the exercise of his sound discretion and for good cause, the Secretary of the Finance and Administration Cabinet may revoke his approval for participation in the Commonwealth's price contracts by any political subdivision.]

L. ROGERS WELLS, JR., Secretary
APPROVED BY AGENCY: September 27, 1991
FILED WITH LRC: September 27, 1991 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1991 at 10 a.m., in Room 350, Capitol Annex Building, Frankfort, Kentucky 40207. Individuals interested in attending this hearing shall notify this agency by November 16, 1991, in writing 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 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 of intent to attend the public hearing or written comments on the proposed administrative regulation to: Warren O. Nash, III, Attorney, Finance and Administration Cabinet, Room 376, Capitol Annex Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Warren O. Nash, III

(1) Type and number of entities affected: The amendments to this regulation will only affect political subdivisions desiring to purchase from state price contracts pursuant to KRS 45A.050.

(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: These amendments do not change reporting or paperwork requirements by the affected political subdivisions.

(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: These amendments do not change reporting or paperwork requirements for the Finance and Administration Cabinet.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative

methods were used.
(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? Yes. These amendments were narrowly tailored to only affect those political subdivisions purchasing from state price contracts pursuant to KRS 45A.050.

FINANCE AND ADMINISTRATION CABINET
(Proposed Amendment)

200 KAR 5:301. Delegation of purchasing authority.

RELATES TO: KRS Chapter 45A
STATUTORY AUTHORITY: KRS 45A.035(2), 45A.045(3)
NECESSITY AND FUNCTION: The Secretary of the Finance and Administration Cabinet is authorized by KRS 45A.055 to publish state purchasing regulations for the implementation of the Kentucky Model Procurement Code (KRS Chapter 45A). This regulation implements the provisions of KRS 45A.035, relative to delegations of purchasing authority. These amendments delete reference to the Department of Public Properties which under KRS 42.027 is now called the Division of Real Properties within the Department for Facilities Management. These amendments also permit the Commissioners of the Departments for Administration and Facilities Management to designate individuals to approve delegations of purchasing authority. This regulation is also amended to address concerns raised by the Interim Joint Committee during its quadrennial review of the regulation under KRS 13A.222(4)(c).

Section 1. Delegations of Purchasing Authority. (1) Standing delegations of purchasing authority may be made to the various cabinets, departments, institutions and other agencies of state government by the Secretary of the Finance and Administration Cabinet upon recommendation of the commissioners of the departments for administration and facilities management [and public properties] as appropriate with regard to the procurement activity or function to be delegated. These [Such] standing delegations shall be made on the basis of a written order signed by the Secretary of the Finance and Administration Cabinet setting forth with particularity the kind or type of procurement activity or function delegated together with any limitations or restrictions on the exercise of such authority.
(2) All standing delegations of purchasing authority by the secretary shall remain in force according to the original terms thereof unless modified, or until rescinded by the secretary.
(3) Delegations of purchasing authority for agency's individual requirements, or to authorize procurement activities by an agency for preestablished and limited periods of time may be granted as appropriate with regard to the procurement activity or function by the commissioners of the departments for administration and facilities management or their designees [or public properties] by letter setting forth with particularity the kind or type of procurement activity or function authorized by the delegation and fixing the limits and restrictions on the exercise of the delegation and its duration. No such delegation of purchasing authority shall be extended or renewed except with the written approval of the Secretary of the Finance and Administration Cabinet.

Section 2. Agency Purchases. All state agencies shall be authorized to make purchases within the monetary limits and according to the procedures for small purchases as authorized by KRS 45A.100 and regulations adopted pursuant to this statute [thereto] without necessity for specific delegation of purchasing authority from the Finance and Administration Cabinet.

L. ROGERS WELLS, JR., Secretary
APPROVED BY AGENCY: September 27, 1991
FILED WITH LRC: September 27, 1991 at 2 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1991 at 10 a.m., in Room 350, Capitol Annex Building, Frankfort, Kentucky 40207. Individuals interested in attending this hearing shall notify this agency in writing by November 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 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 of intent to attend the public hearing or written comments on the proposed administrative regulation to: Warren O. Nash, III, Attorney, Finance and Administration Cabinet, Room 376, Capitol Annex Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Warren O. Nash, III
(1) Type and number of entities affected: The amendments to this regulation only apply to the Finance and Administration Cabinet.
(a) Direct and indirect costs or savings to those affected: None
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: No change.
(2) Effects on the promulgating administrative body: These amendments have no effect on the Finance and Administration Cabinet.
(a) Direct and indirect costs or savings: None
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: No change.
(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: 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. The amendments to 200 KAR 5:301 were narrowly tailored to apply only to the Finance and Administration Cabinet.

FINANCE AND ADMINISTRATION CABINET
(Proposed Amendment)

200 KAR 5:304. Application to be placed on source [vendor's] list.

RELATES TO: KRS Chapter 45A
STATUTORY AUTHORITY: KRS 45A.035(2)(e)
NECESSITY AND FUNCTION: The Secretary of the Finance and Administration Cabinet is authorized by KRS 45A.055 to publish state purchasing regulations for the implementation of the Kentucky Model Procurement Code (KRS Chapter 45A). This regulation implements the provisions of KRS 45A.035(2)(e) and 45A.110. This amendment changes the references to "bidders' list" and "application to be placed on vendors' list" to "source list" and "source application."

Section 1. Any person, firm or corporation desiring to receive written notice of procurement requirements of the Commonwealth may make application to have his name placed on a source [bidders'] list for the types or kinds of procurement activities or functions he wishes to supply or provide. Upon request to either the Division of Purchases, for commodities, supplies, equipment, contractual services and related matters, or the Division of Contracting and Administration, for construction services and related activities and functions, a "source application" [an "Application to be placed on Vendors List"] will be sent to any prospective bidder. Complete information as requested in the application must be submitted by the prospective bidder before his name will be placed on a source [bidders'] list.

Section 2. (1) Upon receipt of a completed "source application" ["Application to be placed on Vendors List"], the qualifications of the prospective bidder may [will] be verified in terms of:
(a) The ability and capacity to perform on a timely basis under contract for goods and services which he desires to bid on and furnish.
(b) Good character, integrity, reputation, and experience.
(c) Satisfactory performance in prior dealings with the Commonwealth of Kentucky and its agencies.
(d) Previous satisfactory compliance with the health rules and regulations of the Commonwealth of Kentucky.
(2) The purchasing agencies may refuse to list any prospective bidder not meeting the minimum qualifications set forth above. The prospective bidder has the burden of showing that he meets the qualifications for inclusion on the source [bidders'] lists to which he seeks to gain entry. The prospective bidder will be promptly advised if his application is disapproved and the reason or reasons for disapproval. A prospective bidder may appeal the disapproval of his application to the Secretary of the Finance and Administration Cabinet. The appeal must be in writing and filed in the office of the secretary within two (2) calendar weeks after the date of the notice of disapproval of the application. [;] Grounds for the appeal shall be stated with reasonable particularity and shall relate directly to reason or reasons for disapproval of the application. Any prospective bidder whose "source application" ["Application to be placed on Vendors List"] is disapproved may reapply after the expiration of six (6) months following the date of disapproval of his last application.

L. ROGERS WELLS, JR., Secretary
APPROVED BY AGENCY: September 30, 1991
FILED WITH LRC: October 1, 1991 at 4 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1991 at 10 a.m., in Room 350, Capitol Annex Building, Frankfort, Kentucky 40207. Individuals interested in attending this hearing shall notify this agency in writing by November 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 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 of intent to attend the public hearing or written comments on the proposed administrative regulation to: Warren O. Nash, III, Attorney, Finance and Administration Cabinet, Room 376, Capitol Annex Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Warren O. Nash, III
(1) Type and number of entities affected: The amendments to 200 KAR 5:304 are only housekeeping in nature and do not effect any state agencies.
(a) Direct and indirect costs or savings to those affected: None
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect costs or savings: None
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state

and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No other alternative method.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict: N/A
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A
(6) Any additional information or comments: N/A
TIERING: Was tiering applied? Yes. The amendments to this regulation have been narrowly tailored to only make several housekeeping changes to 200 KAR 5:304.

FINANCE AND ADMINISTRATION CABINET
(Proposed Amendment)

200 KAR 5:305. Performance bonds; forms; payments.

RELATES TO: KRS [Chapter] 45A.190, 45A.195
STATUTORY AUTHORITY: KRS 45A.035, 45A.195 [45A.145]
NECESSITY AND FUNCTION: The Secretary of the Finance and Administration Cabinet is authorized by KRS 45A.055 to publish state purchasing regulations for the implementation of the Kentucky Model Procurement Code (KRS Chapter 45A). This regulation implements the provisions of KRS 45A.190 and 45A.195. The amendments to this regulation revises the reference to the Finance and Administration Cabinet Manual of Policies and Procedures and makes other revisions to bring the regulation into compliance with the drafting requirements of KRS Chapter 13A.

Section 1. (1) Every contractor to whom it is proposed to award a contract for construction services costing more than $25,000 shall, prior to the award of such contract, give a bond or bonds to the Commonwealth of Kentucky as obligee, in form satisfactory to the purchasing agency, executed by a surety company authorized to do business in Kentucky, and in a penal sum equal to 100 percent of the contract price as it may be increased, the conditions of which shall bind the contractor, as principal, and the surety to the performance of the contract according to the terms, conditions and specifications of the contract, and in any changes or modifications thereto, and to the payment of all costs for labor, materials, equipment, supplies, taxes, and other proper charges and expenses incurred or to be incurred in the performance of the [said] contract.
(2) Every contractor to whom it is proposed to award a contract for construction services costing $25,000 or less, shall, prior to the award of the [such] contract, give bond to the Commonwealth of Kentucky, as obligee, as provided in subsection (1) of this section, when required by the terms of an invitation for bids issued pursuant to KRS 45A.080, or an advertisement and solicitation for proposals for competitive negotiations pursuant to KRS 45A.085 and 45A.090.

Section 2. The provisions of Section 1 of this regulation notwithstanding, every contractor to whom it is proposed to award a contract for the purchase of commodities, supplies or equipment or services by the Commonwealth of Kentucky or any state agency shall, when required by the terms of an invitation for bids, or solicitation or request for proposals, give bond to the Commonwealth of Kentucky, as obligee with surety satisfactory to the purchasing agency, in a penal amount, not to exceed 100 percent of the contract price, to be determined by the purchasing agency as sufficient to assure faithful performance of the contract by the contractor according to its terms.

Section 3. A contract shall not be awarded to any contractor who fails or refuses to give bond to the Commonwealth when required as provided by KRS 45A.190 and this regulation.

Section 4. A contractor may be declared in default of his contract with the Commonwealth of Kentucky, and his bond forfeited, when it is determined by the purchasing official that the contractor is in breach of the terms and conditions of the contract, including, in contracts for construction services, failure to make timely payment of bills for labor, materials and supplies as evidenced by liens filed against the construction fund by laborers and suppliers pursuant to KRS 376.195 to 376.260, or by letters of indebtedness filed with the purchasing agency evidencing that these [such] bills are due and have not been paid by the contractor.

Section 5. (1) The form of performance and payment bond required to be given by contractors pursuant to Sections 1 and 2 of this regulation, including the terms and conditions of the performance and payment bond [thereof], together with any revisions as may from time to time be made in such bond, shall be published in the Finance and Administration Cabinet "Manual of Policies and Procedures" incorporated by reference as an administrative regulation pursuant to 200 KAR 5:020. ["Management and Procedures Manual," filed by reference in 200 KAR 5:302.] The [Such] form of bond shall be applicable to, and included in all contracts for construction services when required by KRS 45A.190 and this regulation; provided, however, that such bond form may be modified, or different terms substituted or other terms added, when, in connection with a particular procurement, it is determined in writing by the purchasing officer [official] that the [such] modification, substitution or addition of terms is reasonably required for the procurement in the best interest of the Commonwealth of Kentucky.
(2) The form of bond required to secure the performance of all other contracts for procurement shall be the standard form of performance or payment bond such as is usually and customarily written and issued by surety companies authorized to do business in Kentucky, together with the [such] additional terms as may be required by the purchasing agency and agreed to by the surety.

L. ROGERS WELLS, JR., Secretary
APPROVED BY AGENCY: September 27, 1991
FILED WITH LRC: September 27, 1991 at 2 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on

November 21, 1991 at 10 a.m., in Room 350, Capitol Annex Building, Frankfort, Kentucky 40207. Individuals interested in attending this hearing shall notify this agency in writing by November 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 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 of intent to attend the public hearing or written comments on the proposed administrative regulation to: Warren O. Nash, III, Attorney, Finance and Administration Cabinet, Room 376, Capitol Annex Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Warren O. Nash, III
(1) Type and number of entities affected: These amendments do not affect any state agencies, only change the reference to the cabinet's Manual of Policies and Procedures, and bring 200 KAR 5:305 into compliance with KRS Chapter 13A.
(a) Direct and indirect costs or savings to those affected: None
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect costs or savings: None
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: 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? Yes. These amendments have been narrowly tailored to only make housekeeping changes and to bring 200 KAR 5:305 into compliance with KRS Chapter 13A.

FINANCE AND ADMINISTRATION CABINET
(Proposed Amendment)

200 KAR 5:306. Competitive sealed bidding.

RELATES TO: KRS [Chapter] 45A.080
STATUTORY AUTHORITY: KRS 45A.035, 45A.080

NECESSITY AND FUNCTION: The Secretary of the Finance and Administration Cabinet is authorized by KRS 45A.055 to publish state purchasing regulations for the implementation of the Kentucky Model Procurement Code (KRS Chapter 45A). This regulation implements the provisions of KRS 45A.080. This regulation is amended to more clearly state that this regulation pertains only to those contracts exceeding the small purchase limits established by KRS 45A.100. These amendments also change the reference to "bidders' list" to "source list" and "purchasing official" and "buyer" to "purchasing officer." These amendments further provide that only those late bids postmarked prior to the scheduled opening date shall be considered for award, and that facsimile bids and responses shall not be accepted by the Division of Purchases. These amendments make revisions to bring the regulation into compliance with the drafting rules established under KRS Chapter 13A.

Section 1. All contracts exceeding the small purchase authority limits established pursuant to KRS 45A.100 [for construction exceeding an estimated cost of $5,000, and $1,000 for all other purchases,] shall be awarded upon the basis of competitive sealed bids unless it is determined in writing that this method is not practicable and that the procurement may, in the best interests of the Commonwealth, more practically be obtained through competitive negotiations.

Section 2. The purchasing agencies shall cause public notice of invitations for bids for furnishing procurement requirements of the Commonwealth and its agencies through newspaper advertisement in the manner set forth in KRS 45A.080(3) and shall solicit bids from interested persons listed on the source [bidders'] lists for particular requirements by sending invitations for bids to at least ten (10) persons listed in such source [bidders'] lists. If there are not ten (10) persons listed on a particular source [bidders'] list, invitations shall be sent to all persons listed on that particular [such] list.

Section 3. Bidders shall complete, execute and submit their bids in strict compliance with the instructions contained in the invitation for bids. Bid forms shall be provided by the purchasing agencies and a bidder responding to an invitation for bids shall use only the bid form or form of proposal furnished by the purchasing agency in submitting his bids.

Section 4. Bidders shall submit their bids at the place and at, or prior to the date and hour set in the invitation for bids. Bids received after the hour set for opening bids are late bids and shall be so marked. A late bid shall not be considered for an award unless no other bid is received in response to an invitation for bids. The late bid, together with the envelope in which the bid was submitted bearing the stamped date and hour of receipt of the bid, [and a note, signed by the buyer, indicating whether or not the bid was considered for an award] shall be retained in the file pertaining to the invitation for bids. Only those late bids postmarked prior to the scheduled opening date shall be considered for award [to which the late bid relates].

Section 5. All bids, and any modifications to bids previously filed, received prior to the date and hour fixed for opening bids shall be kept secure and unopened. Envelopes containing bids but not marked to indicate that they contain a bid and listing the invitation for bids number and the date and hour of opening bids for that invitation may be opened for the purpose of identification of the contents of the envelope and will be marked and resealed.

Section 6. The purchasing officer [buyer] or other employee of the purchasing agency designated to open the bids shall determine when the time set for opening bids has arrived and shall so declare the time to those present for the bid opening. He shall then and there personally, in the presence of the bidders or their representatives and anyone else who may wish to attend the bid opening, open all bids received as of that date and hour; when practical, the names of the bidders and the amounts of their bids may be read aloud to the persons present. Except where, due to the nature or complexity of an invitation for bids, it may be deemed impractical, a bid tabulation summary sheet shall be prepared for each invitation for bids recording the name of each bidder, a description of the supplies or services bid and the amounts of the bids received. The bid tabulation summary sheet shall be permanently retained in the file pertaining to that invitation for bids and shall be available for public inspection. Inspection of bids by interested persons shall not be permitted or authorized during the formal bid opening process.

Section 7. The bids shall be examined by the purchasing officer [buyer] responsible for the procurement for any clerical or technical errors, reviewed for technical compliance with the terms of the invitation for bids, and the supplies or services bid evaluated for conformity with the specifications contained in the invitation for bids. Every bidder shall, when requested by the purchasing officer [official] responsible for the particular procurement, clarify or explain, in writing, any matter contained in his bid about which the purchasing officer may have question or believes in good faith needs to be clarified and explained. The bid of any bidder who fails or refuses, within a reasonable time to give a written clarification or explanation of his bid, or any part thereof, when requested to do so by the purchasing officer, shall not be considered further for an award on the basis of that invitation for bids. The written clarification or explanation of a bid, or a part of a bid, shall be incorporated in and become a part of any contract awarded on the basis of that bid. In due course, and after a reasonable bid evaluation period, the contract shall be awarded to the responsive and responsible bidder whose bid is either the lowest bid price or the lowest evaluated bid price, whichever is determined by the purchasing officer [official] to be in the best interests of the Commonwealth or as designated in the invitation for bids as the basis for award of the contract. If, after evaluation of the bids, including consideration of any clarifying or explanatory information submitted by the bidders, it is determined by the purchasing officer that no satisfactory bid has been received, all bids may be rejected and, in the discretion of the purchasing officer, the invitation for bids cancelled, new bids invited on the basis of the same or revised specifications, or competitive negotiations undertaken for the procurement. The basis for the rejection of all bids and subsequent action taken or to be taken with respect to the invitation for bids shall be recorded in writing and filed in the invitation for bids file relating to the particular procurement.

Section 8. (1) The right to reject any and all bids and to waive technicalities and minor irregularities in bids shall be maintained and preserved in the case of all invitations for bids issued by purchasing agencies within the Finance and Administration Cabinet or pursuant to delegations of purchasing authority by the Finance and Administration Cabinet.

(2) Grounds for the rejection of bids include but shall not to be limited to:

(a) Failure of a bid to conform to the essential requirements of an invitation for bids.

(b) Any bid which does not conform to the specifications contained or referenced in any invitation for bids shall be rejected unless the invitation authorized the submission of alternate bids and the items offered as alternatives meet the requirements specified in the invitation.

(c) Any bid which fails to conform to a delivery schedule established in an invitation for bids.

(d) A bid imposing conditions which would modify the terms and conditions of the invitation for bids, or limit the bidder's liability to the state on the contract awarded on the basis of such invitation for bids.

(e) Any bid determined by the purchasing officer in writing to be unreasonable as to price.

(f) Bids received from bidders determined to be not responsible bidders.

(g) Failure to furnish a bid guarantee when required by an invitation for bids.

(3) Technicalities or minor irregularities in bids which may be waived when the purchasing officer [official] determines that it will be in the Commonwealth's best interest to do so, are mere matters of form not affecting the material substance of a bid or some immaterial deviation from or variation in the precise requirements of the invitation for bids and having no or a trivial or negligible effect on price, quality, quantity or delivery of supplies or performance of the services being procured, the correction or waiver of which will not affect the relative standing of, or be otherwise prejudicial to other bidders. The purchasing officer may either give a bidder an opportunity to cure any deficiency resulting from a technicality or minor irregularity in his bid, or waive such deficiency where it is advantageous to the Commonwealth to do so.

Section 9. Where a mistake in a bid is claimed, and the evidence is clear and convincing that a material mistake was made in the bid and that due to such mistake, the bid submitted was not the bid intended, the bidder may be permitted to withdraw his bid. It shall be the duty of all contractors bidding to carefully review and verify the accuracy of their bids both before submitting them and prior to execution of a contract. When a mistake in a

bid is claimed after the award and execution of a contract, on the basis of such bid, the contractor shall be required to perform according to the terms and conditions of the contract unless it is established by clear and convincing evidence that a material mistake had been made in the original bid and that the contractor would sustain a financial loss if required to perform the contract according to its terms; a reduction or diminution in profit margin shall not be deemed a financial loss under this section. Where the evidence is clear and convincing that a material mistake has been made in a bid after the award of a contract, and the contractor will sustain a financial loss if required to perform the contract, the contract shall be rescinded and the contractor shall be ineligible to submit a bid upon readvertisement for the commodity or service [for the construction services].

Section 10. The following matters shall be applicable to all invitations for bids issued, bids submitted, and contracts awarded for the purchase of commodities, supplies and equipment pursuant to KRS 45A.080 and this regulation:

(1) Time discounts or cash discounts shall not be considered.

(2) Trade discounts. Trade discounts should be deducted by the vendor in calculating the unit price quoted, unless otherwise indicated in the bid.

(3) Quantity discounts. Quantity discounts shall [should] be included in the price of the item. When not included in the item price, the discount shall be considered only if the purchasing agency[, or the agency for whose benefit the procurement has been undertaken,] deems it to be in the Commonwealth's best interests. The unit price shown on the contract shall be the net price, less the discount, unless otherwise indicated in the bid.

(4) Unit prices. In case of a discrepancy in the extension of a price, the unit or item price shall govern over the total price of all items.

(5) Awards on an aggregate or individual item basis. An award may be made to the lowest aggregate bidder for all items, group of items, or on an individual item basis, whichever is deemed to be in the Commonwealth's best interest. The methods and bases of award of contract and of evaluation of bids shall be stated in the invitation for bids.

(6) Telegraphic or facsimile bids. When the purchasing agency has invited competitive sealed bids or requested written quotations, telegraphic or facsimile responses shall not be accepted.

L. ROGERS WELLS, JR., Secretary
APPROVED BY AGENCY: September 27, 1991
FILED WITH LRC: September 27, 1991 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1991 at 10 a.m., in Room 350, Capitol Annex Building, Frankfort, Kentucky 40207. Individuals interested in attending this hearing shall notify this agency in writing by November 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 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 of intent to attend the public hearing or written comments on the proposed administrative regulation to: Warren O. Nash, III, Attorney, Finance and Administration Cabinet, Room 376, Capitol Annex Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Warren O. Nash, III

(1) Type and number of entities affected: The amendments to 200 KAR 5:306 may have a minimal effect on state agencies which have been delegated purchasing authority by the Finance and Administration Cabinet. These amendments will also have a minimal effect on potential bidders for state contracts.

(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: Except for clarifying the competitive bidding process under KRS 45A.080 and 200 KAR 5:306, there will be no direct effect on the Finance and Administration Cabinet.

(a) Direct and indirect costs or savings: None

1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(6) Any additional information or comments: None

TIERING: Was tiering applied? Yes. These amendments were narrowly tailored to only apply to those individuals submitting bids to the Commonwealth and state agencies delegated purchasing authority under KRS Chapter 45A.

FINANCE AND ADMINISTRATION CABINET
(Proposed Amendment)

200 KAR 5:307. Competitively negotiated contracts.

RELATES TO: KRS Chapter 45A

STATUTORY AUTHORITY: KRS 45A.035, 45A.085, 45A.090

NECESSITY AND FUNCTION: The Secretary of the Finance and Administration Cabinet is authorized by KRS 45A.055 to publish state purchasing regulations for the implementation of the

Kentucky Model Procurement Code (KRS Chapter 45A). This regulation implements the provisions of KRS 45A.085 and 45A.090 relating to competitively negotiated contracts. The amendments to this regulation authorize the purchasing agency to establish a funding limitation for a competitively negotiated contracts and provides that vendor source lists shall not be subject to public inspection until negotiations have been completed. These amendments also establish procedures for conducting discussions with offerors. The reference to "purchasing official" is changed to "purchasing officer," to make the language of this regulation consistent with the terminology of KRS Chapter 45A. These amendments also bring the regulation into compliance with the drafting rules established under KRS Chapter 13A.

Section 1. When, due to the complex nature or technical detail of a particular procurement, or when, in the opinion of the purchasing officer [official], specifications cannot be fairly and objectively prepared so as to permit competition in the invitation for sealed bids, or for high technology electronic equipment available from a limited number of sources of supply and for which specifications cannot practicably be prepared except by reference to the specifications of the equipment of a single source of supply, or when it is otherwise determined by the purchasing officer [official] that the invitation for competitive sealed bids is not practicable, or when it is determined by the purchasing officer [official] that the conditions described in KRS 45A.085(3) or 45A.090(1) exist, and except for procurements under KRS 45A.095 and 45A.100, and regulations adopted pursuant to these statutes [thereto], a contract may be awarded for a procurement by competitive negotiations as authorized by KRS 45A.085 and 45A.090 and this regulation. The purchasing officer [official] shall make a written determination of the reasons it is considered impractical to invite bids prior to initiating any other action leading toward the award of a contract on the basis of competitive negotiations.

Section 2. When it has been determined that it is not practical to invite competitive bids as provided in Section 1 of this regulation, except when such determination is based on the existence of the conditions mentioned in KRS 45A.085(3) or 45A.090(1), action to obtain a procurement by competitive negotiations shall commence by advertisement and solicitation for written proposals in the manner specified by KRS 45A.080(3) and regulations adopted pursuant to this statute [thereto]. The advertisement or solicitation for proposals for competitive negotiations shall state:

(1) That the purchasing agency proposes to enter into competitive negotiations with responsible offerors for a procurement;

(2) The date, hour and place that written proposals for the procurement shall be received;

(3) The type of procurement involved and a description of the supplies or services sought; provided, however, that detailed specifications need not be listed in newspaper advertisements, or solicitations for proposals sent to vendors listed on a source [bidder's] list maintained by the purchasing agency if it is considered impractical by the purchasing officer [official] to do so, but potential offerors shall be informed by [such] advertisement or solicitation where such detailed specifications, if available for the particular procurement, may be obtained;

(4) The evaluation factors to be considered by the purchasing agency in the competitive negotiations in determining the proposal most advantageous to the Commonwealth, and the proposed method or methods of award of contract;

(5) Such other information as, in the opinion of the purchasing officer [official], may be desirable or necessary to reasonably inform potential offerors about the requirements of the procurement or the limits or bounds of the competitive negotiations proposed to obtain the procurement.

(6) A funding limitation may be set by the purchasing agency, if determined to be in the best interest of the Commonwealth. Potential offerors shall be advised in the advertisement or the solicitation or in the detailed specifications of the existence. The amount of the funding limit will be determined and placed on file with the purchasing agency prior to the request for proposals. The amount of the funding limit shall not be disclosed unless it is determined by the Director of the Division of Purchasing or the Director of the Division of Contracting and Administration for procurements undertaken by those divisions that disclosure of the amount of the funding limit will promote competition and will be in the best interest of the Commonwealth. Proposals which exceed the funding limit may be rejected.

Section 3. All written proposals received by the purchasing agency in response to advertisement or solicitation for proposals for competitive negotiations shall be kept secure and unopened until the date and hour set for opening the proposals. Proposals for competitive negotiations not clearly marked as such on the envelope in which received may be opened for identification purposes, and shall be appropriately identified with reference to the particular procurement and resealed until the time for opening proposals.

Section 4. At the close of business on, or at the beginning of the next business day after the date fixed for receiving proposals for competitive negotiations, all proposals received as of the close of business on that date shall be transmitted to the purchasing officer [official] for the procurement for opening. Proposals for competitive negotiations and related vendor source lists shall not be subject to public inspection until negotiations between the purchasing agency and all offerors have been concluded and a contract awarded to the responsible offeror submitting the proposal determined by the purchasing officer in writing to be the most advantageous to the Commonwealth, based upon the price[,] and the evaluation factors set forth in the advertisement and solicitations for proposals [considered].

Section 5. (1) The purchasing officer [official] shall examine each written proposal received for general conformity with the advertised terms of the procurement. If it has been provided in the advertisement or solicitation for proposals that an award may be made without written or oral discussions, the purchasing officer [official] may, upon the

basis of the written proposals received, award the contract to the responsible offeror submitting the proposal determined in writing to be the most advantageous to the Commonwealth, price, and the published evaluation factors considered. If, after the proposals have been examined, it is determined that written and/or oral discussions should be had with the offerors, the purchasing officer [official] shall determine in writing, based on an individual review, those proposals received from responsible offerors that are preliminarily susceptible of being selected for award of a contract for the procurement. Each responsible [such] offeror that is preliminarily susceptible of being selected for award of a contract shall be contacted informally by the purchasing officer [official] and a meeting scheduled for discussion of the offeror's proposals. Discussions need not be conducted under the circumstances of or relative to the topics enumerated in KRS 45A.085(6)(a), (b) or (c).

(2) Discussions with offerors shall be held informally and may be conducted orally, in writing, or both orally and in writing, as determined by the purchasing officer [official in writing] to be the most advantageous to the Commonwealth. If, however, after discussions with all responsible offerors have concluded, or after examination of the written proposals initially submitted, it is determined that no acceptable proposal has been submitted, any or all proposals may be rejected and, in the discretion of the purchasing officer [official], new proposals may be solicited as provided in this regulation on the basis of the same, or revised terms, or the procurement may be abandoned.

(3) Procedures for conducting negotiations and for the manner in which proposals will be evaluated shall be established by the purchasing officer for each procurement which shall be set forth in the request for proposals. The purchasing officer shall be authorized to request offerors to submit written clarification or explanation of their proposals and the proposal of any offerer who fails to respond or to ask for an extension of time to respond within the time requested, may be rejected.

(4) Proposals shall be evaluated based on factors stated in the request for proposals. Numerical or other appropriate rating systems may be used. All evaluation documentation, scoring and summary conclusions, shall be in writing, and made a part of the file records for the procurement.

(5) The purchasing officer may notify offerors that as of a date stated negotiations shall be closed and no further negotiations modifications or clarifications of proposals may be received.

Section 6. The purchasing officer [official] shall prepare a written summary of all oral discussions in competitive negotiations setting forth the date or dates of discussions with all responsible offerors and the general substance of the discussions. Verbatim records of the discussion shall not be required.

Section 7. When it is determined in writing by the purchasing officer [official] that the conditions mentioned in either KRS 45A.085(3), or 45A.090(1), exist with respect to any particular procurement, competitive negotiations may be undertaken to obtain the requirements of such procurement as provided by KRS 45A.085(3) or 45A.090(1), and according to the procedures set forth in Sections 3 to 7 of this regulation.

Section 8. When, after solicitation for proposals to enter into competitive negotiations only one (1) proposal responsive to the solicitation is received, the purchasing officer [official] may commence negotiations with the single offeror and any resulting contract entered into with that offeror shall be deemed to have been competitively negotiated and awarded in accordance with KRS 45A.085 and this regulation; provided, however, that the terms and conditions of the [any such] contract shall not in any material respect deviate in a manner detrimental to the purchasing agency from the terms and conditions specified in the solicitation for proposals.

L. ROGERS WELLS, JR., Secretary
APPROVED BY AGENCY: September 27, 1991
FILED WITH LRC: September 27, 1991 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1991 at 10 a.m., in Room 350, Capitol Annex Building, Frankfort, Kentucky 40207. Individuals interested in attending this hearing shall notify this agency in writing by November 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 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 of intent to attend the public hearing or written comments on the proposed administrative regulation to: Warren O. Nash, III, Attorney, Finance and Administration Cabinet, Room 376, Capitol Annex Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Warren O. Nash, III

(1) Type and number of entities affected: The amendments to 200 KAR 5:307 affect state agencies which procure goods and services through the competitive negotiated contracts under KRS 45A.085 and 45A.090.

(a) Direct and indirect costs or savings to those affected: It is difficult to anticipate the costs or savings, if any, which might be realized from the amendments to this regulation.

1. First year: See above.
2. Continuing costs or savings: See above.
3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: No change.

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings: None
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict: None
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None
(6) Any additional information or comments: None
TIERING: Was tiering applied? Yes. The amendments to 200 KAR 5:307 were narrowly tailored to only apply to state agencies which procure goods and services pursuant to KRS 45A.085 and 45A.090.

FINANCE AND ADMINISTRATION CABINET
(Proposed Amendment)

200 KAR 5:309. Noncompetitive negotiations.

RELATES TO: KRS [Chapter] 45A.095
STATUTORY AUTHORITY: KRS 45A.035, 45A.045, 45A.095
NECESSITY AND FUNCTION: The Secretary of the Finance and Administration Cabinet is authorized by KRS 45A.055 to publish state purchasing regulations for the implementation of the Kentucky Model Procurement Code (KRS Chapter 45A). This regulation implements the provisions of KRS 45A.095. This regulation is being amended to revise the reference to "purchasing official" to "purchasing officer" in order to make the regulations more consistent with terminology used in KRS Chapter 45A. These amendments also broaden the type of contracts which may be awarded on the basis of noncompetitive negotiations to include contracts for instructional equipment and supplies; contracts for the purchase of fresh food and perishable items; and contracts for the purchase of limited goods or services which cannot reasonably or practically be obtained through competitive bidding. These amendments also make several changes to statutory references.

Section 1. Procurement contracts may be awarded through noncompetitive negotiations only as provided in this regulation. Contracts which may be awarded on the basis of noncompetitive negotiations include, and shall be limited to the following:
(1) Contractual services for telephone service, electrical energy and other public utility services, and other contractual services provided within a defined geographic area pursuant to a franchise for such service awarded pursuant to law by a city, county or other political subdivision authorized to award such franchise; provided, however, that except for telephone and other public utility services, the invitation for bids or the award of a contract by competitive negotiations for other contractural services performed under a franchise awarded by a political subdivision shall not be precluded when it is determined by the purchasing official to be in the best interest of the Commonwealth; nor shall the award of a contract for the purchase or lease of a telephone system to serve the internal needs of state agencies or institutions by invitation for bids or on the basis of competitive negotiations be precluded under this subsection.
(2) Commodities, equipment and services available, in the discretion of the purchasing officer [official], from a single source. Such items shall include, but not be limited to, patented equipment and copyrighted material, and equipment peripheral to other equipment already owned by the Commonwealth or any state agency determined by the purchasing officer to be incompatible to such other equipment without modification or adjustment in either the equipment already owned or the equipment to be acquired.
(3) Instructional materials, equipment and supplies available, in the discretion of the purchasing officer [official], from a single source. A written determination setting forth need in relation to a particular instructional program, and justifying the procurement of the particular materials on a noncompetitive basis, shall be made by the purchasing officer [official] prior to the award of the contract.
(4) Special supplies or equipment required for laboratory or experimental studies. A written determination setting forth the need in relation to such studies, and justifying the procurement of such supplies or equipment on a noncompetitive basis shall be made by the purchasing officer [official] prior to the award of contract.
(5) Contracts or subscriptions for the purchase of published books, maps, periodicals, technical pamphlets, and except for those specially commissioned for use by an agency which shall be contracted for as provided by subsection (7) of this section, recordings, films and works of art for museum and public display.
(6) Commercial items purchased for resale to the general public through a resale outlet maintained by a state agency. Such items shall be purchased only from a wholesaler, manufacturer or producer of the item or items.
(7) Contracts for professional, technical, scientific, or artistic services. Except for contracts for architectural or engineering services negotiated in accordance with the provisions of KRS 45A.205, or agreements with multiple vendors of medical or health care and related services, and fixed rates of payment for such services as prescribed by state or federal law or regulations, and entered into for the benefit of persons who are wards of the Commonwealth, or who are otherwise entitled pursuant to law to the provision of such services by the Commonwealth, all contracts for professional, technical, scientific, or artistic services by state agencies shall be made, awarded and entered into only as provided in KRS 45A.690 to 45A.725 [45.530 to 45.545].
(8) Contracts for the purchase of commodities, supplies, equipment, and construction services that would ordinarily be purchased on a competitive basis when an emergency has been declared in the manner prescribed by KRS 45A.095(2) and (3) [45.400].
(9) Contracts or agreements for the purchase or sale of supplies, equipment or services between the Commonwealth and the Government of the United States, another state, a political subdivision of the Commonwealth, or nonprofit organization organized under the laws of the Commonwealth, another state or the District of

Columbia, or chartered under an Act of Congress, and lawfully doing business in the Commonwealth of Kentucky, and serving a public purpose of an essentially government, civic, educational or charitable nature.

(10) Contracts with vendors who maintain a general service administration price agreement with the United States of America or any agency thereof, provided, however, that no contracts executed under this provision shall authorize a price higher than is contained in the contract between general service administration and the vendor.

(11) Contracts for the purchase of real property, or interests in real property.

(12) Contracts for the purchase of fresh food and perishable items which cannot reasonably be acquired through competitive sealed bidding.

(13) Contracts for the purchase of limited goods or services which cannot reasonably or practically be obtained through competitive sealed bidding as approved by the director of purchases.

L. ROGERS WELLS, JR., Secretary
APPROVED BY AGENCY: September 27, 1991
FILED WITH LRC: September 27, 1991 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1991 at 10 a.m., in Room 350, Capitol Annex Building, Frankfort, Kentucky 40207. Individuals interested in attending this hearing shall notify this agency in writing by November 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 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 of intent to attend the public hearing or written comments on the proposed administrative regulation to: Warren O. Nash, III, Attorney, Finance and Administration Cabinet, Room 376, Capitol Annex Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Warren O. Nash, III

(1) Type and number of entities affected: The amendments to 200 KAR 5:309 affect state agencies which procure goods and services through noncompetitive contracts pursuant to KRS 45A.095.

(a) Direct and indirect costs or savings to those affected: It is difficult to anticipate the costs or savings, if any, which might be realized from the amendments to this regulation.

1. First year: See above.
2. Continuing costs or savings: See above.
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: 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? Yes. The amendments to 200 KAR 5:309 were narrowly tailored to only apply to state agencies which procure goods and services pursuant to KRS 45A.095.

FINANCE AND ADMINISTRATION CABINET
(Proposed Amendment)

200 KAR 5:310. Multiple contracts.

RELATES TO: KRS Chapter 45A
STATUTORY AUTHORITY: KRS 45A.035[, 45A.105]

NECESSITY AND FUNCTION: The Secretary of the Finance and Administration Cabinet is authorized by KRS 45A.055 to publish state purchasing regulations for the implementation of the Kentucky Model Procurement Code (KRS Chapter 45A). This regulation implements the provisions of KRS 45A.035(2)(f) and (h). The amendments to this regulation change references to "purchasing official" to "purchasing officer" to conform with terms used in KRS Chapter 45A, and make changes to bring the regulation into compliance with KRS 13A.222(4)(c).

Section 1. Multiple contracts may be awarded on the basis of a single invitation for bids as after competitive negotiations when it is determined in writing by the purchasing officer [official] in advance of the invitation for bids or the advertisement and solicitation for proposals for competitive negotiations that due to the geographic distribution of the agencies requiring supplies of the kind or kinds to be sought through the procurement, the need for a variety of kinds and quality of supplies of the same general nature, or when it is otherwise determined that the award of multiple contracts may be in the Commonwealth's best interests, and its needs met at a reasonable cost. A determination, and notice to potential bidders and offerors, that multiple contracts may be awarded for any procurement shall not preclude the award of a single contract for the [such] procurement where it is determined by the purchasing officer [official] to be in the best interest of the Commonwealth, price and other factors considered.

Section 2. When it is determined in writing by the purchasing officer [official] after the evaluation of competitive bids, or the closing of competitive negotiations, that bids or offers substantially and materially responsive to terms of the procurement have been received for only a part or parts of the requirements of the

procurement, and the bids or offers received for another part or parts of the procurement are not substantially and materially responsive to [such] terms of the procurement, a contract or contracts may be awarded as to the part or parts of the procurement for which responsive bids or offers have been received, and the bids or offers determined to be nonresponsive may be rejected in the discretion of the purchasing officer [official] and new bids invited, or proposals for competitive negotiations for the procurement advertised and solicited, on the same or revised terms, conditions and specifications.

L. ROGERS WELLS, JR., Secretary
APPROVED BY AGENCY: September 27, 1991
FILED WITH LRC: September 27, 1991 at 2 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1991 at 10 a.m., in Room 350, Capitol Annex Building, Frankfort, Kentucky 40207. Individuals interested in attending this hearing shall notify this agency in writing by November 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 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 of intent to attend the public hearing or written comments on the proposed administrative regulation to: Warren O. Nash, III, Attorney, Finance and Administration Cabinet, Room 376, Capitol Annex Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Warren O. Nash, III
(1) Type and number of entities affected: The amendments to 200 KAR 5:310 are very minor housekeeping changes and other revisions which bring the regulation into compliance with KRS 13A.222.
(a) Direct and indirect costs or savings to those affected: None
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect costs or savings: None
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: 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? Yes. The amendments are narrowly tailored to only make very minor housekeeping changes and revisions to bring 200 KAR 5:310 into compliance with KRS 13A.222.

FINANCE AND ADMINISTRATION CABINET
(Proposed Amendment)

200 KAR 5:311. Contract modifications.

RELATES TO: KRS Chapter 45A
STATUTORY AUTHORITY: KRS 45A.210(1)
NECESSITY AND FUNCTION: The Secretary of the Finance and Administration Cabinet is authorized by KRS 45A.055 to publish state purchasing regulations for the implementation of the Kentucky Model Procurement Code (KRS Chapter 45A). This regulation implements the provisions of KRS 45A.210(1). These amendments change the reference of "purchasing official" to "purchasing officer" and make changes to bring the regulation into compliance with KRS 13A.222(4)(c).

Section 1. The purchasing agencies within the Finance and Administration Cabinet, and any state agency to whom purchasing authority has been delegated by the Finance and Administration Cabinet, shall be authorized to provide by appropriate clauses to contracts for supplies or services of all types for changes and modifications [to such contracts] and providing for the method or methods of calculating the costs of any decrease, increase, or other change in the contract price resulting from the contract [such] change or modification. In contracts for the purchase in fixed amounts of commodities, supplies and equipment, increases in quantities in excess of ten (10) percent of the original quantity, fixed by the contract shall not be permitted unless the invitation for bids or advertisement and solicitation for proposals for competitive negotiations for the procurement informed prospective bidders or offerors that an increase in quantities might be forthcoming, nor shall increases in unit prices be permitted in such contracts for increased quantities except as provided by a price escalation formula authorized by the invitation for bids or request for proposals for competitive negotiations.

Section 2. All changes or modifications to contracts for the purchase of commodities, supplies, equipment and construction services shall be effected by an advice of change in order to the contract which shall be supported [by a written determination] by the purchasing officer [official] documenting the reason and basis for the change or modification to the contract. A copy of the advice of change in order and the supporting documentation relative to any change or modification to a contract shall be filed and maintained in the contract file by the purchasing agency.

Section 3. Every contractor awarded a contract containing clauses authorizing changes or modifications to the contract shall be deemed, by acceptance of the contract, to have agreed to the changes or modifications of the contract as provided therein.

L. ROGERS WELLS, JR., Secretary
APPROVED BY AGENCY: September 27, 1991
FILED WITH LRC: September 27, 1991 at 2 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1991 at 10 a.m., in Room 350, Capitol Annex Building, Frankfort, Kentucky 40207. Individuals interested in attending this hearing shall notify this agency in writing by November 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 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 of intent to attend the public hearing or written comments on the proposed administrative regulation to: Warren O. Nash, III, Attorney, Finance and Administration Cabinet, Room 376, Capitol Annex Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Warren O. Nash, III
(1) Type and number of entities affected: The amendments to 200 KAR 5:311 make very minor housekeeping changes and other revisions which bring the regulation into compliance with KRS 13A.222.
(a) Direct and indirect costs or savings to those affected: None
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: No change.
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect costs or savings: None
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict: None
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None
(6) Any additional information or comments: None
TIERING: Was tiering applied? Yes. The amendments are narrowly tailored to only make minor housekeeping changes and make revisions to bring 200 KAR 5:311 into compliance with KRS 13A.222.

FINANCE AND ADMINISTRATION CABINET
(Proposed Amendment)

200 KAR 5:312. Termination of contracts.

RELATES TO: KRS Chapter 45A
STATUTORY AUTHORITY: KRS 45A.210(2), (3)
NECESSITY AND FUNCTION: The Secretary of the Finance and Administration Cabinet is authorized by KRS 45A.055 to publish state purchasing regulations for the implementation of the Kentucky Model Procurement Code (KRS Chapter 45A). This regulation implements the provisions of KRS 45A.210(2), (3). These amendments revise the reference to "purchasing official" to "purchasing officer" to make the regulations conform with the terminology used in KRS Chapter 13A.

Section 1. (1) Any contractor who is determined in writing by the purchasing officer [official] to be in breach of any of the terms and conditions of a contract with the Commonwealth of Kentucky held by such contractor, shall, in the discretion of the purchasing officer [official], be declared in default and such contract may be terminated as a result of such default.
(2) A default in performance by a contractor for which a contract may be terminated shall include, but shall not necessarily be limited to, failure to perform the contract according to its terms, conditions and specifications; failure to make delivery within the time specified or according to a delivery schedule fixed by the contract; late payment or nonpayment of bills for labor, materials, supplies, or equipment furnished in connection with a contract for construction services as evidenced by mechanics' liens filed pursuant to the provisions of KRS Chapter 376, or letters of indebtedness received from creditors by the purchasing agency; failure to diligently prosecute the work under a contract for construction services.
(3) The Commonwealth shall not be liable for any further payment to a contractor under a contract terminated for the contractor's default after the date of such default as determined by the purchasing officer [official] except for commodities, supplies, equipment or services delivered and accepted on or before the date of default and for which payment had not been made as of that date. The contractor, and/or his surety, if a performance or payment bond has been required under the contract, shall be jointly and severally liable to the Commonwealth for all loss, cost or damage sustained by the Commonwealth as a result of the contractor's default; provided, however, that a contractor's surety liability shall not exceed the final sum specified in the contractor's bond.

Section 2. The Commonwealth shall be authorized to terminate for its own convenience all contracts for the procurement of supplies and services when the purchasing officer [official] has determined that such termination will be in the Commonwealth's best interests.

When it has been determined that a contract should be terminated for the convenience of the Commonwealth, the purchasing agency shall be authorized to negotiate a settlement with the contractor according to terms deemed just and equitable by the purchasing agency. Compensation to a contractor for lost profits on a contract terminated for convenience of the Commonwealth shall not exceed an amount proportionate to the sum that the contractor's total expected margin of profit on the contract bore to the contract price, based on the total out of pocket expense incurred by the contractor as of the date of termination of the contract. Whenever a contract is terminated for the convenience of the Commonwealth, the contractor shall have the burden of establishing the amount of compensation to which he believes himself to be entitled by the submission of complete and accurate cost data employed in submitting his bid or proposal for the contract, and evidence of expenses paid or incurred in performance of the contract from the date of award through the date of termination. Payment of the sum agreed to in settlement of a contract terminated for convenience of the Commonwealth shall be made from the same source of funds or account as the original contract.

L. ROGERS WELLS, JR., Secretary
APPROVED BY AGENCY: September 27, 1991
FILED WITH LRC: September 27, 1991 at 2 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1991 at 10 a.m., in Room 350, Capitol Annex Building, Frankfort, Kentucky 40207. Individuals interested in attending this hearing shall notify this agency in writing by November 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 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 of intent to attend the public hearing or written comments on the proposed administrative regulation to: Warren O. Nash, III, Attorney, Finance and Administration Cabinet, Room 376, Capitol Annex Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Warren O. Nash, III
(1) Type and number of entities affected: The amendments to 200 KAR 5:312 only make housekeeping changes which do not affect any agency.
(a) Direct and indirect costs or savings to those affected: None
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect costs or savings: None
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict: None
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None
(6) Any additional information or comments: None
TIERING: Was tiering applied? Yes. The amendments to 200 KAR 5:312 were narrowly tailored to only make housekeeping changes pertaining to the Finance and Administration Cabinet.

FINANCE AND ADMINISTRATION CABINET
(Proposed Amendment)

200 KAR 5:313. General and special conditions for bidding.

RELATES TO: KRS Chapter 45A
STATUTORY AUTHORITY: KRS 45A.035(2)(e)
NECESSITY AND FUNCTION: The Secretary of the Finance and Administration Cabinet is authorized by KRS 45A.055 to publish state purchasing regulations for the implementation of the Kentucky Model Procurement Code (KRS Chapter 45A). This regulation implements the provisions of KRS 45A.035(2)(e). This amendment changes the reference to the "Finance and Administration Cabinet's Policies and Procedures Manual" which is incorporated by reference as an administrative regulation pursuant to 200 KAR 5:020. This amendment also changes the reference to Department of Administrative Services to the Department for Administration and makes changes to bring the regulation into compliance with KRS 13A.222(4)(c).

Section 1. The Division of Purchases, for commodity and other procurement functions within its jurisdiction, and the Division of Contracting and Administration, for construction and related services and items, shall adopt, and revise from time to time as may be necessary and convenient in the discretion of the directors of the divisions, with the approval of the Commissioners of the Departments for Administration [of Administrative Services] and Facilities Management, respectively, general conditions for bidding to the Commonwealth of Kentucky. The divisions shall also be authorized to promulgate and adopt in relation to any particular procurement, or class or type of procurement, special conditions, supplemental to and in extension of the general conditions of bidding. The general conditions of bidding, and any revisions thereto, adopted by both the Division of Purchases and the Division of Contracting and Administration shall be published in the "Finance and Administration Cabinet's Manual of Policies and Procedures which has been incorporated by reference as an

administrative regulation pursuant to 200 KAR 5:020." ["Policy and Procedure Manual," filed by reference in 200 KAR 5:302.]

Section 2. The general conditions of bidding shall be applicable to, and incorporated by reference in all invitations for bids issued by the Division of Purchases, the Division of Contracting and Administration, or by any agency to which purchasing authority has been delegated pursuant to authorization contained in KRS Chapter 45A and these regulations.

Section 3. All vendors, firms, contractors and persons who submit a bid in response to an invitation for bids issued by the Finance and Administration Cabinet, or by any agency of the Commonwealth of Kentucky pursuant to a delegation of purchasing authority by the Finance and Administration Cabinet, shall be deemed to have agreed to comply with all terms, conditions, and specifications of the [such] invitation for bids.

Section 4. The general conditions of bidding, or specific portions thereof, shall be applicable to all requests for proposals for competitive negotiations pursuant to KRS 45A.085 and 45A.090, in the discretion of the purchasing agencies; provided, however, the advertisement and solicitation for proposals for competitive negotiations shall inform prospective offerors that the request for proposals shall be subject to the general conditions or parts thereof, by specific reference to the particular parts or sections of the general conditions applicable to the particular procurement to be obtained by the competitive negotiations.

L. ROGERS WELLS, JR., Secretary
APPROVED BY AGENCY: September 27, 1991
FILED WITH LRC: September 27, 1991 at 2 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1991 at 10 a.m., in Room 350, Capitol Annex Building, Frankfort, Kentucky 40207. Individuals interested in attending this hearing shall notify this agency in writing by November 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 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 of intent to attend the public hearing or written comments on the proposed administrative regulation to: Warren O. Nash, III, Attorney, Finance and Administration Cabinet, Room 376, Capitol Annex Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Warren O. Nash, III
(1) Type and number of entities affected: The amendments to 200 KAR 5:313 make very minor housekeeping changes and other revisions which bring the regulation into compliance with KRS 13A.222.
(a) Direct and indirect costs or savings to those affected: None
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect costs or savings: None
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: 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? Yes. The amendments to 200 KAR 5:313 were very narrowly tailored to only make housekeeping changes and other revisions to bring the regulation into compliance with KRS 13A.222.

FINANCE AND ADMINISTRATION CABINET
(Proposed Amendment)

200 KAR 5:315. Disciplinary action for failure to perform.

RELATES TO: KRS Chapter 45A
STATUTORY AUTHORITY: KRS 45A.035(2)(b)
NECESSITY AND FUNCTION: The Secretary of the Finance and Administration Cabinet is authorized by KRS 45A.055 to publish state purchasing regulations for the implementation of the Kentucky Model Procurement Code (KRS Chapter 45A). This regulation implements the provisions of KRS 45A.035(2)(b). The amendments to this regulation change references to "bidders list" to "source list" and also brings the regulation into compliance with KRS 13A.222(4)(c).

Section 1. Any bidder or contractor to the Commonwealth of Kentucky who, except for good cause shown, shall have committed, or failed to perform, as the context may require, one or more of the following acts or omissions, shall be liable to disciplinary action by the Finance and Administration Cabinet as set forth in Section 2 of this regulation. Specific grounds for disciplinary action include:
(1) Failure to post bid or performance bonds, or to provide alternate bid or performance guarantee in form acceptable to the purchasing agency in lieu of a bond, as required by an invitation for bids or a solicitation for proposals;
(2) Substitution of commodities without the prior written approval of the purchasing agency;
(3) Failure to comply with the terms and conditions of the invitation for bids or

solicitation for proposals, or with the terms, conditions and specifications of a contract, including failure to complete performance of a contract within the time specified in the contract;

(4) Failure to replace inferior or defective materials, supplies or equipment immediately after notification by the purchasing agency or the agency to which the [such] materials, supplies or equipment has been delivered;

(5) Failure by a bidder listed on a bidder's list to respond to three (3) (five (5) for construction service contracts) invitations for bids sent to the [such] bidder;

(6) Refusal to accept a contract awarded pursuant to the terms of an invitation for bids, or following the close of competitive negotiations;

(7) Falsifying invoices, or making false representations to any state agency or state official, or untrue statements about, any payment under a contract, or to procure award of a contract, or to induce a modification in the price or the terms of a contract to the contractor's advantage;

(8) Collusion, or collaboration with another bidder or other bidders, in the submission of a bid or bids for the purpose of lessening or reducing competition;

(9) Falsifying information in the submission of an application for listing on a Finance and Administration Cabinet bidders' list.

(10) Failure to report, and to pay over to the Revenue Cabinet any Kentucky sales and/or use taxes as may be due in connection with a procurement contract as provided by law;

(11) Failure to comply with the prevailing wage law requirements of state or federal laws as may be applicable to any public works contract of the Commonwealth or any political subdivision or public authority.

Section 2. (1) Any contractor preliminarily determined to have done any act prohibited, or to have failed to do any act required by Section 1(1) to (6) of this regulation shall, in the discretion of the commissioner of the department having jurisdiction over the particular procurements activity or function, be liable to be placed on probation, or suspended from bidding to the Commonwealth of Kentucky, or a combination of suspension from bidding and probation, for not more twelve (12) months.

(2) Any contractor preliminarily determined to have done any act prohibited by Section 1(7), (8) and (9) of this regulation shall be removed from the source [bidders'] lists and shall be ineligible for reinstatement to these [such] lists for a period not to exceed twenty-four (24) months following the date of removal. Any contractor removed from the source [bidders'] lists under this section shall be eligible to apply for reinstatement as provided in 200 KAR 5:304, after the expiration of the removal period.

(3) Any contractor, or any subcontractor to a contractor, determined by the Labor Cabinet to have violated the prevailing wage requirements of KRS Chapter 337 shall be suspended from bidding to the Commonwealth of Kentucky, or to participate in a public works contract of the Commonwealth of Kentucky, effective on and after the date the Finance and Administration Cabinet receives notice from the Labor Cabinet that the [such] contractor or subcontractor has been determined to have violated the prevailing wage law, and until the [such] time [as] the Labor Cabinet has determined the contractor or subcontractor to be in compliance with the requirements of the [such] law.

Section 3. Except for the grounds mentioned in Section 1(5), (6) and (11) of this regulation a preliminary written determination shall be made concerning the facts of any allegation or claim that a bidder or contractor has either committed an act prohibited, or failed to perform an act required, by Section 1 of this regulation before any disciplinary action is taken against the [such] contractor. The [Such] preliminary determination shall be submitted to the [Office of] General Counsel of the [,] Finance and Administration Cabinet, for review prior to the administration of any disciplinary action as authorized by Section 2 of this regulation. Notice of disciplinary action shall be sent to the bidder or contractor at the address shown in the cabinet's records by certified mail, return receipt requested.

Section 4. Bidders or contractors against whom disciplinary action has been taken under this regulation may appeal the action to [of] the Secretary of the Finance and Administration Cabinet. The appeal must be filed in the office of the secretary within ten (10) working days after the date of notice of the disciplinary action has been received by the bidder or contractor as shown by the certified mail receipt. The appeal must be filed in writing and must state facts showing cause why the disciplinary action should be set aside. An appeal constituting a general denial of the charges contained in the notice of disciplinary action, unless supported by specific facts rebutting the [such] charges, shall be preemptorily dismissed. The appellant may request either a formal hearing before a hearing officer to be designated by the secretary to take proof and make findings and recommendations to the secretary, or an informal hearing to be conducted by the commissioner of the department having jurisdiction over the particular procurement activity or function, or his designee. A written report of the substance of the matters raised in the [such] informal hearing shall be prepared and submitted to the secretary and recommending that the appeal be sustained or denied. The rules of evidence shall not apply in either formal or informal hearings conducted under this section and any matter considered pertinent to the issues of the hearing shall be admissible, subject only to the determination by the presiding officer as to the proper weight to be accorded all matters introduced at the hearing.

Section 5. No purchase of any kind shall be made by any state agency from a bidder or contractor who has been suspended or removed from the source [bidders'] lists, except for those removed for the grounds stated in Section 1(5) of this regulation. All state agencies shall be promptly informed about bidders or contractors suspended or removed from the source [bidders'] lists and shall immediately comply with this prohibition.

Section 6. The administration of disciplinary action against a bidder, potential bidder or

contractor under this regulation shall not preclude the taking of other action by the Commonwealth, based on the same facts, as may be otherwise available, either at law or in equity, including, without limitation to the generality thereof, suits for damages or actions for specific performance.

L. ROGERS WELLS, JR., Secretary
APPROVED BY AGENCY: September 27, 1991
FILED WITH LRC: September 27, 1991 at 2 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1991 at 10 a.m., in Room 350, Capitol Annex Building, Frankfort, Kentucky 40207. Individuals interested in attending this hearing shall notify this agency in writing by November 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 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 of intent to attend the public hearing or written comments on the proposed administrative regulation to: Warren O. Nash, III, Attorney, Finance and Administration Cabinet, Room 376, Capitol Annex Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Warren O. Nash, III
(1) Type and number of entities affected: The amendments to 200 KAR 5:315 make very minor housekeeping changes and other changes which bring the regulation into compliance with KRS 13A.222.
(a) Direct and indirect costs or savings to those affected: None
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: No change.e
(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: No change.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict: None
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None
(6) Any additional information or comments: None
TIERING: Was tiering applied? Yes. The amendments to 200 KAR 5:315 were narrowly tailored to make only housekeeping changes and to bring 200 KAR 5:315 into compliance with KRS 13A.222.

FINANCE AND ADMINISTRATION CABINET
(Proposed Amendment)

200 KAR 5:317. Cost principles.

RELATES TO: KRS Chapter 45A
STATUTORY AUTHORITY: KRS 45A.215
NECESSITY AND FUNCTION: The Secretary of the Finance and Administration Cabinet is required by KRS 45A.215 to adopt regulations setting forth cost principles to be used as guidelines, inter alia, to determine allowable costs incurred by contractors under cost reimbursement type contracts; where estimated or incurred costs of performing contracts have to be determined; in the negotiation of contracts not subject to competitive bidding; where changes or modifications to contracts are directed or for the settlement of contracts that have been terminated. This regulation sets forth the cost principles to be employed for the aforementioned purposes, or when it may otherwise be necessary or convenient to determine a contractor's costs. These amendments add and delete additional references to OMB Circulars and state regulations governing cost reimbursement contracts administered by the Cabinet for Human Resources. These amendments also delete the requirement that the various federal laws cited be incorporated by reference or adopted as an administrative regulation.

Section 1. Cost reimbursement contracts shall conform to the cost principles set forth in Chapter 1, Subparts 1-15.101 to 1-15.713-8, inclusive, and in Subparts 1-3.800 to 1-3.814-3, inclusive, of Title 41 CFR, Public Contracts and Property Management revised as of July 1, 1980[, are hereby adopted, incorporated in and made a part hereof by reference, the same as if copied verbatim herein].

Section 2. (1) The Cabinet for Human Resources shall administer "Community Services" and "Social Services" Block Grant Funds as authorized by the Omnibus Budget Reconciliation Act of 1981, P.L. 97-35, in accordance with applicable administrative requirements and cost principles specified in Title 45 CFR Part 74, Administration of Grants, dated as of June 9, 1981; Office of Management and Budget Circulars A-21, A-87 or A-122, as applicable; 905 KAR Chapter 3; 900 KAR 1:006 and subsequent changes; 905 KAR 6:060 and subsequent changes applicable to community services block grant only. [, which are hereby adopted, incorporated, and made a part hereof by reference, the same as if copied verbatim herein;] Federal interpretation of said requirements may be used as a guide in the state determination of the applicability of the various subparts and appendices of 45 CFR Part 74, 92 and 96, as applicable.
[(2) Applicable requirements of Subpart Q, Cost Principles, shall be the basis for determining allowable and unallowable costs for expenditures of Social Services and Community Services Block Grant funds.]

(2) [(3)] The state shall not be required to secure any approvals from the federal granting authority as specified in 45 CFR Part 74 unless it is specifically required by the Omnibus Reconciliation Act of 1981, individual Block Grants, or by changes hereinafter enacted in federal law or regulations. The state shall not apply any part of 45 CFR Part 74 which it determines not to be in the best interest of the Commonwealth. All references to the term "Federal Granting agency" or similar reference in 45 CFR Part 74 shall be construed to mean the Cabinet for Human Resources; and the terms "grantees" and subgrantees" shall be construed to mean contractors and subcontractors of the Cabinet for Human Resources, including other state agencies receiving community services or social services block grant funds.

(3) [(4)] The provisions of any other regulation notwithstanding, the exclusive method of determining allowable costs incurred by contractors under cost reimbursement type contracts entered into under community services and social services block grants shall be as provided in this section.

Section 3. The cost principles referenced in this regulation [hereby adopted] may be used as guidelines in the negotiation of estimated costs or fixed prices when the use of competitive sealed bidding is precluded by the absence of open market competition, for changes or modifications in contracts directed by the state; for determining the allowability of incurred costs under cost reimbursement contracts entered into pursuant to KRS 45A.130; and in other cases where the determination of the estimated or the incurred costs of performing contracts may be required.

L. ROGERS WELLS, JR., Secretary
APPROVED BY AGENCY: September 27, 1991
FILED WITH LRC: September 27, 1991 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1991 at 10 a.m., in Room 350, Capitol Annex Building, Frankfort, Kentucky 40207. Individuals interested in attending this hearing shall notify this agency in writing by November 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 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 of intent to attend the public hearing or written comments on the proposed administrative regulation to: Warren O. Nash, III, Attorney, Finance and Administration Cabinet, Room 376, Capitol Annex Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Warren O. Nash, III
(1) Type and number of entities affected: The amendments to 200 KAR 5:317 only affect those state agencies which use cost reimbursement contracts.
(a) Direct and indirect costs or savings to those affected: It is difficult to anticipate costs or savings which would result from these amendments.
1. First year: See above.
2. Continuing costs or savings: See above.
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: 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? Yes. The amendments to 200 KAR 5:317 were narrowly tailored to apply only to those agencies which use cost reimbursement contracts.

FINANCE AND ADMINISTRATION CABINET
Department for Facilities Management
(Proposed Amendment)

200 KAR 6:015. Real property inventories.

RELATES TO: KRS 45A.045(5) [45.360]
STATUTORY AUTHORITY: KRS 45A.045 [45.360]
NECESSITY AND FUNCTION: [KRS 45.360 requires inventories to be taken.] This regulation provides for taking of inventories of real property and buildings and the filing of inventories with the Division of Real Properties, Finance and Administration Cabinet. These amendments make several revisions to clarify the inventory reporting requirements of state-owned land and buildings by state agencies.

Section 1. The Division of Real Properties of the Finance and Administration Cabinet shall be [is] responsible for maintenance of inventory records for all state-owned land and buildings.

Section 2. The inventory shall be supplied to the Division of Real Properties by each agency. The report will be as of June 30th and received by [due to arrive in] the Division of Real Properties no later than September 30th. All inventory records shall [must] be kept current.

Section 3. Forms for reporting the inventory of both land and buildings shall be supplied by the Division of Real Properties.
(1) Land: Each installation shall [tract of land will] require a separate inventory report Form B 117-6. For purposes of inventory reporting, an installation shall be state-owned

land that completely encloses a definable area of land that is administered by a single state agency. If a tract of land is completely separated by privately owned land, then each tract of land shall be reported by the agency as a separate installation. Contiguous tracts of state-owned land administered by different state agencies shall be reported by these agencies as separate installations. [PR-40.]

(2) Buildings:

(a) Each individual building valued at more than $5,000 shall [should] be reported on a separate inventory report Form B 117-6 [PR-40].

(b) If acquisition costs are not known for the land or buildings, the current appraisal price as established by the Department of Insurance shall [should] be used for the cost. [This will include all permanent installations and additions.]

Section 4. Periodic inspections shall be made by the Division of Real Properties to determine accuracy of reports. When changes in the state agency's inventory become necessary because of sales, purchases, demolitions, and modifications to the state-owned buildings, the state agency shall [must] adjust their inventory records accordingly and shall provide a copy of the adjusted inventory record [change] to the Division of Real Properties on Form B 117-6.

L. ROGERS WELLS, JR., Secretary

APPROVED BY AGENCY: September 27, 1991

FILED WITH LRC: September 27, 1991 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1991 at 10 a.m., in Room 350, Capitol Annex Building, Frankfort, Kentucky 40207. Individuals interested in attending this hearing shall notify this agency in writing by November 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 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 of intent to attend the public hearing or written comments on the proposed administrative regulation to: Warren O. Nash, III, Attorney, Finance and Administration Cabinet, Room 376, Capitol Annex Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Warren O. Nash, III

(1) Type and number of entities affected: The amendments to 200 KAR 6:015 affect state agencies maintaining state-owned real estate.

(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: The amendments to 200 KAR 6:015 may result in very minor paperwork and inventory reporting for state agencies.

(2) Effects on the promulgating administrative body: More efficient inventory reporting of state-owned real estate.

(a) Direct and indirect costs or savings: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(6) Any additional information or comments: None

TIERING: Was tiering applied? Yes. The amendments to 200 KAR 6:015 were narrowly tailored to apply only to state agencies maintaining state-owned real estate.

FINANCE AND ADMINISTRATION CABINET
(Proposed Amendment)

200 KAR 6:040. Flood plain management.

RELATES TO: KRS Chapters 45, 56[, 151]

STATUTORY AUTHORITY: KRS 56.185

NECESSITY AND FUNCTION: In order for the Commonwealth of Kentucky to qualify for the purchase of flood insurance for state structures under the National Flood Insurance Program it shall [must] comply with the federal National Flood Insurance Program regulations administered by the Federal Emergency Management Agency. The amendments to 200 KAR 6:040 bring this regulation into compliance with KRS 13A.222. [The amendments to these regulations allow the Commonwealth of Kentucky to bring its present regulations, relating to flood plain management into compliance with the National Flood Insurance Program.]

Section 1. General. (1) Purpose. The purpose of this regulation is to minimize the loss of lives and property due to floods. Each state agency undertaking a development activity within the base flood plains of the state shall comply with this regulation.

(2) Definitions. Unless otherwise defined, terms in this regulation shall be interpreted to give them the meaning they commonly have.

(a) "Addition to an existing building" means any walled and roofed expansion to the perimeter of a building in which the addition is connected by a common loadbearing wall other than a fire wall. Any walled and roofed addition which is connected by a fire wall or is separated by independent perimeter loadbearing walls is new construction.

(b) "Allowable base flood elevation" means an increase of no more than one (1) foot in the water surface elevation above the existing base flood elevation.

(c) "Area of shallow flooding" means a designated AO Zone on a community's Flood

Insurance Rate Map (FIRM) with base flood depths from one (1) to three (3) feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident.

(d) "Base flood" means the flood having a one (1) percent chance of being equaled or exceeded in any given year (i.e., 100-year frequency flood).

(e) "Base flood elevation" means the elevation of the existing base flood.

(f) "Base flood plain" means any land area susceptible to a base flood.

(g) "Basement" means that portion of a building having its floor subgrade (below ground level) on all sides.

(h) "Building" means any structure built for support, shelter, or enclosure for any occupancy or storage.

(i) "Development activity" means any manmade change to improved or unimproved real estate by a state agency including, but not limited to, the construction of buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations.

(j) "Elevated building" means a nonbasement building built to have the lowest floor elevated above the ground level by means of fill, solid foundation perimeter walls, pilings, columns (posts and piers), shear walls, or breakaway walls.

(k) "FEMA" means Federal Emergency Management Agency.

(l) "Flood" or "flooding" means a general and temporary condition of partial or complete inundation of normally dry land areas from:

1. The overflow of inland or tidal waters;

2. The unusual and rapid accumulation or run-off of surface waters from any source.

(m) "Flood Hazard Boundary Map (FHBM)" means an official map of a community, issued by the Federal Emergency Management Agency, where the boundaries of the areas of special flood hazard have been defined as Zone A.

(n) "Flood Insurance Rate Map (FIRM)" means an official map of a community, on which the Federal Emergency Management Agency has delineated both the areas of special flood hazard and the risk premium zones applicable to the community.

(o) "Flood insurance study" is the official report provided by the Federal Emergency Management Agency. The report contains flood profiles, as well as the Flood Boundary Floodway Map and the water surface elevation of the base flood.

(p) "Flood proofing" means any combination of structural and nonstructural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures or their contents.

(q) "Floodway" means the channel of a river or other watercourse and the adjacent land areas that shall [must] be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot.

(r) "Floor" means the top surface of an enclosed area in a building (including basement), i.e., top of slab in concrete slab construction or top of wood flooring in wood frame construction. The term does not include the floor of a garage used solely for parking vehicles.

(s) "Functionally dependent facility" means a facility which cannot be used for its intended purpose unless it is located or carried out in close proximity to water, such as a docking or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding, ship repair, or seafood processing facilities. The term does not include long-term storage, manufacture, sales, or service facilities.

(t) "Mean sea level" means the average height of the sea for all stages of the tide.

(u) "Manufactured home" means a structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. It does not include recreational vehicles or travel trailers. This term also includes park trailers, travel trailers, and similar transportable structures placed on a site for 180 consecutive days or longer and intended to be improved property.

(v) "New construction" means facilities for which the "start of construction" began on or after the effective date of this regulation.

(w) "Riverine" means relating to, formed by, or resembling a river (including tributaries), streams, brooks, etc.

(x) "Secretary" means the Secretary of the Finance and Administration Cabinet.

(y) "Start of construction" (for other than new construction or substantial improvements under the Coastal Barrier Resources Act (P.L. 97-348)), includes substantial improvement, and means the date on which the work order was issued by the Finance and Administration Cabinet, provided the actual start of construction, repair, reconstruction, or improvement was within 180 days from the work order date. The actual start means the first placement of permanent construction of a structure (including a manufactured home) on a site, such as the pouring of slabs or footings, installation of piles, construction of columns, or any work beyond the stage of excavation or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure.

(z) "State" means Commonwealth of Kentucky.

(aa) "State agency" means any state administrative body, department, bureau or division as defined in KRS Chapter 12, and any institution, commission, board, program cabinet, instrumentality, independent state authority, office, or other agency of the state.

(bb) "State facility" means all structures including, but not limited to, buildings, manufactured homes, storage tanks, docks, piers, dams, levees, utilities, roads, and bridges, constructed or placed, and associated land disturbance activities or state-owned lands.

(cc) "Substantial improvement" means any repair, reconstruction, or improvement of a state facility, the cost of which equals or exceeds fifty (50) percent of the current value of the facility either: before the improvement

or repair is started; or if the facility has been damaged and is being restored, before the damage occurred. The term does not include: any project for improvement of a structure to comply with existing state health, sanitary, or safety codes solely necessary to assure safe living conditions; or any alteration of a structure listed on the "National Register of Historic Places" or a "State Inventory of Historic Places."

(dd) "Water surface elevation" means the projected heights in relation to mean sea level reached by floods in the flood plains of riverine areas.

Section 2. Application. This regulation shall apply to all base flood plains of the state.

Section 3. Establishing Flood Plains. Base flood plains in the state will be identified in writing by the Natural Resources and Environmental Protection Cabinet. The Finance and Administration Cabinet will use this in determining whether a permit is to be issued.

Section 4. Abrogation and Greater Restrictions. This regulation is not intended to repeal, abrogate, or impair any existing state easements, covenants, or deed restrictions. Where this regulation and another state regulation conflict or overlap, whichever imposes the more stringent restrictions shall apply. Compliance with this regulation does not relieve responsibility for complying with other statutory requirements. All permits as required under CFR 44, Chapter 1, Section 60.3(a)(2) of the National Flood Insurance Program shall [must] be obtained where applicable.

Section 5. Interpretation. In interpreting and applying this regulation, all provisions shall be construed in favor of the state.

Section 6. Warning and Disclaimer of Liability. This regulation shall not subject the state or any officer, agency or employee thereof to any liability for any damages from flooding that may occur or result from compliance with or reliance on this regulation or any administrative decision made pursuant to this regulation [hereunder].

Section 7. Development Permit. (1) The Secretary shall administer this regulation by granting, granting with conditions, refusing to grant, or otherwise determining the appropriate action as [hereinafter] provided in Section 9 of this regulation, a development permit to state agencies proposing to undertake development activity within the base flood plain, excluding only those activities of the Department of Highways in the Transportation Cabinet relating to the acquiring of right-of-way for, and constructing and maintaining of highways.

(2) The Secretary of the Transportation Cabinet, subject to this regulation, shall grant, grant with conditions, or refuse to grant, a permit for development activities for the Department of Highways. The permit shall include a certification that it was issued pursuant to this regulation and a copy of it shall be provided to the Finance and Administration Cabinet.

Section 8. Flood Plain Management. (1) Every state agency (except as provided in Section 7) proposing development activity within the base flood plain shall notify the Finance and Administration Cabinet prior to initiating this [such] activity. The notice shall contain a complete description of the proposed development and likely effects of it on the base flood plain; an explanation of why the development shall [must] be located in the flood plain, whether alternative sites were considered, and why alternative sites not in the flood plain were rejected.

(2) The plans and specifications for all construction covered by this regulation shall meet the following criteria:

(a) All development activity within a floodway, except as [hereinafter] provided in this section, is prohibited. Necessary utilities are permitted. Except as provided in subparagraph 3 of this paragraph, the following are also permitted in the floodway only if their construction does not cause the flood to exceed the base flood elevation: necessary marine use facilities (other than buildings) when the [such] construction is considered together with full usage of the floodway on the opposite bank; and bridges, with their appurtenances. Construction within the floodway shall [must] be designed to withstand at least the water velocity of the base flood. Dams are permitted only if the base flood plain is held entirely in fee simple. To meet the requirements of this regulation, the following methods shall be acceptable in order of preference:

1. Design the facility so there is no encroachment within the floodway;
2. Fully offset the effect of any encroachment into the floodway by stream improvements; or
3. Determine the increased backwater over the base flood elevation caused by an encroachment and secure any affected land by flood easement or fee simple purchase.
4. In areas where no floodway is designated, an engineering analysis shall [must] be conducted to establish an appropriate floodway or it shall [must] be demonstrated that the proposed development, in combination with all present and planned development, will not cause the flood to exceed the allowable base flood elevation. The methodology for conducting this [such an] analysis may be obtained from FEMA.
5. If subparagraphs 2, 3, or 4 of this paragraph are used, new flood plain information shall [must] be provided to FEMA.

(b) Development outside the floodway limits, but in the remaining portion of the flood plain, is permitted as follows:

1. Water supply, sewage, electrical, gas, and all other utilities shall [must] be so located and constructed as to eliminate infiltration of flood waters which could damage the utilities. In the case of on site waste disposal systems, they shall also be located to avoid contamination from them during flooding.
2. All structures shall be anchored to prevent flotation, collapse, or lateral movement and constructed with materials resistant to flood damage by methods that minimize flood damage.
3. Electrical, heating, ventilation, plumbing, air conditioning equipment, and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

4. No manufactured home shall be allowed in the base flood plain.

5. Buildings shall be constructed so as to be protected to at least the base flood elevation. Flood protection for these [such] buildings may consist of the following methods in order of preference:

a. Elevation of the lowest floor (including basement) using open works such as columns, walls, piles.

b. Elevation of the lowest floor (including basement) using fill.

c. For nonresidential buildings only, together with attendant utility and sanitary facilities, completely flood proofed watertight with walls substantially impermeable to the passage of water and with structural components able to resist the hydrostatic and hydrodynamic loads and buoyancy effects of the base flood. The adequacy of the [such] flood proofing shall be certified by a professional engineer registered in Kentucky.

(c) New construction or substantial improvements of elevated buildings that include fully enclosed areas formed by foundation and other exterior walls below the base flood elevation shall be designed to preclude finished living space and designed to allow for the entry and exit of floodwaters to automatically equalize hydrostatic flood forces on exterior walls.

1. Designs for complying with these requirements shall [must] either be certified by a professional engineer or architect or meet the following minimum criteria:

a. Provide a minimum of two (2) openings having a total net area of not less than one (1) square inch for every square foot of enclosed area subject to flooding;

b. The bottom of all openings shall be no higher than one (1) foot above grade; and

c. Openings may be equipped with screens, louvers, valves or other coverings or devices provided they permit the automatic flow of floodwaters in both directions.

2.a. Electrical, plumbing, and other utility connections are prohibited below the base flood elevation;

b. Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door) or limited storage or maintenance equipment used in connection with the premises (standard exterior door) or entry to the living area (stairway or elevator); and

c. The interior portion of the [such] enclosed area shall not be partitioned or finished into separate rooms.

(d) Standards for areas of shallow flooding (AO Zones). Located within the areas of special flood hazard are areas designated as shallow flooding areas. These areas have special flood hazards associated with base flood depths of one (1) to three (3) feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and indeterminate; therefore, the following provisions shall apply:

1. All new construction and substantial improvements of residential structures shall have the lowest floor, including basement, elevated to the depth number specified on the Flood Insurance Rate Map, in feet, above the highest adjacent grade. If no depth number is specified, the lowest floor, including basement, shall be elevated, at least two (2) feet above the highest adjacent grade.

2. All new construction and substantial improvements or nonresidential structures shall:

a. Have the lowest floor, including basement, elevated to the depth number specified on the Flood Insurance Rate Map, in feet, above the highest adjacent grade. If no depth number is specified, the lowest floor, including basement shall be elevated at least two (2) feet above the highest adjacent grade; or

b. Together with attendant utility and sanitary facilities be completely flood-proofed to or above that level so that any space below that level is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.

(e) Improvements to existing facilities are permitted within the flood plain provided:

1. For facilities located in the floodway, no additions, alterations, encroachments, or relocations will cause flood levels to increase.

2. Practical alternatives are considered and used to minimize or eliminate flood damages.

3. Facilities substantially improved shall meet all requirements of new development as contained in this section.

Section 9. Administrative Procedures. (1) Upon receipt and review by the secretary of notice from a state agency proposing development activity within the flood plain, the secretary shall: issue a development permit; issue [such] a permit with conditions; refuse to issue a permit and provide the reasons for denial; or, in his discretion, determine that such a permit is not required under this regulation.

(2) When a development permit for building construction is issued, the agency undertaking the development in accordance with the terms of the permit shall:

(a) Secure a certification from a land surveyor or professional engineer registered in Kentucky of the elevation of the lowest floor (including basement) or, if flood proofing is utilized, the actual level of flood proofing in relation to the mean sea level and provide the certificate to the secretary within thirty (30) days following its issuance.

(b) Secure certifications, as applicable under Section 8(2)(b)5c of this regulation and provide same to the secretary within sixty (60) days after completion of the building.

(3) The Finance and Administration Cabinet shall maintain for public inspection all certifications and permit records required by these regulations.

L. ROGERS WELLS, JR., Secretary
APPROVED BY AGENCY: September 30, 1991
FILED WITH LRC: October 1, 1991 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1991 at 10 a.m., in Room 350, Capitol Annex Building, Frankfort, Kentucky 40207. Individuals interested in attending this hearing shall notify this agency in writing by November 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 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 of intent to attend the public hearing or written comments on the proposed administrative regulation to: Warren O. Nash, III, Attorney, Finance and Administration Cabinet, Room 376, Capitol Annex Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Warren O. Nash, III
(1) Type and number of entities affected: The amendments bring 200 KAR 6:040 into compliance with KRS 13A.222, and therefore these amendments only effect the Finance and Administration Cabinet.
(a) Direct and indirect costs or savings to those affected: None
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: No change.
(2) Effects on the promulgating administrative body: No effects on the Finance and Administration Cabinet.
(a) Direct and indirect costs or savings: None
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: No change.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict: None
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None
(6) Any additional information or comments: None
TIERING: Was tiering applied? Yes. These amendments are narrowly tailored to bring the regulation into compliance with KRS 13A.222.

FINANCE AND ADMINISTRATION CABINET
Department for Facilities Management
(Proposed Amendment)

200 KAR 7:010. Substitution of securities for retainage.

RELATES TO: KRS Chapters 45A, 56
STATUTORY AUTHORITY: KRS 45A.035, 45A.045, 56.463 [Chapters 45 and 56]
NECESSITY AND FUNCTION: In order to allow contractors holding contracts with the state, administered by the Division of Engineering, Finance and Administration Cabinet, to substitute securities for retainage, this regulation establishes guidelines for such substitution, provided the market value or par value is equal to or exceeds the amount of retainage to be withdrawn. The amendments to this regulation delete the contractor's option to use his retainage to purchase shares in a "retainage fund", and clarify the process and the terms and conditions by which a contractor may withdraw retainage during the term of his contract with Commonwealth. These amendments also bring the regulation into compliance with KRS Chapter 13A.

Section 1. General. Contractors holding contracts with the Commonwealth of Kentucky and administered by the Finance and Administration Cabinet, Division of Engineering, for the construction, renovation, repair or improvement of any building or other facility owned, controlled or maintained by the Commonwealth, may withdraw the whole or any portion of any percentage of the contract price or fixed sum withheld from each periodic payment made to such contractor and retained by the Commonwealth pursuant to the terms of their contracts.

Section 2. Definitions. As used in this regulation and where the context so admits the following terms shall have the meaning assigned:
(1) Secretary: the Secretary of the Finance and Administration Cabinet.
(2) Cabinet: the Finance and Administration Cabinet.
(3) Contractor: any person, firm, partnership, or corporation holding a contract with the Commonwealth of Kentucky, and administered by the Finance and Administration Cabinet, Division of Engineering, for the construction, renovation, repair or improvement of any building, structure or other facility owned, controlled and maintained by the Commonwealth of Kentucky.
(4) Custodian: any trust company or banking firm having a trust department in this state approved by the secretary to receive payments as an escrow agent under this regulation.
(5) Director: the Director, Division of Engineering in the Finance and Administration Cabinet.
(6) Division: the Division of Engineering in the Finance and Administration Cabinet.
(7) Retainage: the percentage or fixed sum withheld from each periodic estimate paid under a contract and retained by the cabinet until completion of a contractor's performance and acceptance of the work.
(8) Surety: the corporate surety under a contractor's performance and payment bond.

Section 3. Contractor's Election to Withdraw Retainage. (1) Any contractor desiring to withdraw the retainage under his contract with the Commonwealth shall elect to do so in writing on a form prescribed by the cabinet and filed with the director. No [such] election shall be given effect until and unless approved by an authorized officer or agent of the contractor's surety. The director, or his authorized representative, shall acknowledge the contractor's election by endorsement thereon and the election, when approved by the contractor's surety, and agreed to by the contractor's custodian, shall be incorporated with and become a part of the contract between the contractor and the Commonwealth. The contractor shall designate a custodian from a list of approved custodians to be furnished by the director.
(2) The contractor may elect to withdraw

retainage under future payments at any time during the continuation of the contractor's performance of the contract; but [provided, however, that] no [such] election will be accepted during the period between the date the next to last invoice [periodic estimate] is paid and the date the final invoice [estimate] is submitted for payment; and, provided further, that the [such] election shall apply only as to payments coming due on and after the date of the [such] election.

(3) The surety's approval as to the contractor's election shall be indicated on the face of the contractor's performance and payment bond with respect to contracts awarded, or by endorsement on a letter submitted with the contractor's election under contracts in effect on that date.

Section 4. Surety for Retainage. (1) Each contractor electing to withdraw the retainage under his contract as provided in Section 3 of this regulation, shall as soon as practicable after his election has been filed with the director, deposit in escrow subject to the terms established by this regulation [hereinafter set forth], governmental securities having a market value at the time of deposit, or par value, whichever is less, equal to or greater than the amount of retainage to be withdrawn. These [Such] securities may be one or more of the following kinds:

(a) United States Treasury Bonds, notes, treasury bills or certificates of indebtedness;

(b) General obligation or revenue bonds issued by the Commonwealth of Kentucky or its agencies;

(c) Subject to the secretary's approval, general obligation bonds issued by any political subdivision of the Commonwealth.

(2) In the event that a contractor does not have sufficient capital readily available for the purchase of [such] securities for deposit, the [such] contractor may, subject to the director's approval, enter into an agreement with the custodian providing, in addition to any [such] other terms and conditions as any party may consider necessary and desirable, that upon receipt of a check drawn on the State Treasury and payable to the custodian for the contractor's account, the custodian shall purchase for the contractor's account securities of one or more of the kinds specified in this section [above] to be held by the custodian in escrow for the Commonwealth's benefit.

(3) The terms under which the custodian shall hold the securities shall be subject in each instance to the director's approval and shall provide, in addition to any other terms considered necessary or desirable under the circumstances, for the Commonwealth's unlimited and irrevocable right to demand delivery of and to sell the securities in the event of a default in the contractor's performance of his contract as determined by the director with reference to the relevant provisions of this [such] contract and no claim or assertion by the contractor disputing such determination shall disrupt or displace the Commonwealth's entitlement thereto.

(4) The custodian shall execute a certificate to the contractor, with a copy to the director, verifying that is has possession of and the value of the securities deposited.

[(5) As an alternative to the deposit of securities with the custodian as provided above, contractors may request that the retainage under their contracts be transferred to an approved custodian for investment in a fund to be established by the custodian and to be designated in the records of each custodian establishing such a fund as the Commonwealth of Kentucky, Finance and Administration Cabinet Retainage Participation Fund. The investment of such funds by the custodian shall be limited to securities of the kinds authorized by this section.]

[(6) Each contractor electing to participate in the retainage participation fund shall be credited by the custodian with shares in the fund to the extent of the funds transferred to the fund and invested for his benefit and be credited with and receive all interest and increments to said fund based on his pro rata interest therein. Provided, however, that in the event that any contractor sharing in the fund is declared to be in default in the performance of his contract by the director such contractor's shares in the fund shall, upon receipt of notice of the declaration of default by the custodian, be transferred on the custodian's books to the Commonwealth's credit and the custodian shall thereafter on demand by the secretary deliver the value of such shares to the State Treasury.]

[(7) No contractor sharing in the retainage participation fund shall withdraw or attempt to withdraw the principal amount of his interest therein until the Commonwealth's security interest in such shares has been released as provided in this regulation.]

Section 5. Contractor's Right to Interest. Contractors depositing securities [or participating in the retainage participation fund] as provided in Section 4 of this regulation shall be entitled to receive all interest income accruing on these securities [thereon] from the date of deposit or commencement of their participation [in the fund] to the date that demand is served on the custodian by the cabinet for delivery of the securities. After this date, [or the contractor's shares in the fund; thereafter,] all interest income so accruing shall be the property of the Commonwealth. To this end, and so long as it may have possession of such securities[, or shares are maintained in the retainage participation fund], the custodian shall, on a regular basis collect and pay over the income from these securities to the contractor, unless and until a demand is served on the custodian by the cabinet, at which time all income accruing on the securities shall be the property of the cabinet. [accruing thereon to the party then entitled to the same.]

Section 6. Commonwealth's Entitlement to Delivery of Securities. The Commonwealth shall be absolutely entitled to demand and receive delivery of the securities deposited as provided in Section 4 of this regulation in the event of a default in the contractor's performance of his contract as determined by the director, and this [such] entitlement shall in no way be displaced or disrupted by a claim or assertion from the contractor to the custodian disputing the [such] determination. Delivery of the securities to the Commonwealth's control shall be effected by the custodian within thirty (30) days from the date that a written demand therefor has been served upon the custodian. [;] Service of the demand to the custodian shall be made either by hand or by

United States first class [certified] mail addressed to the custodian's principal office and place of business. This [Such] demand, when signed by the director [Secretary of the Finance and Administration Cabinet] shall, when acted upon by the custodian, relieve the custodian from any further liability to the contractor [therefor]. The Commonwealth shall designate in its demand to the custodian the method of delivery of the securities, whether by actual physical transfer of the securities to the custody of the State Treasury, or by constructive delivery evidenced by the custodian's certificate of safe keeping issued to the Commonwealth with a copy [thereof] furnished the contractor.

Section 7. Custodian's Fee. Each custodian designated and approved for the keeping of securities shall be entitled to be paid a reasonable fee to be deducted from the income accruing to the account for the performance of all services actually rendered, the amount of the [such] fee, whether based on a flat rate charge or a percentage of the value of the securities held, or a combination of a flat rate and percentage, shall be stated in the escrow agreement between the custodian and the contractor and the amount [and/]or the rate thereof shall not be changed thereafter except with the approval of the Secretary of the Finance and Administration Cabinet. The contractor shall be liable for the payment of the custodian's fee and to secure the payment of the fee [thereof] the custodian shall have a lien on the securities held, secondary to the right and entitlement to the Commonwealth to the securities [thereto]. The Commonwealth shall be liable for the payment of the custodian's fee for any period for which the [such] fee may be payable after delivery of the securities to the Commonwealth's control as provided in Section 6 of this regulation. [;] The Commonwealth shall have no liability for the payment of the custodian's fee for any period prior to the date of delivery of the securities to the Commonwealth's possession, actual or constructive.

Section 8. Release of Securities. Upon completion of the contractor's performance under the contract and final acceptance of the work thereunder by the Commonwealth, the director shall advise the custodian in writing and the custodian shall [thereupon] be released and exonerated from any further liability for the delivery to the Commonwealth of the securities [or shares in the retainage participation fund] held in escrow by the custodian. [;] A copy of the release shall be furnished the contractor. Likewise, from time to time during the term [prosecution] of the contract, the director, in the exercise of his discretion, may authorize the discharge from escrow of a percentage or a lump sum amount of the securities deposited with the custodian plus interest earned, and this [such] authorization shall release the custodian from further liability for the delivery to the Commonwealth of the securities so discharged.

Section 9. Accounting by Custodian. The custodian shall, upon request therefor by the contractor, from time to time render to the contractor, with information copies to the division, detailed statements of account for all securities [or shares] in the retainage program [participation fund] held by the custodian for the contractor's account pursuant to Section 4 of this regulation and the escrow agreement between the custodian and the contractor. These [Such] statements shall reflect all interest income accruing to the contractor's account and the disbursements thereof made by the custodian together with [such] other information as may be considered necessary or desirable according to standard accounting procedures to describe the transactions affecting the account during the period involved. [Provided, however, that] The custodian shall furnish such statements without necessity of a request by the contractor at [upon the happening of one or more of the following occurrences:

(1) As of] the end of each calendar year or pay period during any calendar year in which such securities are held. [;]

[(2) As of the end of any month that such securities are released by the Commonwealth as provided in Section 8 of this regulation;]

[(3) As of the end of any month that such securities are delivered to the Commonwealth as provided in Section 6 of this regulation.]

L. ROGERS WELLS, JR., Secretary
APPROVED BY AGENCY: October 1, 1991
FILED WITH LRC: October 2, 1991 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1991 at 10 a.m., in Room 350, Capitol Annex Building, Frankfort, Kentucky 40207. Individuals interested in attending this hearing shall notify this agency in writing by November 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 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 of intent to attend the public hearing or written comments on the proposed administrative regulation to: Warren O. Nash, III, Attorney, Finance and Administration Cabinet, Room 376, Capitol Annex Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Warren O. Nash, III

(1) Type and number of entities affected: The amendments to this regulation are housekeeping in nature and also bring the regulation governing retainage held by the Commonwealth on construction contracts, into compliance with KRS Chapter 13A. These changes will have little effect on general contractors who enter into construction contracts with the Commonwealth.

(a) Direct and indirect costs or savings to those affected: None

1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative

body: None
(a) Direct and indirect costs or savings: None
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: 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? Yes. These amendments were narrowly tailored to only make housekeeping changes having little effect on contractors entering into construction contracts with the Commonwealth, and to bring the regulation into compliance with KRS Chapter 13A.

FINANCE AND ADMINISTRATION CABINET
(Proposed Amendment)

200 KAR 12:020. Unemployment insurance payments.

RELATES TO: KRS Chapter 341
STATUTORY AUTHORITY: KRS 341.282 [Chapters 13, 42, 45, 341]
NECESSITY AND FUNCTION: KRS 341.050 defines "covered employment." This regulation provides that agencies employing persons in positions of "covered employment" are to draw from funds available amounts sufficient to make unemployment insurance payments for each such employee. These amendments make revisions to the regulation to bring it into compliance with KRS 13A.220(3) and 13A.222(4)(c).

Section 1. All agencies of this state employing persons in positions of "covered employment" as defined in KRS 341.050, may draw from such funds as are properly available for the operation of each [such] agency an amount or amounts sufficient to make unemployment insurance payments for each employee engaged in [such] "covered employment." These [Such] amounts shall be paid over to the Division of Unemployment Insurance [Commission] in the Cabinet for Human Resources by interaccount transfer between funds upon receipt of appropriate billing as contemplated by KRS 341.282 [and 904 KAR 5:210].

L. ROGERS WELLS, JR., Secretary
APPROVED BY AGENCY: October 9, 1991
FILED WITH LRC: October 10, 1991 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1991 at 10 a.m., in Room 350, Capitol Annex Building, Frankfort, Kentucky. Individuals interested in attending the hearing shall notify this agency in writing by November 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 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: Warren O. Nash, III, Attorney, Finance and Administration Cabinet, Room 376, Capitol Annex Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Warren O. Nash, III
(1) Type and number of entities affected: 200 KAR 12:020 establishes the funds from which agencies may make unemployment insurance payments. The amendments to this regulation bring the regulation into compliance with KRS 13A.220(3) and 13A.222(4)(c) and therefore, will not directly affect any particular state agency.
(a) Direct and indirect costs or savings to those affected: None
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: No change.
(2) Effects on the promulgating administrative body: The amendments to 200 KAR 12:020 will not directly effect the Finance and Administration Cabinet.
(a) Direct and indirect costs or savings: None
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: No change.
(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: 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. The amendments to 200 KAR 12:020 were closely tailored to make revisions to 200 KAR 12:020 to bring the regulation into compliance with KRS 13A.220(3) and 13A.222(4)(c).

GENERAL GOVERNMENT CABINET
Board of Physical Therapy
(Proposed Amendment)

201 KAR 22:053. Code of ethical standards and standards of practice for physical therapists and physical therapists' assistants.

RELATES TO: KRS 327.040, 327.070
STATUTORY AUTHORITY: KRS 327.040(11), (12)
NECESSITY AND FUNCTION: KRS 327.040(11) and (12) authorize the Board of Physical Therapy to establish by regulation a code of ethical standards and standards of practice for physical therapists and physical therapist's assistants. This regulation establishes those standards which, if violated, are a basis for disciplinary action under KRS 327.070(9).

Section 1. As used in this administrative regulation, unless the context requires otherwise:
(1) "Board" means the Kentucky State Board of Physical Therapy.
(2) "Full time" means employment for forty (40) hours a week.
(3) "On-site supervision" means immediate physical accessibility within the same building.
(4) "Supportive personnel" means a person assisting in direct patient care who is not licensed or certified by the board to provide physical therapy.

Section 2. Code of Ethical Standards for the Physical Therapist and Physical Therapist's Assistant. Physical therapists and physical therapist's assistants shall:
(1) Respect the rights and dignity of all individuals;
(2) Maintain the confidentiality of patient information unless the patient or his appointed representative consents to its release;
(3) Provide accurate information to the consumer; and
(4) Report unethical, incompetent or illegal acts to the board.

Section 3. Standards of Practice for the Physical Therapist. When engaged in the practice of physical therapy, a physical therapist shall:
(1) Evaluate each patient. The patient shall be evaluated:
(a) Prior to initiation of any treatment;
(b) Upon receipt of a patient from another physical therapy service, facility or agency; and
(c) When requested by a referring professional.
(2) Refer the patient to other professionals or services when the treatment or service is beyond his scope of practice;
(3) Be responsible for the physical therapy record of each patient;
(4) Provide services that meet or exceed the generally accepted practice of the profession;
(5) Explain the plan of care to the patient, to others designated by the patient, and to appropriate professionals;
(6) Make it clear to the patient that the patient has the right to choose any qualified professional or equipment supply companies if the physical therapist makes recommendations for such;
(7) Disclose in writing to each patient any financial interest or compensation or other value to be received by the referral source:
(a) For services provided by the physical therapist;
(b) For equipment rental or purchase; and
(c) For other services the physical therapist might recommend for the patient.
(8) Unless prohibited by law, as members of a business entity be allowed to pool or apportion fees received in accordance with any business agreement.

Section 4. Standards of Practice for the Physical Therapist's Assistant. When engaged in the practice of physical therapy the physical therapist's assistant shall:
(1) Provide services only under the supervision and direction of a physical therapist;
(2) Refuse to carry out procedures that he believes are not in the best interest of the patient or that he is not competent to provide by training or skill level;
(3) Initiate treatment only after evaluation by the physical therapist;
(4) Upon direction from the physical therapist, gather data relating to the patient's disability, but not determine the significance of the data as it pertains to the development of the plan of care;
(5) Refer to the physical therapist inquiries that require an interpretation of patient information related to rehabilitation potential;
(6) Comply with the plan of supervision established by the physical therapist; and
(7) Communicate with the physical therapist any change or lack of change which occurs in the patient's condition which may indicate the need for reassessment.

Section 5. Standards for Supervision. When supervising the physical therapist's assistant and supportive personnel, the physical therapist shall:
(1) Prepare a written plan for the training and supervision of supportive personnel. The plan shall be reviewed annually and revised as necessary. The plan shall be readily available for review by all physical therapists and physical therapist's assistants who work with the supportive personnel and shall include:
(a) A list of clinical competencies of each supportive personnel;
(b) The method for monitoring and supervising care provided by supportive personnel; and
(c) The date and signature of the supervisor and supportive personnel governed by the plan.
(2) At all times, including all work locations, be limited to:
(a) Supervising no more than four (4) full-time physical therapist's assistants or supportive personnel; or
(b) The number of those persons providing part-time patient care for a period equivalent to that provided by four (4) full-time providers of patient care; except
(c) Temporary failure to abide by the maximum staffing ratio of physical therapists to physical therapist's assistants or supportive personnel required in this section for a period not to exceed seven (7) consecutive work days shall not constitute a violation of this standard.
(3) Be responsible for:
(a) Interpreting any referral;
(b) Conducting the initial physical therapy evaluation;
(c) Establishing reporting procedures to be

followed by the physical therapist's assistant and supportive personnel;
(d) Evaluating the competency of physical therapist's assistants and supportive personnel;
(e) Supervising the physical therapist's assistant and supportive personnel;
(f) Reassessing inpatients in either a hospital or comprehensive rehabilitation facility every fourteen (14) days;
(g) Reassessing every ninety (90) days, with the physical therapist's assistant present, patients in:
1. A facility defined in 902 KAR 20:086 as an intermediate care facility (ICF) for the mentally retarded (MR) and developmentally disabled (DD); or
2. A school system.
(h) Reassessing each patient not otherwise noted after the earlier of every:
1. Twenty (20) physical therapy visits; or
2. Thirty (30) days following the initial evaluation or subsequent reassessment.
(i) Reassessing a patient whose medical condition has changed;
(j) Establishing discharge planning for patients who require continued physical therapy;
(k) Altering, extending, refusing or discontinuing treatment by the physical therapy service; [and]
(l) Insuring that when supportive personnel provide direct patient care that there is on-site supervision by a physical therapist or physical therapist's assistant; and
(m) Insuring that physical therapist students and physical therapist's assistant students fulfilling the clinical education requirements of an APTA accredited program in physical therapy shall receive on-site supervision by a physical therapist.

Section 6. Standards for Documentation. The physical therapist is responsible for the physical therapy record of a patient. The physical therapy record shall consist of:
(1) The initial evaluation, a written report signed and dated by the physical therapist performing the evaluation which shall include:
(a) The patient's name, age and sex;
(b) Referral source, if appropriate;
(c) Pertinent medical and social history;
(d) Symptoms and date of onset;
(e) Medical diagnosis, if available;
(f) Subjective information;
(g) Appropriate objective testing;
(h) Precautions and contraindications;
(i) Problems, interpretation, assessment;
(j) Plan of care, including:
1. Treatment to be rendered;
2. Frequency and duration of treatment;
3. Referral to other professionals, if indicated;
4. Patient education and instruction; and
5. Measurable goals.
(2) Progress notes, which are written, signed and dated by the person rendering treatment, and countersigned and dated by the physical therapist when written by supportive personnel, physical therapist students, physical therapist's assistant students, or examination candidates. The progress notes shall include:
(a) A current record of treatment;
(b) Patient's response to treatment;
(c) Any factors affecting treatment; and
(d) Data obtained by all objective tests performed.
(3) Reassessment, which is written, signed and dated by a physical therapist. If the physical therapist is treating the patient, these reports may be incorporated into the progress notes. If a physical therapist's assistant or supportive personnel are treating the patient, the report shall be a separate entry into the record. A reassessment shall include directly observed objective, subjective, and medical data necessary for the revision or reaffirmation of the plan of care and measurable goals.
(4) Discharge summary, which is the written, signed, and dated statement of the patient's physical therapy status upon discharge, including reference to previously established goals and program plan. A physical therapist's assistant may write the discharge summary which shall be countersigned by the responsible physical therapist. The discharge summary shall include:
(a) Data and reason for discharge;
(b) Objective data related to the initial evaluation and subsequent review;
(c) A complete and accurate summary of the patient's status at the time of discharge. Status includes functional ability, increase or limitation of range of motion, decrease or increase of pain, muscle power, general physical and mental condition including tolerance; and
(d) Discharge plan, which means any recommendations the physical therapist has regarding the need for continuing physical therapy.
(5) The correct designation following the signature of the person who has entered a statement(s) into the patient record shall be as follows:
(a) If written by a physical therapist or a physical therapist candidate granted a temporary permit by the board: "P.T.";
(b) If written by a physical therapist's assistant or a physical therapist's assistant examination candidate granted a temporary permit by the board: "P.T.A.";
(c) If written by supportive personnel: "P.T. Aide", or "Physical Therapy Aide"; and
(d) If written by students: "Physical Therapist Student" or "P.T. Student"; "Physical Therapist's Assistant Student" or "P.T.A. Student".

ROBERT E. McCRAY, Chairman
APPROVED BY AGENCY: September 20, 1991
FILED WITH LRC: October 8, 1991 at 9 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 22, 1991 at 10 a.m. at the Board Office, 400 Sherburn Lane, Suite 248, Louisville, Kentucky 40207. Individuals interested in attending this hearing shall notify this agency in writing by November 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: Mrs. Nancy Brinly, Executive Secretary, Kentucky State Board of Physical Therapy, The Mall Office Center, 400 Sherburn Lane, Suite 248, Louisville, Kentucky 40207-4215.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Nancy Brinly
(1) Type and number of entities affected: 135 or more students and clinical respective clinical supervisors.
(a) Direct and indirect costs or savings to those affected: N/A. Will not influence costs.
1. First year: N/A
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A
(b) Reporting and paperwork requirements:
(2) Effects on the promulgating administrative body: N/A. Is merely a clarification for licensees. Will greatly decrease calls to the board office for clarification.
(a) Direct and indirect costs or savings: Neither. No costs involved.
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: Leaving dissemination of requirements concerning supervision of students to the accredited Kentucky program faculty has not worked well as from 1975-1990 the requirement for on-site supervision of students was mandated in the board's standards of practice document which was formerly incorporated by reference in 201 KAR 22:052.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: N/A
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: This amendment should clear up any questions PT supervisors should have concerning their requirements when supervising students; restating long standing standards which required on-site supervision of all students by the physical therapist.
TIERING: Was tiering applied? No. All physical therapists and physical therapist's assistants are treated uniformly under the law.

TOURISM CABINET
Department of Fish and Wildlife Resources
(Proposed Amendment)

301 KAR 2:220. Hunting seasons for migratory birds.

RELATES TO: KRS 150.010, 150.015, 150.025, 150.170, 150.175, 150.235, 150.240, 150.305, 150.330, 150.340, 150.360, 150.600, 150.603, 150.630, 150.990
STATUTORY AUTHORITY: KRS 13A.350, 150.025
NECESSITY AND FUNCTION: This regulation pertains to the seasons and limits for the taking of specified migratory birds, to the associated permitting and harvest reporting requirements, and to restrictions in the use of blinds and pits. It is necessary for the continued protection and conservation of the migratory birds listed herein, and to insure a permanent and continued supply of the wildlife resource. The framework of this regulation falls within the seasons and bag limits prescribed by the U.S. Fish and Wildlife Service. The function of this regulation is to provide for the prudent taking of migratory birds within reasonable limits based upon an adequate supply. This amendment is necessary to change season dates and hunting rules.

Section 1. Definitions. (1) "Blind" means any form of concealing enclosure, including a pit or an anchored, stationary, or drifting boat from which hunting occurs.
(2) "Permanent blind" means any blind which is in place more than twenty-four (24) hours.
(3) "Commercial waterfowl hunting area" means any area of land or water used in whole or in part for the taking of migratory waterfowl where a monetary charge is made for hunting.
(4) "Commercial guide" means any individual who accepts monetary considerations for receipt of services in assisting another individual or group in the taking of fish or wildlife.
(5) [(4)] "Noncommercial waterfowl hunting area" means any area used in whole or in part for the taking of migratory waterfowl where no monetary charge is made.
(6) [(5)] "Waterfowl" means all species of ducks, coots, mergansers and geese.

Section 2. Seasons and Zones for Gun, Archery and Falconry [and Archery]. (1) Sora rails, Virginia rails, common moorhens, and purple gallinules: October 5 through October 28 and November 28 through January 5 [November 22 through January 20].
(2) Ducks, coots and mergansers:
(a) Eastern duck zone: December 7 through January 5 east of a boundary beginning at the Kentucky-Tennessee border along I-65 north to Bowling Green, northwest along the Green River Parkway to Owensboro, southwest along U. S. Bypass 60, north along U.S. 231 to the Indiana border. [November 22 through November 25 and December 12 through January 6.]
(b) Western duck zone: November 28 through December 1 and December 11 through January 5. This zone consists of the area to the west of the boundary described in [paragraph (a) of this subsection.
(c) Falconry (eastern and western duck zones): October 22 through January 31.
(3) Geese.
(a) Eastern goose zone: December 13 through January 31 [November 22 through November 25 and December 1 through January 31], east of a boundary beginning at the Kentucky-Tennessee border at Fulton, Kentucky, extending north along the Purchase Parkway to I-24, East on I-24 to U.S. 641, north on U.S. 641 to U.S. 60, northeast on U.S. 60 to the Henderson County line then south, east and northerly along the Henderson County line to the Indiana border. [to U.S. 41 and then north on U.S. 41 to the Kentucky-Indiana border].
(b) Western goose zone: November 28 through January 31, unless harvest quotas are met as

described in subparagraphs 1 through 4 of this paragraph. This zone consists of the area to the west of the boundary described in paragraph (a) of this subsection. For the purpose of controlling the goose harvest, the western goose zone is subdivided into the Ballard reporting area and associated counties and the Henderson-Union reporting area and associated counties. [Seasons within the western zone are specified as follows:]

[1. Canada goose season: November 22 through November 25 and December 1 through January 31, unless harvest quotas are met as described below.]

1. [a.] Ballard reporting area. This reporting area lies within the following boundary: starting at the northwest city limits of Wickliffe in Ballard County to the middle of the Mississippi River, and thence north along the Mississippi to the low water mark of the Ohio River along the Illinois shore to the Ballard-McCracken County line; thence along the county line south to state road 358; thence south along state road 358 to its junction with U.S. Highway 60 at LaCenter; thence following U.S. 60 southwest to the northeast city limits of Wickliffe. Should it be determined that the quota of 28,000 Canada geese will be filled prior to January 31, the goose hunting season shall close in the Ballard reporting area. Notice shall be given a minimum of twenty-four (24) hours in advance of the time and date of closing.

2. [b.] Counties associated with the Ballard reporting area. The counties associated with the Ballard reporting area are those portions of Ballard (excluding Ballard reporting area), McCracken, Graves, Carlisle, Hickman, Fulton and Marshall counties in the western goose zone, shall remain open for seven (7) days after the closure of the Ballard reporting area or until January 31, whichever occurs first.

3. [c.] Henderson-Union reporting area. This reporting area includes Henderson and that portion of Union County [those portions of Henderson and Union Counties] within the western goose zone. Should it be determined that the quota of 8,200 Canada geese will be filled prior to January 31, the goose hunting season shall close in the Henderson-Union reporting area. Notice shall be given a minimum of twenty-four (24) hours in advance of the time and date of closing.

4. [d.] Counties associated with the Henderson-Union reporting area. The counties associated with the Henderson-Union reporting area are those portions of Lyon, Crittenden and Livingston counties in the western goose zone shall remain open for seven (7) days after the closure of the Henderson-Union reporting area or until January 31, whichever occurs first.

(c) Falconry.

1. Fulton County: November 28 through February 15.

2. Remainder of state: October 22 through January 31.

[2. Season for goose species other than Canada geese (snow and blue geese, white-fronted geese, and brant): November 22 through November 25 and December 1 through January 31, or whenever the Canada goose season closes, whichever occurs first.]

Section 3. Limits for Gun, Archery and Falconry [and Archery].

(1) Gun and archery.

(a) [(1)] Ducks. The daily bag limit is three (3) and shall include no more than two (2) mallards (no more than one (1) hen mallard [or one (1) black duck]), two (2) wood ducks, one (1) black duck, one (1) redhead, and one (1) pintail of either sex. No canvasbacks shall be taken. The possession limit is double the daily bag.

(b) [(2)] Coots. The daily bag limit is fifteen (15) and the possession limit is thirty (30).

(c) [(3)] Mergansers. The daily bag limit is five (5) of which no more than one (1) shall be a hooded merganser. Possession limit is double the daily bag limit.

(d) [(4)] Geese.

1. [(a)] The bag limit is seven (7) with no more than three (3) Canada geese and two (2) white-fronted geese in the western goose zone or two (2) [one (1)] Canada geese [goose] and two (2) white-fronted geese in the eastern goose zone.

2. [(b)] The possession limit is double the daily bag limit.

(e) [(5)] Sora and Virginia Rails. The bag and possession limits are twenty-five (25) singly or in the aggregate.

(f) [(6)] Common Moorhens and Purple Gallinules. The bag and possession limits are fifteen (15) and thirty (30), respectively, singly or in the aggregate of the two (2) species.

(2) Falconry. The bag and possession limits are three (3) and six (6) respectively, of any legal species listed in this regulation, singly or in aggregate.

Section 4. Hunting [Shooting] Hours. One-half (1/2) hour before sunrise to sunset for all species listed in this regulation except as specified in Section 7 [8] of this regulation. [Shooting hours for waterfowl in the Ballard reporting area are one-half (1/2) hour before sunrise to sunset November 22 through November 25 and January 27 through January 31 except hunting shall end at 3 p.m. daily from December 1 through January 26.]

Section 5. Shotshell Restrictions. The following restrictions apply to species listed in this regulation. Lead shot is prohibited for the taking of ducks, geese, coots and mergansers as listed in [301 KAR 3:080] and 301 KAR] 2:044E. No [lead shot larger than BB or] steel shot larger than F shall be in possession while hunting the species listed in this regulation.

[Section 6. Falconry Season. October 22 through January 31. All legal species listed in this regulation may be taken by falconry.

(1) Falconry limits. The bag and possession limits are three (3) and six (6), respectively, of any legal species listed in this regulation, singly or in the aggregate.

(2) Hunting hours for falconry. The hunting hours shall conform with the shooting hours stated in Sections 4 and 8 of this regulation.]

Section 6. [7.] Wildlife Management Area Blind Regulations. The following restrictions apply to all wildlife management areas except those excluded in Section 7 [8] of this regulation.

(1) Permanent blinds are not permitted. Decoys and temporary blinds shall be removed at the end

of each hunting day.

(2) No blind shall be established less than 200 yards from any other blind or waterfowl refuge areas.

(3) No more than four (4) persons shall occupy a single blind at any one time.

(4) Designated recreation areas and access points are closed to hunting of all species listed in this regulation.

Section 7. [8.] Exceptions for Specified Wildlife Management Areas and Counties. Other sections or regulations apply unless specified below. Pit and blind restrictions described in this section and Section 10 [11] of this regulation shall not apply to periods of the falconry season as described in Section 4 [6] of this regulation that do not coincide with waterfowl gun hunting seasons.

(1) Ballard Wildlife Management Area, except the Miller Tract, located in Ballard County.

(a) Species, seasons and bag limits.

1. Geese: December 10 [4] through January 31 or until the Ballard Reporting Area quota is reached.

2. Ducks, coots and mergansers: December 11 [12] through January 5 [6].

3. Daily bag limits.

a. Canada geese. The daily bag limit on Ballard Wildlife Management Area is three (3) [two (2)] per day.

b. Ducks, coots and mergansers. Same as state bag limits.

4. No hunting is permitted on Sunday, Monday, Christmas and New Year's day [Sundays or Mondays or on Christmas and New Year's Day].

5. No more than three (3) persons shall occupy a single blind at the same time.

(b) General rules. Waterfowl hunters shall have no more than ten (10) shells in their possession. Any hunter under the age of eighteen (18) years shall be accompanied by an adult. Any person whose transportation to and from blinds is furnished by the department shall have his gun encased. Hunting shall be by advanced application or as otherwise authorized.

(c) Shooting hours: one-half (1/2) hour before sunrise to 12 noon.

(2) Swan Lake Wildlife Management Area located in Ballard County.

(a) Closed areas. Swan Lake, adjacent wetlands and uplands as marked by signs are closed from October 15 through March 15 as described in 301 KAR 4:050.

(b) Open areas. The Upper Blenderman Tract, located to the north of Holloway Landing Road and marked by signs, is open to hunting of all legal species listed in this regulation.

(3) Paintsville Lake Wildlife Management Area in Johnson and Morgan counties and Dewey Lake wildlife Management Area in Floyd County are open to hunting of all legal species listed in this regulation.

(4) Land Between the Lakes Wildlife Management Area, located in Lyon and Trigg Counties.

(a) Closed areas. Long Creek Pond, the eastern one-third (1/3) of Smith Bay, and the eastern two-thirds (2/3) of Duncan Bay are closed to all activity from November 1 through March 15 as indicated by signs and buoys. The Environmental Education Center and Energy Lake are closed to hunting of all species listed in this regulation.

(b) LBL permit. An annual LBL hunting permit is required for hunting of all legal species listed in this regulation on all shoreline areas along Kentucky and Barkley Lakes from the water's edge to twenty-five (25) yards above elevation 359' and inland areas. Waterfowl hunting from shoreline areas along Lake Barkley is allowed according to subsection (4) of this section. No hunting of any species listed in this regulation is permitted on inland areas during quota gun deer hunt days as listed in 301 KAR 2:111. Permanent blinds are not permitted on inland areas nor along the Kentucky Lake shoreline area. Decoys and temporary blinds shall be removed at the end of each hunting day.

(5) Lake Barkley Wildlife Management Area located in Trigg, Lyon, and Livingston Counties.

(a) Closed areas. Refuge areas shall be closed to all hunting, fishing, boating and molesting of all species listed in this regulation during the dates designated in this subsection and on signs posted along the boundaries. Refuges and closing dates are as follows: November 1 through February 15 within an area including a row of islands on the west side of the main channel as marked by buoys and signs between river mile 51 (Hayes Landing Light) and river mile 57.3 (Crooked Creek Light), excluding Taylor and Jake Fork Bays as marked by buoys and signs. Within the refuge area, that area west of a line from the north point of the mouth of Fulton Bay to the south point of the mouth of Honker Bay will remain closed through [until] March 15 as marked by buoys and signs. Boating is allowed but hunting is prohibited within 200 yards of the area surrounded by a levee and located between river mile 68.4 and river mile 70.4 from [during the period] October 15 through March 15.

(b) Blinds. Permanent blinds shall remain within ten (10) yards of the assigned numbered blind marker within the two (2) areas described as follows:

1. Beginning at the mouth of Donaldson Creek and proceeding south along the east side of the old Cumberland River channel as marked by buoys, to a point due west of the boat ramp at Linton, then east to the Linton boat ramp, then north along the east shore of Barkley Lake to the mouth of Donaldson Creek;

2. Beginning at the Pryor's Creek Light extending south along the western shore of Barkley Lake to the boat ramp at the end of Land Between the Lakes Road 204 thence to the west side of the Cumberland River Channel, marked with buoys, to river mile 73.5, thence north along the west side of the Cumberland River channel, marked with buoys, to the Pryor Creek Light. All other blinds within this described area shall be temporary.

(6) Sloughs Wildlife Management Area located in Henderson and Union Counties.

(a) Grassy Pond-Powell's Lake Unit. Hunting is permitted only from permanent blinds constructed by the department. Hunters shall remove all personal property from blinds or the vicinity of blinds daily.

(b) Jenny Hole-Highland Creek Unit. Hunting shall be allowed from permanent blinds constructed by the department and at any other above ground site provided there is a minimum of 200 yards between hunters or hunting parties. Hunters shall remove all personal property from blinds or the vicinity of blinds daily.

(c) Shooting hours: one-half (1/2) hour before sunrise to 2 p.m.

(d) When the Ohio River reaches a level that requires boat access to the units, hunting shall be allowed from boats spaced 200 yards apart,

without regard to the department blinds.

(e) Sauerheber Unit.

1. On the Crenshaw and Duncan Tracts, waterfowl hunting shall be allowed only on Thursdays through Sundays and from permanent blinds constructed by the department. Use of the constructed blinds shall be by drawing unless the person(s) drawn do not occupy the blind by the opening of legal shooting hours.

2. Waterfowl hunting only shall be allowed on the Crenshaw and Duncan II tracts during the waterfowl season. The Crenshaw and Duncan II tracts shall be closed to all other hunting from October 15 through March 15.

3. Waterfowl hunters shall have no more than fifteen (15) shells in their possession when hunting on the Crenshaw and Duncan tracts.

(4) The remainder of the Sauerheber Unit, including the Wood Tract, located between mile marker four (4) and six (6) on state road 268 and bounded by the Ohio River on the north and Tram Road on the east is closed to all hunting, fishing, boating and trespassing from October 15 through March 15. [On the Crenshaw and Duncan Tracts - waterfowl hunting shall be allowed only on Thursdays through Sundays and from permanent blinds constructed by the department. Use of the constructed blinds shall be by drawing unless the person(s) drawn do not occupy the blind by the opening of legal shooting hours. The remainder of the Sauerheber Unit, including the Wood Tract, located between mile marker 4 and 6 on state road 268 and bounded by the Ohio River on the north and Tram Road on the east is closed to all hunting, fishing, boating and trespassing between October 15 and March 15.]

[(f) Waterfowl hunting only shall be allowed on the Crenshaw and Duncan II tracts during the waterfowl season. The Crenshaw and Duncan II tracts shall be closed to all other hunting from October 15 through March 15.]

(7) Ohio River Waterfowl Refuge located in Livingston County shall be closed to all hunting from October 15 through March 15. This area includes the Kentucky portion of the Ohio River from Smithland Lock and Dam upstream to a power line crossing the river at approximately river mile 911.5 and [including] Stewart Island.

(8) The portion of Westvaco Wildlife Management Area located in Carlisle and Hickman counties. The area south of Highway 1217 (also known as Fish Lake or Lower River Road) is closed from October 15 through March 15.

(9) [(8)] Hunting of all species listed in this regulation is not permitted on the following areas:

(a) Ohio River in the vicinity of the Ballard Wildlife Management Area located in Ballard County, from a point fifty (50) yards upstream from Dam 53, downstream to a point fifty (50) yards below the downstream boundary of the Ballard Wildlife Management Area.

(b) The portion of Grayson Wildlife Management Area located in Carter and Elliott counties: the Camp Webb Refuge Area, the area north of Rosedale Point, Deer Creek Fork west of 1496, and within fifty (50) yards of the state park shoreline. All other portions are open.

(c) Beaver Creek Wildlife Management Area located in Pulaski and McCreary Counties.

(d) Cane Creek Wildlife Management Area located in Laurel County.

(e) Robinson Forest Wildlife Management Area located in Breathitt, Perry and Knott Counties.

(f) Redbird Wildlife Management Area located in Leslie and Clay Counties.

(g) Mill Creek Wildlife Management Area located in Jackson County.

(h) Beech Creek Wildlife Management Area located in Clay County.

(10) [(9)] Bath, Rowan, Menifee and Morgan Counties, including Cave Run Lake, are closed to goose hunting. Breech and muzzle-loading shotguns may be used for duck hunting along the shore line portion of Cave Run Lake bordering the Pioneer Weapons Wildlife Management Area.

(11) [(10)] Ohio County south of Rough River, Muhlenburg County, except for the portion south of U.S. Highway 62 and west of State Route 181, Butler County west of State Route 79, Hopkins County north of State Route 70, south of U.S. Highway 41A, east of State Route 614 and State Route 109, and south of the Western Kentucky Parkway, Christian County north of State Route 80, Bell County south of Route 119 and east of Route 25E, Pulaski and McCreary Counties east of U.S. Highway 27 and Laurel, Clay, Whitley, Perry, Knott and Breathitt Counties are closed to goose hunting. In addition all designated goose refuge lakes within the western Kentucky coalfields are closed to all waterfowl hunting.

(12) [(11)] Yellowbank Wildlife Management Area in Breckinridge County. A twenty-five (25) acre wetland designated by signs and painted boundary markers is closed to the public from October 15 through March 15.

(13) [(12)] Lake Cumberland, Pulaski County.

(a) Wesley Bend, the area bounded to the north, west and south by Fishing Creek and to the east by Beech Grove Road and Fishing Creek Road is closed to the public from October 15 through March 15.

(b) Yellowhole, the area bounded to the east and north by Fishing Creek to the west by Fishing Creek Road and the south by Hickory Nut Road is closed to the public from October 15 through March 15.

(14) [(13)] Blind restrictions for Barkley Lake, Barren Lake, Green River Lake, Nolin River Lake, Paintsville Lake, Rough River Lake, Buckhorn Lake and Taylorsville Lake Wildlife Management Areas.

(a) Permanent blinds shall be registered on a permit issued by the U.S. Army Corps of Engineers. Applicants may designate one (1) other person as a partner for registration. No more than two (2) nontransferable permits shall be issued for each permanent blind. Only one (1) permit shall be issued per hunter per area. Permittees who have not constructed a blind at the designated location by November 20 shall forfeit their permit.

(b) Blinds not occupied by permittees by the opening of shooting hours of any day shall be available for use by other hunters on a first come - first served basis for the remainder of that day.

(c) Permittees shall not lock blinds so as to prevent use by other hunters in the absence of the permittee.

(d) Permanent blinds shall be removed within thirty (30) days of the close of waterfowl season unless extension of that period is approved.

(e) Permittees shall be selected by drawing at Barkley Lake, Barren Lake, Green River Lake, Paintsville Lake and Taylorsville Lake Wildlife Management Areas. Applicants for blind permits shall present a current Kentucky hunting license to the registration clerk at the time of the

drawing. Sites which become available by forfeiture shall be assigned to another applicant according to the following procedure: five (5) additional names shall be drawn at each area (or the number of remaining names if less than five (5) are present) and any forfeited blinds shall be assigned to those people in the order they were drawn.

(15) [(14)] White City Wildlife Management Area located in Hopkins County. Waterfowl shooting hours are from one-half (1/2) hour before sunrise to 2 p.m.

(16) [(15)] Taylorsville Lake Wildlife Management Area, located in Anderson, Nelson and Spencer Counties. That portion east of Van Buren Boat Ramp as marked by buoys and signs is closed to all hunting, fishing, boating, and trespassing during the period from the first Monday following the quota deer hunt in November [24] through March 1.

(17) [(16)] Fulton County shall remain open to Canada goose hunting through February 15, 1992 [4], unless closed prior to this date under the provisions of Section 2 of this regulation.

Section 8. [9.] Ballard and Henderson-Union Reporting Area Waterfowl Hunting Permit Requirements. It is unlawful for any person to hunt waterfowl within the Ballard or Henderson-Union Reporting Areas without first obtaining the appropriate waterfowl hunting permit or waterfowl harvest register forms as specified in subsections (1), (2) and (3) of this section.

(1) Commercial waterfowl hunting areas.

(a) A commercial waterfowl hunting area permit issued by the department shall be obtained by any person operating a commercial waterfowl hunting area. An annual fee shall be charged for each commercial waterfowl hunting area permit. These permits shall expire at the end of waterfowl hunting season.

(b) Persons operating more than one (1) commercial waterfowl hunting area shall obtain a permit for each individual area. A land holding divided by a public road may be operated as a commercial waterfowl hunting area under one (1) permit. Whenever a farm unit is divided by land owned by others, a separate permit shall be required for each tract of land operated as a commercial waterfowl hunting area.

(2) Noncommercial waterfowl hunting areas.

(a) Any person controlling the waterfowl hunting rights and privileges on a noncommercial waterfowl hunting area shall obtain a free migratory goose hunting area permit which shall expire at the end of waterfowl hunting season.

(b) The holder of a free migratory goose hunting area permit may be the landowner, his tenant or any person to whom these individuals have assigned exclusive control of goose hunting rights or privileges, in writing, on forms provided by the department.

(c) The permittee shall display the permit openly on the property for which it was issued and provide the permit for inspection by agents of the department and the U.S. Fish and Wildlife Service.

(3) Ohio and Mississippi River waterfowl hunters. Persons hunting geese on the Ohio or Mississippi Rivers or their overflow areas within the Ballard and Henderson-Union Reporting Areas shall carry on their person a waterfowl harvest register form provided by the department. When hunting in a party, one (1) hunter of the party may possess the goose harvest reporting form provided the names of all members of the party are written on the form.

(4) Obtaining permits and harvest reporting forms. Persons desiring commercial waterfowl hunting area permits, migratory goose hunting area permits, or a season supply of waterfowl harvest register forms for the Ballard Reporting Area may apply by writing to the Ballard County Wildlife Management Area, Route 1, LaCenter, Kentucky 42056, and for the Henderson-Union Reporting Area shall apply by writing to the Sloughs Wildlife Management Area, 9956 Hwy. 268 [RR 2, Box 183A], Corydon, Kentucky 42406.

Section 9. [10.] Ballard and Henderson-Union Reporting Area Recordkeeping and Reporting Requirements. (1) Commercial waterfowl hunting area permit holders.

(a) The permittee shall maintain and keep an accurate and complete daily hunter register and waterfowl harvest record in duplicate on the hunting area on forms provided by the department.

(b) The permittee shall, during the waterfowl season, close the register at the end of shooting hours each Wednesday and deliver by the following Monday either through mail or hand delivery the original completed daily register and waterfowl harvest record to the address indicated on the form. The permittee shall hold duplicate copies of these completed forms at the place of registration and make these and current register and harvest records available for inspection by agents of the department and the U.S. Fish and Wildlife Service.

(c) A permittee is responsible for any violation of permit requirements or violations of other regulations committed on the premises under permit unless he immediately reports such violations to a conservation officer.

(2) Migratory goose hunting area permit holders.

(a) At all times during the waterfowl season, the permittee shall make available on the premises under permit the daily hunter registration forms as provided by the department.

(b) The permittee shall require all waterfowl hunters to enter their names and the date on the register and report form prior to each time they hunt on any permit area and to record, prior to leaving the permitted premises, the numbers and kinds of geese taken.

(c) The permittee shall, during the waterfowl season, close the register at the end of shooting hours each Wednesday and deliver by the following Monday either through mail or hand delivery the original completed daily register and waterfowl harvest record to the address indicated on the form. The permittee shall hold duplicate copies of the forms for a period of two (2) months after the end of the waterfowl season and make these and current register and harvest records available for inspection by agents of the department and the U.S. Fish and Wildlife Service.

(3) Hunter requirements.

(a) Persons hunting waterfowl on commercial or noncommercial waterfowl hunting areas in the Ballard or Henderson-Union Reporting Areas shall:

1. Prior to hunting, enter their name, address, and the date of the hunt on the daily register form made available by the waterfowl hunting area operator.

2. Before leaving the premises, enter on the waterfowl harvest register form the numbers and

kinds of geese taken.

(b) Persons hunting geese on the Ohio or Mississippi Rivers or their overflow areas within the Ballard and Henderson-Union Reporting Areas shall:

1. Prior to hunting, enter on the waterfowl harvest register form their name and address, or the names and addresses of all hunting party members if only one (1) hunter is carrying the form for the party, and the date.

2. At the end of each day's hunting, enter on the waterfowl harvest register form the number and kinds of geese taken.

3. Mail or hand deliver the completed original waterfowl harvest register so it is received by no later than Monday of each week, to the address indicated on the form.

Section 10. [11.] General Rules Concerning Waterfowl Hunting in the Ballard Reporting Area.

(1) It is unlawful to hunt waterfowl except from a blind, unless waterfowl hunting is conducted in flooded, standing timber.

(2) It is unlawful to establish or use any blind within 100 yards of any other blind.

(3) It is unlawful to establish or locate any blind within fifty (50) yards of any property line.

(4) No more than five (5) persons shall occupy a single blind at the same time.

(5) A hunter shall possess only one (1) shotgun while occupying a blind.

Section 11. [12.] Waterfowl Stamp Requirements. Individuals hunting waterfowl shall possess appropriate state and federal waterfowl stamps as stipulated in KRS 150.330 and 150.603.

DON R. McCORMICK, Commissioner
DAVID H. GODBY, Chairman
RONALD E. GENTRY, Secretary

APPROVED BY AGENCY: October 10, 1991

FILED WITH LRC: October 10, 1991 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 26, 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 November 21, 1991, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: 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 14,000 persons will participate in the migratory bird hunting proposed by this regulation.

(a) Direct and indirect costs or savings to those affected: Direct costs involve the purchase of a state hunting license, a federal migratory bird hunting and conservation stamp, and a state duck stamp. Approximately 25 commercial waterfowl hunting area operators will be required to purchase a permit. Indirect costs are determined by the individual hunter, depending upon 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) unless exempted by statute, a $15.00 migratory bird hunting and conservation stamp, and a $5.25 state duck stamp. Commercial water fowl hunting operators will be required to purchase a $40 permit each.

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: Approximately 7,500 waterfowl hunters within the Ballard and Henderson-Union reporting areas will be required to register prior to hunting waterfowl and to report their harvest on forms provided by the department. The reporting frequency will be only half of what it has been due to a change requiring weekly rather than biweekly reporting.

(2) Effects on the promulgating administrative body: Requires time and effort in developing, publishing, report monitoring and enforcing the proposed regulation.

(a) Direct and indirect costs or savings: Primary costs are associated with enforcing the regulation and administering the harvest registration zone.

1. First year: The estimated cost associated with establishing and carrying out the provisions of this regulation is $275,000.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Monitoring of harvest on registration forms will involve tabulation of forms submitted in the Ballard and Henderson-Union reporting areas. Permits will be issued to approximately 500 individuals and landowners.

(3) Assessment of anticipated effect on state and local revenues: Approximately 14,000 waterfowl hunters any be expected to expend money for equipment, transportation, food and lodging. The average annual expenditure for these items is $216 per migratory bird hunter according to the 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 U.S. Fish and Wildlife Service requires that any harvest of migratory birds occur through a regulated hunting season that is held within a specific

time frame. Therefore, 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 the involved species populations are at levels which can sustain a regulated harvest by Kentucky sportsmen. The regulated hunting alternative selected is that which will provide the most opportunity to Kentucky waterfowl hunters while affording necessary protection to the waterfowl resource.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None know

(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, waterfowl are unevenly distributed across the state temporally, spatially and according to species and/or population. This regulation recognizes the variation in waterfowl abundance and adjusts bag limits and hunting seasons accordingly.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 50 CFR Part 20, Federal Register, vol. 56, no. 165, Monday, August 26, 1991.

2. State compliance standards. State seasons and bag limits are within the federal frameworks.

3. Minimum or uniform standards contained in the federal mandate. Ducks, coots and mergansers. Not more than a 30 day season between October 5, 1991 and January 5, 1992. The state may be divided into two separate duck zones and they may be split into no more than two segments within each zone. The daily bag limit of ducks is three and may include not more than two mallards (no more than one of which may be a female), one black duck, two wood ducks, one redhead, and one pintail of either sex. There is a point system option in which hen mallard, black duck, pintail, redhead and hooded merganser are 100 point birds, mallard drake and wood duck are 50 point birds and all other species of ducks and mergansers are 35 points. The possession limit shall be twice the daily bag. The season on canvasbacks is closed. The coot daily bag shall be 15 with the possession limit being 30. The merganser limit (without point system) shall be five daily (of which only one may be a hooded merganser) and the possession limit being twice the daily bag. Both the coot and merganser bag shall be in addition to the duck limit, except when the point system is chosen. Then mergansers are part of the point system. Sora and Virginia rails, common moorhens and purple gallinules. Season shall not exceed 70 days between September 1, 1991 and January 20, 1992, with the option to split into 2 segments. The daily bag limit for rails shall be 25 with the possession limit also being 25, singly or in the aggregate of the 2 species. The daily limit for common moorhens and purple gallinules shall be 15 with the possession limit being twice the daily bag, singly or in the aggregate of the 2 species. Geese: western goose zone season may extend to 93 days between September 21, 1991 and January 31, 1992, or until the harvest of 43,200 birds is taken, whichever occurs first. The daily bag limit shall be seven geese, to include no more than three Canada geese and two white-fronted geese. Eastern Zone Season may extend for 70 days with a daily bag limit of one Canada goose or for 50 days with a daily bag limit of two Canada geese between the Saturday nearest October 1, 1991 and January 31, 1992. Possession limit is twice the daily bag limit. Shooting hours shall be one-half hour before sunrise until sunset daily for all species. Falconry season for migratory birds mentioned above shall fall between September 1, 1991 and March 10, 1992 and shall not exceed 107 days. Daily bag and possession limits shall not exceed three birds daily or six in possession, singly or in the aggregate of species. Hunting hours shall be the same as for firearms hunting.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The goose season runs for 65 rather than 93 days due to the paucity of birds utilizing Kentucky during early parts of the framework. Exerting hunting pressure on so few birds could jeopardize long term bird use in Kentucky. The Ballard Wildlife Management Area season is for 37 days or 28 days shorter than the western zone so that controlled hunts will not jeopardize goose and duck use. Scheduled resting periods during the framework is a good means of enhancing use of hunting areas on the WMA. Rail, common moorhen and purple gallinule seasons are 63 days in length in order to coordinate opening with the duck, coot, merganser and goose seasons and extend them to the end of the allowable federal framework.

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 whether this administrative regulation will affect the local government or only a part or division of the local government. Hunting encourages spending by hunters for local goods and services. Local tax revenues will increase slightly.

3. State the aspect or service of local government to which this administrative regulation relates. This activity relates to KRS Chapter 150.

4. How does this administrative regulation affect the local government or any service it provides Hunting encourages spending by hunters for local goods and services. State tax revenues will increase slightly. Activities involving hunting will not increase state or local expenditures beyond those necessary to enforce laws.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Water
(Proposed Amendment)

401 KAR 5:031. Surface water standards.

RELATES TO: KRS Chapter 224
STATUTORY AUTHORITY: KRS 224.020, 224.033, 224.034, 224.037, 224.060, 33 U.S.C. 1313
NECESSITY AND FUNCTION: This regulation sets forth water quality standards which consist of designated legitimate uses of the surface waters of the Commonwealth and the associated water quality criteria necessary to protect those uses. These standards are minimum criteria which apply to all surface waters in order to maintain and protect them for designated uses. Criteria for nutrients are recognized and included. These water quality standards are established to protect public health and welfare, protect and enhance the quality of water, and fulfill federal and state requirements for the establishment of water quality standards. These water quality standards are subject to periodic review and revision in accordance with federal and state laws. Definitions for terms used in this regulation are found in 401 KAR 5:029. On May 31, 1990 the Interim Joint Committee on Agriculture and Natural Resources determined that this regulation did not comply with KRS Chapter 13A. This regulation is being amended to remove the portions that the Interim Joint Committee found deficient, so that the letter of attachment may be removed.

Section 1. Nutrient Limits. (1) In lakes, surface impoundments and their tributaries, and other surface waters where eutrophication problems may exist, nitrogen, phosphorus, carbon, and contributing trace element discharges will be limited as appropriate by the cabinet.
(2) The affected surface waters will be designated as nutrient limited.

Section 2. Minimum Criteria Applicable to All Surface Waters. (1) The following minimum water quality criteria are applicable to all surface waters including mixing zones, with the exception that toxicity to aquatic life in mixing zones shall be subject to the provisions of 401 KAR 5:029, Section 5. Surface waters shall not be aesthetically or otherwise degraded by substances that:
(a) Settle to form objectionable deposits;
(b) Float as debris, scum, oil, or other matter to form a nuisance;
(c) Produce objectionable color, odor, taste, or turbidity;
(d) Injure, are chronically or acutely toxic to or produce adverse physiological or behavioral responses in humans, animals, fish and other aquatic life;
(e) Produce undesirable aquatic life or result in the dominance of nuisance species;
(f) Cause fish flesh tainting (the concentration of all phenolic compounds which cause fish flesh tainting shall not exceed five (5) ug/l as an instream value);
(g) Cause the following changes in radionuclides:
1. The gross total alpha particle activity (including radium-226 but excluding radon and uranium) to exceed fifteen (15) pCi/l;
2. Combined radium-226 and radium-228 to exceed five (5) pCi/l (specific determinations of radium-226 and radium-228 are not necessary if dissolved gross alpha particle activity does not exceed five (5) pCi/l);
3. The concentration of total gross beta particle activity to exceed fifty (50) pCi/l;
4. The concentration of tritium to exceed 20,000 pCi/l;
5. The concentration of total Strontium-90 to exceed eight (8) pCi/l.
(2) The following criteria are applicable to all surface water outside designated mixing zones except for those points where water is withdrawn for domestic water supply use. They are established for the protection of human health from the consumption of fish tissue, and shall not be exceeded. For those substances associated with a cancer risk, an acceptable risk level of no more than one (1) additional cancer case in a population of 1,000,000 people (10^{-6}) will be utilized to establish the allowable concentration.

Table 1.
Water Quality Criteria for Protection of Human Health from the Consumption of Fish Tissue

Substances not Linked to Cancer	Concentration (ug/l)
Metals[1]	
Antimony	45,000
Chromium (III)	3,433,000
Mercury	0.146
Nickel	100
Thallium	48
Organics	
Acrolein	780
1,2,4,5-tetrachlorobenzene	48
Pentachlorobenzene	85
1,1,1-trichloroethane	1,030,000
bis(2-chloroisopropyl) ether	4,360
Dichlorobenzenes	2,600
Dichloropropenes	14,100
Endosulfan	159
Ethylbenzene	3,280
Fluoranthene	54
Isophorone	520,000
2,4-dinitro-o-cresol	765
Dinitrophenol	14,300
Dibutyl phthalate	154,000
Diethyl Phthalate	1,800,000
Di-2-ethylhexyl phthalate	50,000
Dimethyl phthalate	2,900,000
Toluene	424,000
Substances Linked to Cancer	
Metals[1]	
Beryllium	0.117
Organics	
Acrylonitrile	0.65
Aldrin	.000079
Benzene	40.0
Benzidine	.00053
Carbon tetrachloride	6.94

Chlordane	.00048
Hexachlorobenzene	.00074
1,2-dichloroethane	243
1,1,2-trichloroethane	41.8
1,1,2,2,-tetrachloroethane	10.7
Hexachloroethane	8.74
2,4,6-trichlorophenol	3.6
bis(2-chloroethyl) ether	1.36
Chloroform	15.7
DDT	0.000024
Dichlorobenzidine	0.02
1,1-dichloroethylene	1.85
Dieldrin	0.000076
2,4-dinitrotoluene	9.1
[Dioxin (2,3,7,8-TCDD)	0.000000014]
Diphenylhydrazine	0.56
Halomethanes	15.7
Heptachlor	0.00029
Hexachlorobutadiene	50.0
alpha Hexachlorocyclohexane (HCH)	0.031
beta HCH	0.0547
gamma HCH (lindane)	0.0625
Technical HCH	0.0414
N-nitrosodiethylamine	1.24
N-nitrosodimethylamine	16.0
N-nitrosodibutylamine	0.587
N-nitrosodiphenylamine	16.1
N-nitrosopyrrolidine	91.9
Polychlorinated Biphenyls (PCBs)	0.000079
Polynuclear Aromatic Hydrocarbons (PAHs)	0.0311
Tetrachloroethylene	8.85
Toxaphene	0.00073
Trichlorethylene	80.7
Vinyl Chloride	525

[1]Total recoverable form measured in an unfiltered sample

Section 3. Use Classifications and Associated Criteria. (1) Surface waters may be designated as having one (1) or more of the following legitimate uses and associated use criteria. The classifications in Sections 4, 5, 6, and 7 of this regulation include the most common usage of surface waters within the Commonwealth. Nothing in this regulation shall be construed to prohibit or impair the legitimate beneficial uses of these waters. The criteria in Section 2 of this regulation and the following use criteria represent minimum conditions necessary to protect surface waters for the indicated use and to provide for the protection of human health from fish consumption or a combination of fish and water consumption.

(2) On occasion surface water quality may be outside of the limits established to protect designated uses because of natural conditions. When this condition occurs during periods when stream flows are below the flow which is used by the cabinet to establish effluent limits for wastewater treatment facilities, a discharger shall not be considered a contributor to in-stream violations of water quality standards, provided that treatment in compliance with permit requirements is maintained.

(3) Governing flows for water quality-based permits. The following stream flows are to be utilized when deriving KPDES permit limitations for the protection of surface waters for the listed uses and purposes.

(a) Aquatic life protection – $7Q_{10}$.

(b) Water-based recreation protection – $7Q_{10}$.

(c) Domestic water supply protection – harmonic mean for cancer-linked substances, $7Q_{10}$ for noncancer-linked substances, determined at points of withdrawal.

(d) Human health protection from fish consumption only – harmonic mean for cancer-linked substances, $7Q_{10}$ for noncancer-linked substances.

(e) Protection of aesthetics and for changes in radionuclides – $7Q_{10}$.

Section 4. Aquatic Life. (1) Warm water aquatic habitat. The following parameters and associated criteria shall apply for the protection of productive warm water aquatic communities, fowl, animal wildlife, arboreous growth, agricultural, and industrial uses:

(a) Natural alkalinity as $CaCO_3$ shall not be reduced by more than twenty-five (25) percent. Where natural alkalinity is below twenty (20) mg/l $CaCO_3$, no reduction below the natural level is allowed. Alkalinity shall not be reduced or increased to a degree which may adversely affect the aquatic community.

(b) pH shall not be less than six (6.0) nor more than nine (9.0) and shall not fluctuate more than one (1) unit over a period of twenty-four (24) hours.

(c) Flow shall not be altered to a degree which will adversely affect the aquatic community.

(d) Temperature shall not exceed thirty-one and seven-tenths (31.7) degrees Celsius (eighty-nine (89) degrees Fahrenheit).

1. The normal daily and seasonal temperature fluctuations that existed before the addition of heat due to other than natural causes shall be maintained.

2. The cabinet will determine allowable surface water temperatures on a site-specific basis utilizing available data which shall be based on the effects of temperature on the aquatic biota which utilize specific surface waters of the Commonwealth and which may be affected by person-induced temperature changes. Effects on downstream uses will also be considered in determining site-specific temperatures. As a guideline, the water temperature for all surface waters shall comply with the limits shown in the following table:

Month/Date	Period Average (°F)	Instantaneous Maximum (°F)
January 1-31	45	50
February 1-29	45	50
March 1-15	51	56
March 16-31	54	59
April 1-15	58	64
April 16-30	64	69
May 1-15	68	73
May 16-31	75	80
June 1-15	80	85
June 16-30	83	87
July 1-31	84	89
August 1-31	84	89
September 1-15	84	87
September 16-30	82	86
October 1-15	77	82
October 16-31	72	77
November 1-30	67	72
December 1-31	52	57

3. A successful demonstration concerning thermal discharge limits carried out under Section 316(a) of the Clean Water Act shall constitute compliance with the temperature

requirements of this subsection. A successful demonstration assures the protection and propagation of a balanced indigenous population of shellfish, fish and wildlife in or on the water into which the discharge is made.

(e) Dissolved oxygen.

1. Dissolved oxygen shall be maintained at a minimum concentration of five (5) mg/l daily average; at no time shall the instantaneous minimum be less than four (4) mg/l.

2. The dissolved oxygen concentration shall be measured at middepth in waters having a total depth of ten (10) feet or less and at representative depths in other waters.

(f) Solids.

1. Total dissolved solids. Total dissolved solids shall not be changed to the extent that the indigenous aquatic community is adversely affected.

2. Total suspended solids. Total suspended solids shall not be changed to the extent that the indigenous aquatic community is adversely affected.

3. Settleable solids. The addition of settleable solids that may adversely alter the stream bottom is prohibited.

(g) Ammonia. The concentration of the un-ionized form shall not be greater than 0.05 mg/l at any time instream after mixing. Un-ionized ammonia shall be determined from values for total ammonia-N, in mg/l, pH and temperature, by means of the following equation:

$$Y = 1.2\ (\text{Total ammonia-N})/(1 + 10^{pK_a - pH})$$

$$pK_a = 0.0902 + (2730/(273.2 + T_c))$$

Where:

T_c = temperature, degrees Celsius.

Y = un-ionized ammonia (mg/l).

(h) Toxics.

1. The allowable in-stream concentration of toxic substances or whole effluents containing toxic substances which are noncumulative or nonpersistent (half-life of less than ninety-six (96) hours) shall not exceed the no observed effect level (NOEL) or one-tenth (0.1) of the ninety-six (96) hour median lethal concentration (LC50) of a representative indigenous or indicator aquatic organism(s) or exceed a chronic toxicity unit of one (1), whichever is more appropriate.

2. The allowable in-stream concentration of toxic substances or whole effluents containing toxic substances which are bioaccumulative or persistent, including pesticides, when not specified elsewhere in this section, shall not exceed the NOEL or 0.01 of the ninety-six (96) hour median lethal concentration (LC50) of a representative indigenous or indicator aquatic organism(s) or exceed a chronic toxicity unit of one (1), whichever is more appropriate.

3. In the absence of acute criteria for substances listed in Table 2 or for other substances known to be toxic but not listed in this regulation, or for whole effluents which are acutely toxic, the allowable concentration shall not exceed the LC_1 or one-third (1/3) LC_{50} concentration derived from bioassay tests on a representative indigenous or indicator aquatic organism(s) or exceed 0.3 acute toxicity unit, whichever is more appropriate.

4. Where specific application factors have been determined for a toxic substance or whole effluent such as an acute/chronic ratio or water effect ratio, they may be used instead of the one-tenth (0.1) and 0.01 factors listed in this subsection upon approval by the cabinet.

5. Allowable in-stream concentrations for specific substances (acute and chronic criteria) are listed in Table 2. These concentrations are based on protecting aquatic life from acute and chronic toxicity, and shall not be exceeded.

Table 2
Warm water Aquatic Habitat Criteria[1]

Substance	Acute Criteria	Chronic Criteria
Metals		
Arsenic		50 ug/l
Arsenic (III)	360 ug/l	190 ug/l
Beryllium		11 ug/l soft water[2] 1100 ug/l hard water[2]
Cadmium (ug/l)	e(1.128(In Hard*)-3.828)	e(0.7852(In Hard)-3.490)
Chromium (III) (ug/l)	e(0.8190(In Hard)+3.688)	e(0.8190(In Hard)+1.561)
Chromium (VI)	16 ug/l	11 ug/l
Copper (ug/l)	e(.9422(In Hard)-1.464)	e(.8545(In Hard)-1.465)
Iron	4.0 mg/l	1.0 mg/l[3]
Lead (ug/l)	e(1.273(In Hard)-1.460	e(1.273(In Hard)-4.705)
Mercury	2.4 ug/l	0.012 ug/l
Nickel (ug/l)	e(0.8460(In Hard)+3.3612)	e(0.8460(In Hard)+1.1645)
Selenium	20 ug/l	5 ug/l
Silver (ug/l)	e(1.72(In Hard)-6.52	
Zinc (ug/l	e(0.8473(In Hard)+0.8604	e(0.8473(In Hard)+0.7614
Organics		
Aldrin	3.0 ug/l	
Chlordane	2.4 ug/l	0.0043 ug/l
Chloropyrifos	0.083 ug/l	0.041 ug/l
DDT	1.1 ug/l	0.001 ug/l
Dieldrin	2.5 ug/l	0.0019 ug/l
Endosulfan	0.22 ug/l	0.056 ug/l
Endrin	0.18 ug/l	0.0023 ug/l
Heptachlor	0.52 ug/l	0.0038 ug/l
Lindane	2.0 ug/l	0.080 ug/l
Parathion	0.065 ug/l	0.013 ug/l
Pentachloro-phenol (ug/l)	e(1.005(pH) -4.830)	e(1.005(pH)-5.290)
Phthalate esters		3 ug/l
Polychlorinated Biphenyls (PCBs)		0.0014 ug/l
Toxaphene	0.73 ug/l	0.0002 ug/l
Others		
Chloride	1200 mg/l	600 mg/l
Chlorine, total residual	19 ug/l	10 ug/l
Cyanide, free	22 ug/l	5 ug/l
Hydrogen sulfide (undissociated)		2 ug/l

[1]Metal criteria, for purposes of this regulation, are total recoverable metals to be measured in an unfiltered sample.

[2]Soft water has an equivalent concentration of calcium carbonate ($CaCO_3$) of zero to

seventy-five (75) mg/l, and hard water has an equivalent concentration of calcium carbonate ($CaCO_3$) of over seventy-five (75) mg/l.
[3]The chronic criterion for total recoverable iron shall not exceed three and five-tenths (3.5) mg/l when it is established that there will be no damage to aquatic life.
*Hard = Hardness as mg/l $CaCO_3$.

(2) Cold water aquatic habitat. The following parameters and their associated criteria are for the protection of productive cold water aquatic communities and streams which support trout populations (whether self-sustaining or reproducing) on a year-round basis. All of the criteria adopted for the protection of warm water aquatic life also apply to the protection of cold water habitats with the following additions:

(a) Dissolved oxygen.

1. A minimum concentration of six (6) mg/l as a daily average and five (5) mg/l as an instantaneous minimum shall be maintained at all times.

2. In impoundments which support trout, the concentration of dissolved oxygen in waters below the epilimnion shall be kept consistent with natural water quality.

(b) Temperature. Water temperature shall not be increased through man's activities above the natural seasonal temperatures.

Section 5. Domestic Water Supply Use. Maximum allowable in-stream concentrations for specific substances, to be applicable at the point of withdrawal for use for domestic water supply from surface water sources are specified in Table 3 and shall not be exceeded.

Table 3
Domestic Water Supply Source Criteria[1]

Substances Not Linked to Cancer	Concentration
Metals	
Antimony	0.146 mg/l
Barium	1 mg/l
Cadmium	0.010 mg/l
Chromium	0.05 mg/l
Chromium (III)	170 mg/l
Copper	1 mg/l
Lead	0.05 mg/l
Manganese	0.05 mg/l
Mercury	0.144 ug/l
Nickel	13.4 ug/l
Selenium	0.01 mg/l
Silver	0.05 mg/l
Thallium	0.013 mg/l
Organics	
Acrolein	0.320 mg/l
Monochlorobenzene	0.488 mg/l
1-2-4-5-tetrachlorobenzene	0.038 mg/l
Pentachlorobenzene	0.074 mg/l
1,1,1-trichloroethane	18.4 mg/l
2,4,5-trichlorophenol	2.6 mg/l
Bis(2-chloroisopropyl) ether	0.0347 mg/l
Dichlorobenzenes	0.400 mg/l
2,4-dichlorophenol	3.090 mg/l
Dichloropropenes	0.087 mg/l
Endosulfan	0.074 mg/l
Endrin	0.001 mg/l
Ethylbenzene	1.4 mg/l
Fluoranthene	0.042 mg/l
Hexachlorocyclopentadiene	0.206 mg/l
Isophorone	5.2 mg/l
Nitrobenzene	19.8 mg/l
2-4-dinitro-o-cresol	0.0134 mg/l
Dinitrophenol	0.070 mg/l
Pentachlorophenol	1.0 mg/l
Phenol	3.5 mg/l
Dibutyl phthalate	34 mg/l
Diethyl phthalate	350 mg/l
Di-2-ethylhexyl phthalate	15 mg/l
Dimethyl phthalate	313 mg/l
Toluene	14.3 mg/l
Others	
Chloride	250 mg/l
Color	75 Platinum Cobalt Color Units
Cyanide (free)	0.200 mg/l
Fecal Coliform	2000/100 ml Geometric mean)
Fluoride	1.0 mg/l
Methylene Blue Active Substances	0.5 mg/l
Nitrate (NO_3-N)	10 mg/l
Sulfate	250 mg/l
Total Dissolved Solids	750 mg/l
Substances Linked to Cancer	
Metals (ug/l)	
Beryllium	0.0068
Organics (ug/l)	
Acrylonitrile	0.058
Aldrin	0.000074
Asbestos (fibers/liter)	30,000
Benzene	0.66
Benzidine	0.00012
Carbon tetrachloride	0.40
Chlordane	0.00046
Hexachlorobenzene	0.00072
1,2-dichloroethane	0.94
1,1,2-trichloroethane	0.60
1,1,2,2,-tetrachloroethane	0.17
Hexachloroethane	1.9
2,4,6-trichlorophenol	1.2
bis(2-chloroethyl) ether	0.03
Chloroform	0.19
DDT	0.000024
Dichlorobenzidine	0.01
1,1-dichloroethylene	0.033
Dieldrin	0.000071
2,4-dinitrotoluene	0.11
[Dioxin (2,3,7,8-TCDD)	0.000000013]
Diphenylhydrazine	0.042
Halomethanes	0.19
Heptachlor	0.00028
Hexachlorobutadiene	0.45
alpha Hexachlorocyclohexane (HCH)	0.009
beta HCH	0.016
gamma HCH (Lindane)	0.019
Technical HCH	0.012
N-nitrosodiethylamine	0.0008
N-nitrosodimethylamine	0.0014
N-nitrosodibutylamine	0.0064
N-nitrosodiphenylamine	4.9
N-nitrosopyrrolidine	0.016
Polychlorinated Biphenyls (PCBs)	0.000079
Polynuclear Aromatic Hydrocarbons (PAHs)	0.0028

Tetrachloroethylene	0.8
Toxaphene	0.00071
Trichloroethylene	2.7
Vinyl Chloride	2.0

[1]See note 1 in Table 2.

Section 6. Recreational Waters. (1) Primary contact recreation water. Primary contact recreation waters are waters suitable for full body contact recreation during the recreation season of May 1 through October 31. Criteria for primary contact recreation waters are listed below:

(a) Fecal coliform content shall not exceed 200 colonies per 100 ml as a monthly geometric mean based on not less than five (5) samples per month; nor exceed 400 colonies per 100 ml in twenty (20) percent or more of all samples taken during the month; these limits are applicable during the recreation season. Fecal coliform criteria listed in subsection (2)(a) of this section apply during the remainder of the year.

(b) pH shall be between six (6.0) to nine (9.0) and shall not change more than one (1) pH unit within this range over a period of twenty-four (24) hours.

(2) Secondary contact recreation water. Secondary contact recreation waters are waters suitable for partial body contact recreation, with minimal threat to public health due to water quality. The following criteria apply to waters classified for secondary contact recreation use during the entire year:

(a) Fecal coliform content shall not exceed 1000 colonies per 100 ml as a monthly geometric mean based on not less than five (5) samples per month; nor exceed 2000 colonies per 100 ml in twenty (20) percent or more of all samples taken during the month.

(b) pH shall be between six (6.0) to nine (9.0) and shall not change more than one (1) pH unit within this range over a period of twenty-four (24) hours.

Section 7. Outstanding Resource Waters. This classification category includes certain unique waters of the Commonwealth.

(1) Water for inclusion.

(a) Automatic inclusion. The following surface waters shall automatically be included in this category:

1. Waters designated under the Kentucky Wild Rivers Act, KRS 146.200-146.360.

2. Waters designated under the Federal Wild and Scenic Rivers Act, 16 U.S.C. 1271 et seq. and high quality waters constituting an outstanding national resource water.

3. Waters identified under the Kentucky Nature Preserves Act, KRS 146.410-146.530, which are contained within a formally dedicated nature preserve or are published in the registry of natural areas and concurred upon by the cabinet.

4. Waters that support federally recognized endangered or threatened species under the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 et seq.

(b) Permissible consideration. Other surface waters may be included in this category as determined by the cabinet if:

1. The surface waters flow through or are bounded by state or federal forest land, or are of exceptional aesthetic or ecological value or are within the boundaries of national, state, or local government parks, or are a part of a unique geological or historical area recognized by state or federal designation; or

2. They are a component part of an undisturbed or relatively undisturbed watershed that can provide basic scientific data and possess outstanding water quality characteristics; or two (2) of the following criteria:

a. Support a diverse or unique native aquatic flora or fauna.

b. Possess physical or chemical characteristics that provide an unusual and uncommon aquatic habitat.

c. Provides a unique aquatic environment within a physiographic region.

(2) Outstanding resource waters protection: The classification of certain waters as outstanding resource waters shall fairly and fully reflect those aspects of the waters for which the classification is proposed. The cabinet will determine water quality criteria for these waters as follows:

(a) At a minimum, the criteria of Section 2 of this regulation and the appropriate criteria associated with the stream use classification assignments in 401 KAR 5:026, are applicable to these waters.

(b) Where the values identified for an outstanding resource water are dependent upon or related to in-stream water quality, the cabinet will review existing water quality criteria and determine whether additional criteria or more stringent criteria are necessary for protection, and evaluate the need for the development of additional data upon which to base the determination. Existing water quality and habitat shall be maintained and protected in those waters designated as outstanding resource waters which support federally threatened and endangered species of aquatic organisms, unless it can be demonstrated to the satisfaction of the cabinet, that lowering of water quality or a habitat modification will not have a harmful effect on the threatened or endangered species which the water supports.

(c) "Water quality shall be maintained and protected in waters which constitute an outstanding national resource. The cabinet may approve temporary or short-term changes in water quality if the changes to the waters in question have no demonstrable impact on the ability of the waters to support this use."

(d) Adoption of more protective criteria in accordance with this section will be listed with the respective stream segment in 401 KAR 5:026, and will be promulgated as an administrative regulation pursuant to KRS Chapter 13A.

(3) Determination of classification.

(a) Any person may present a proposal to classify certain waters under this section. Documentation requirements in support of an outstanding resource water proposal shall contain those elements outlined in 401 KAR 5:026, Section 5(1) through (8).

(b) The cabinet will review the proposal and supporting documentation to determine whether the proposed waters qualify as outstanding resource waters within the criteria established by this regulation. The cabinet will document the determination to deny or to propose reclassification, and a copy of the decision will be served upon the petitioner and other interested parties.

(c) After considering all of the pertinent data, a reclassification, if appropriate, will be made pursuant to 401 KAR 5:026.

Section 8. Water Quality Criteria for the Main Stem of the Ohio River. The following criteria apply to the main stem of the Ohio River from its juncture with the Big Sandy River at River Mile 317.1 to its confluence with the Mississippi River, and shall not be exceeded: these waters are subject to all applicable provisions of 401 KAR 5:026, 401 KAR 5:029, and this regulation.

(1) Dissolved oxygen. Concentrations shall average at least five (5.0) mg/l per calendar day and shall not be less than four (4.0) mg/l at any time provided that a minimum of five and one-tenth (5.1) mg/l at any time is maintained during the April 15 - June 15 spawning season.

(2) Temperature.

(a) Allowable stream temperatures are:

Month/Date	Period Average (°F)	Instantaneous Maximum (°F)
January 1-31	45	50
February 1-29	45	50
March 1-15	51	56
March 16-31	54	59
April 1-15	58	64
April 16-30	64	69
May 1-15	68	73
May 16-31	75	80
June 1-15	80	85
June 16-30	83	87
July 1-31	84	89
August 1-31	84	89
September 1-15	84	87
September 16-30	82	86
October 1-15	77	82
October 16-31	72	77
November 1-30	67	72
December 1-31	52	57

(b) A successful demonstration conducted for thermal discharge limits under Section 316(a) of the Clean Water Act will constitute compliance with these temperature criteria.

(3) Total dissolved solids: not to exceed 500 mg/l as a monthly average, nor exceed 750 mg/l at any time. Equivalent twenty-five (25) degrees Centigrade specific conductants values are 800 and 1200 micromhos/cm respectively.

(4) Maximum allowable in-stream concentrations for specific parameters are given below. Metal concentrations are total recoverable values except hexavalent chromium which is dissolved.

Parameter	Concentration (mg/l)
Arsenic	.05
Barium	1.0
Chloride	250
Fluoride	1.0
Nitrite + Nitrate Nitrogen	10.0
Nitrite-Nitrogen	1.0
Phenolics	.005
Sulfate	250

Parameter	Chronic Criteria Concentration ug/l	Acute Criteria Concentration ug/l
Cadmium	e(.7852(ln Hard)-3.490)	e(1.128(ln Hard)-3.828)
Chromium (hexavalent)	11	16
Copper	e(.8545(ln Hard)-1.465)	e(.9422(ln Hard)-1.464)
Cyanide (free)	5	22
Lead	e(1.273(ln Hard)-4.705)	e(1.273(ln Hard)-1.460)
Mercury	.012	2.4
Zinc	e(.8473(ln Hard)+.7614)	e(8473(ln Hard)+.8604)

(5) The net discharge of aldrin, dieldrin, DDT, including DDD and DDE, endrin, toxaphene, benzidine, and PCBs is prohibited.

Section 9. Exceptions to Criteria. (1) The cabinet may grant exceptions to the criteria contained in Sections 2, 4, 5, 6 and 7 of this regulation upon demonstration by an applicant that maintenance of applicable water quality criteria are not attainable or scientifically valid but the use classification is still appropriate. This determination will be made on a case-by-case basis with respect to a specific surface water following an analysis for each area.

(2) The analysis shall show that the water quality criteria cannot be reasonably achieved either on a seasonal or year-round basis due to natural conditions, or site-specific factors differing from the conditions used to derive criteria in Sections 2, 4, 5, 6, 7, and 8 of this regulation, or a demonstration that meeting the criteria would cause substantial and widespread economic and social impact. Site-specific criteria shall be developed by the applicant utilizing toxicity tests, indicator organisms, and application factors that are consistent with those outlined in "Water Quality Standards Handbook" (EPA, 1983). In addition, an applicant shall supply the documentation listed in Section 5 of 401 KAR 5:026.

(3) An exception to criteria listed in Section 2(2) of this regulation for the protection of human health from the consumption of fish tissue may be granted if it can be demonstrated that natural, ephemeral, intermittent or low flow conditions or water levels preclude the year-round support of a fishery, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges.

(4) Before granting an exception to water quality criteria, the cabinet shall ensure that the water quality standards of downstream waters are attained and maintained.

(5) All exceptions to water quality criteria will be subject to review at least every three (3) years.

(6) Upon completing a review and the procedures for promulgation under administrative rule-making, all exceptions to water quality criteria shall be listed with the respective stream segment in Section 7 of 401 KAR 5:026.

Section 10. This administrative regulation shall expire on adjournment of the next regular session of the General Assembly.

FRANK DICKERSON, Commissioner
JOHN F. NICHOLS, JR., Secretary
APPROVED BY AGENCY: October 14, 1991
FILED WITH LRC: October 15, 1991 at 9 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled on 21 November 1991 at 2 p.m. at the Auditorium of the State Office Building, Clinton and High

Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by 16 November 1991, five days prior to the hearing, of their intent to attend. If no notification 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. Persons not wishing to attend this public hearing may submit written comments on the proposed administrative regulation. Written comments will be received until close of business, November 21, 1991. Send written notification of intent to attend the public hearing or to provide written comments on the proposed administrative regulation to: Jack A. Wilson, Director, Division of Water, Frankfort Office Park, 18 Reilly Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact: Jack A. Wilson

(1) Type and number of entities affected: The cabinet is deleting numerical criteria for dioxin which were listed to protect human health because it was not considered to be a parameter of concern. The regulated public and citizens who consume fish caught in Kentucky's waters or drink from those waters will not be affected by the deletion because dioxin is not present in waters at levels of public health concern nor is it being discharged into waters at levels which require controls. Therefore, no entities will be affected. The attachment to this regulatory impact analysis details the cabinet's finding that dioxin is not a parameter of concern.

(a) Direct and indirect costs or savings to those affected: Since no entities are affected by this amendment there are no direct or indirect costs or savings.

1. First year: No first year costs or savings will be realized because entities are not affected.

2. Continuing costs or savings: Since the control of dioxin was not required on any permit issued in the state and since it is not present at levels of public health concern there are no anticipated continuing costs or savings associated with the deletion of this parameter from the regulation. Any new discharger or expansion of a current discharger which has dioxin in the discharge will be evaluated and if levels of dioxin will be great enough to be limited in the permit, that will be done under existing narrative criteria. Monitoring may be the only requirement if levels are low enough. Costs will be associated with this but are speculative. The cabinet has no information to indicate what future expansions will take place at existing facilities or if new dischargers plan to locate in the state, so this is not addressed.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None determined. This amendment will not affect competition. Existing dischargers were not affected by the dioxin criteria in the regulation nor to our knowledge did it have an effect on other entities. The deletion will not provide a competitive advantage to any new discharge of dioxin because they will have dioxin limits on their permits if it is discharged at a level that needs to be controlled. The cabinet is requiring monitoring for all discharges suspected of containing dioxin and will do so for any new discharges suspected of containing dioxin.

(b) Reporting and paperwork requirement: This amendment does not contain any reporting or paperwork requirements. It deletes a criterion from regulation for one parameter.

(2) Effects on the promulgating administrative body: This amendment does not have an effect in the direct operation or costs of the Natural Resources and Environmental Protection Cabinet in the first year nor are there any continuing costs or savings. Permit and other costs are internalized with normal budget appropriations and the deletion does not affect these costs. The amendment has no effect on the amount of paperwork done by the cabinet. It is a deletion of criteria for one parameter from the regulation.

(3) Assessment of anticipated effect on state and local revenues: This amendment has no anticipated effect on state and local revenues. It does not cause an increase or decrease in the cabinet's budget and is not associated with fees that generate revenues for state or local government.

(4) Assessment of alternative methods; reason why alternatives were rejected: The cabinet reviewed three alternatives to the deletion of the criteria for dioxin: (1) Establishment of criteria at a level equivalent to a 10^{-5} (one in one hundred thousand) risk level using different factors than those used in establishing the current standard. (2) Establishment of criteria at a level equivalent to a 10^{-6} (one in a million) risk level using different factors than those used in establishing the current standard. (3) Keeping the current criteria in the standards.

Alterative (1) was rejected for two reasons. First, the cabinet determined that the 10^{-6} risk factor was reasonable and adequate to provide for protection of public health and the cabinet has been presented with no compelling reasons to change that determination. Most states have adopted this risk factor in their standards. Second, there is an ongoing debate in scientific circles over the appropriate factors which should be considered in establishing criteria for dioxin. The U.S. EPA and the cabinet used factors which differ from the U.S. Food and Drug Administration. The U.S. EPA is undertaking a two year study to determine what is the most appropriate criteria for dioxin. Since no one best method is currently known, the cabinet felt it was prudent to wait for the results of these studies before adopting criteria based on other methods.

Alternative (2) was rejected for the reasons stated above relating to the current controversy about the correct factors to use in developing the criteria.

Alternative (3) was rejected because an amendment was necessary to change dioxin criteria so that the letter of attachment to this regulation could be removed. The deletion serves this purpose and will enable the regulation to remain as amended and not be subject to bill drafting and possible expiration, if not enacted as a statute by the 1992 legislature.

(5) Identify any statue, administrative

regulation or government policy which may be in conflict, overlapping, or duplication: No statutes, rules, regulations or government policies were determined to be in conflict with this regulation.

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: The attachment to this regulatory impact analysis provides the cabinet's rationale for deletion of dioxin.

TIERING: Was tiering applied? No. Tiering was not applied since this regulation affects all discharges into surface waters irrespective of facility ownership, capacity, or unit processes or treatment employed.

RATIONALE FOR DELETION OF DIOXIN FROM KENTUCKY WATER QUALITY STANDARDS

Introduction

Polychlorinated dibenzo-para-dioxins (PCDDs) are a family of 75 chemicals which can be present as trace impurities in some manufactured chemicals including herbicides, chlorinated phenols and chlorinated benzenes. They may be present in waste from industrial processes such as bleached paper production involving chlorine, refinery operations and municipal incinerators. EPA has classified 2,3,7,8-tetrachloro-para-dibenzodioxin (2,3,7,8-TCDD) as a probable human carcinogen. The current Kentucky water quality criteria for this dioxin are: 0.000000014 ug/l, or .014 parts per quadrillion (ppq), for protection of human health from consumption of fish and 0.000000013 ug/l (.013 ppq) for protection of domestic water supply sources. The dioxin monitoring data currently available for Kentucky indicate that 2,3,7,8-TCDD is present at concentrations which do not interfere with any state designated use. Consequently, the cabinet has determined that it is not a parameter of concern and proposes to delete it from the state's water quality standards. The available data are discussed in the following sections:

National Bioaccumulation Study

Eleven locations in Kentucky have been sampled as part of the National Dioxin Study and the National Bioaccumulation Study conducted by U.S. EPA. The Division of Water has participated in these studies by providing information on sampling locations and by collecting fish samples for analysis by U.S. EPA/Region IV. Samples representing nine species have been collected and analyzed during these studies. Three major contaminants have been found: chlordane, dioxin and PCBs (Table 1).

Chlordane and PCB data from these studies indicated two areas where FDA action levels were exceeded in fillet samples: the Ohio River at West Point and the Mud River at Cooperstown. Both of these areas are currently under a fish consumption advisory.

Only one sample collected by Kentucky during these studies has approached the FDA "Level of Concern" for dioxin which is currently 25 parts per trillion (ppt), or 25,000 ppq. A composite fillet sample from two striped bass collected during 1989 in the Big Sandy River near Catlettsburg, Kentucky was analyzed by U.S. EPA/Region IV and found to contain 22.8 ppt dioxin (Table 1). Although a fish consumption advisory was not warranted based on this information, follow-up fish and sediment sampling was conducted in this area during 1990.

Big Sandy River, 1990

In cooperation with the U.S. Army Corps of Engineers - Huntington District, the Division of Water collected fish samples from the Big Sandy River during 1990 and had them analyzed for dioxin. Fish samples representing a total of five species were collected from three locations on the Big Sandy River. Fillet samples were analyzed for dioxins (Table 2) with results indicating values well below the FDA Level of Concern. The maximum dioxin value reported was 2.70 ppt. Sediment samples were collected from the Big Sandy River by personnel from the U.S. Army Corps of Engineers-Huntington District. The results received to date for 2,3,7,8-TCDD have been reported as "not detected".

Ashland Petroleum Company operates a refinery in Catlettsburg, Kentucky, which discharges effluent to the Big Sandy River. As required by their KPDES permit (KY0000388), the company collected and analyzed effluent and sludge samples for 2,3,7,8-TCDD during 1990. Results showed no detectable levels of dioxin in these samples.

Westvaco

Westvaco Corporation operates a pulp paper mill near Wickliffe, Kentucky, which discharges effluent to Mayfield Creek and to the Mississippi River (RM 950). As part of their KPDES permit (KY0000086), Westvaco has monitored dioxin levels in their effluent and sludge on a quarterly basis. They have also collected fish samples from the Mississippi and Ohio Rivers and had them analyzed for dioxin.

The 2,3,7,8-TCDD results reported for the effluent have ranged from 84 ppq to 10 ppq and averaged about 25 ppq. In sludge samples, dioxin values have varied from 21 ppt to 0.1 ppt with a mean of approximately 4 ppt (Table 3).

Dioxin results for fish samples collected during 1988 (Table 4) and 1989 (Table 5) from the Mississippi River near the Westvaco facility were well below the 25 ppt "Level of Concern" established by FDA. Dioxin levels were also very low in wholebody and fillet samples collected from the Mississippi River upstream of Westvaco, and from the Ohio River (Tables 4 and 5).

While a fish consumption advisory is currently in place for Kentucky's portion of the Ohio River, it is for PCBs and chlordane. Based on lack of supporting information, Kentucky has not issued any fish consumption advisory on the Mississippi River and has not included dioxin on the advisory for the Ohio River. Division of Water will utilize available opportunities to conduct dioxin monitoring activities in conjunction with U.S. EPA, other states and ORSANCO.

Paducah Gaseous Diffusion Plant

The Paducah Gaseous Diffusion Plant (PGDP) is a uranium enrichment facility located in McCracken County, west of Paducah, Kentucky. The plant is operated by Martin Marietta Energy Systems, Inc., for the U.S. Department of Energy. During 1988, samples of surface water, effluent, groundwater, sediment and sludge were collected and analyzed for dioxins.

The results for surface water samples

collected from the Ohio River indicated no detectable concentrations of 2,3,7,8-TCDD. Similar results were reported for the effluent and groundwater samples. The dioxin concentration in sediment from Big Bayou Creek was 0.00053 parts per billion (ppb), or 530 ppq. Sludge samples collected on PGDP property indicated an estimated dioxin of 0.007 ppb, or 7000 ppq.

Summary

The available data on environmental concentrations of 2,3,7,8-TCDD in Kentucky obtained by the Division of Water does not currently indicate a cause for concern regarding dioxin concentrations in fish or water. Of the 55 fish samples tested for dioxin, none have exceeded the 25 ppt Level of Concern set by FDA, and only one sample has approached this value. Areas where dioxin could reasonably be expected to occur in the environment have been targeted for monitoring. Because of the costs and complex nature of dioxin analyses, the division will continue to pursue cooperative efforts with federal agencies and other state agencies.

(See Tables on following pages)

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 33 USCA section 1313; 40 CFR Part 131.

2. State compliance standards. The proposed amendments to the above regulation are a result of Kentucky's review of its water quality standards. That review determined that dioxin was not a parameter of concern and could not reasonably be expected to interfere with any state designated surface water use. It has therefore been deleted from the standards. States are required to have criteria for toxic pollutants only when their discharge or presence in affected water could reasonably be expected to interfere with those designated uses adopted by a state.

3. Minimum or uniform standards contained in the federal mandate. 33 USCA section 1313 and 40 CFR Part 131 require that states review, and revise if appropriate, their water quality standards at least every three years. When revisions take place states are required to adopt criteria for all toxic pollutants listed pursuant to section 307(a)(1) of the federal Clean Water Act (33 USCA section 1317(a)(1)) for which criteria have been published under section 304(a) (33 USCA section 1314(a), the discharge or presence of which in the affected waters could reasonably be expected to interfere with those designated uses adopted by the state, as necessary to support such designated uses. The criteria must be specific numerical criteria for these toxic pollutants. Where numerical criteria are not available whenever a state reviews water quality standards or revises or adopts new standards, the state is required to adopt criteria based on biological monitoring or assessment methods consistent with information published pursuant to section 304(a)(8) (33 USCA section 1314(a)(8)). Nothing in section 1313 is construed to limit or delay the use of effluent limitations or other permit conditions based on or involving biological monitoring or assessment methods or previously adopted numerical criteria. The deleted dioxin criteria were determined not to reasonably be expected to interfere with state adopted designated uses.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? 401 KAR 5:031 does not impose stricter requirements or responsibilities other than those required by the federal mandate. 33 USCA section 1313 and 40 CFR 131 require only that criteria be adopted by the states; they do not mandate their levels or suggest minimum or uniform standards. The cabinet has adopted other criteria using EPA's published list of toxic pollutants and the suggestions contained in its published water quality criteria documents. The deletion for reasons stated is allowable under the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable because 401 KAR 5:031 does not contain stricter standards, requirements or responsibilities other than those required by the federal mandate.

Table 1
National Bioaccumulation Study Results
(Dioxin, Chlordane, PCBs) for Kentucky

Site	Dioxin 2,3,7,8 TCDD (ppt)	Furan 2,3,7,8 TCDF (ppt)	TEC	Chlordane (ppm)	PCBs (ppm)	%Lipid
Big Sandy River						
Catlettsburg (1987)						
Carp (WB; n=5)	4.38	3.05	5.72	0.215	1.218	7.0
Sauger (F; n=4)	0.67	ND	0.67	0.0046	0.094	0.6
Catlettsburg (1989)						
Carp (WB; n=3)	3.22	1.42	4.47	-	-	7.5
Carp duplicate	2.26	1.38	3.64	-	-	7.8
Carpsucker (WB; n=3)	1.90	0.68	1.97	0.0702	0.504	2.8
Carpsucker duplicate	-	-	-	0.0729	0.529	2.9
Striped Bass (F; n=2)	21.55	3.62	22.8	0.0733	0.741	1.2
Ohio River						
Cannelton (1984)						
Carpsucker (WB; n=1)	-	3.9	0.426	1.777	8.8	
Carpsucker (F; n=2)	-	-	ND	-	-	-
Sauger (WB; n=2)	-	-	4.1	-	-	-
Sauger (F; n=1)	-	-	ND	-	-	-
Markland (1985)						
Carp (WB; n=2)	-	-	13.0	-	-	-
Carp (F)	-	-	6.4	-	-	-
Largemouth Bass (WB; n=5)	-	-	4.2	-	-	2.5
Largemouth Bass (F)	-	-	ND	-	-	2.5
Uniontown (1984)*						
Bottom feeder (WB)	-	-	3.4	-	-	-
Predator (WB)	-	-	ND	-	-	-
West Point (1984)*						
Bottom feeder (WB)	-	-	5.2	-	-	-
Predator (WB)	-	-	2.1	-	-	-

Table 1 (Continued)
National Bioaccumulation Study Results
(Dioxin, Chlordane, PCBs) for Kentucky

Site	Dioxin 2,3,7,8 TCDD (ppt)	Furan 2,3,7,8 TCDF (ppt)	TEC	Chlordane (ppm)	PCBs (ppm)	%Lipid
West Point (1987)						
Carp (WB; n=3)	4.38	3.23	7.37	0.403	1.366	7.2
Largemouth Bass (F; n=5)	ND	ND	0.00	-	-	2.5
Cave Run Lake						
1984						
Carp (WB; n=3)	-	-	ND	-	-	-
Kentucky River						
Gest (1985)						
Carp (WB; n=2)	-	-	0.8	-	-	-
Largemouth Bass (WB; n=2)	-	-	ND	-	-	-
Largemouth Bass (F; n=5)	-	-	ND	-	-	-
Mud River						
Cooperstown (1987)						
Carp (WB; n=3)	ND	23.53	3.16	0.195	24.12	7.4
Rock Bass (F; n=5)	ND	8.63	0.88	0.0052	0.780	1.1
Green River						
Beech Grove (1984)						
Carp (WB; n=4)	-	-	ND	-	-	-
Kentucky Lake						
1984						
Carp (WB; n=5)	-	-	ND	-	-	-
Mississippi River						
Wickliffe (1988)						
Carp (WB; n=4)	4.75	6.46	6.79	0.124	0.757	7.4
Carp duplicate	4.48	6.79	6.55	-	-	7.3
White Bass (F; n=7)	1.42	2.91	1.98	-	-	1.9

WB = Wholebody, F = fillet, ND = nondetected, TEC = toxicity equivalent concentration, n = number of fish analyzed

*Information obtained from U.S. EPA. 1987. The National Dioxin Study: Tiers 3,5,6 and 7. EPA 440/4-87-003. U.S. EPA, Washington, D.C. 20460.

Table 2
Summary of Analytical Results for Fish Samples (Fillets) Collected from Big Sandy River, August 1, 1990

Sample No.	Fish Species	Location	2,3,7,8 Dioxin (ppt)	2,3,7,8 Furan (ppt)	% Lipid
1	Carp (1)	Between Whites Creek and Sharps Branch*	ND	ND	1.72
2	Bigmouth Buffalo(1)	Between Whites Creek and Sharps Branch*	ND	ND	3.31
3	Drum (1)	Between Whites Creek and Sharps Branch*	ND	ND	0.09
4	Bigmouth Buffalo(3)	Above Tennessee Gas pumping station**	ND	ND	2.84
5	Carp (1)	Above Tennessee Gas pumping station**	2.2	4.5 (e)	2.15
6	Sauger(1)	Above Tennessee Gas pumping station**	1.4	3.3 (e)	2.05
7	Redhorse(2)	Above Tennessee Gas pumping station**	1.3	0.27	1.71
8	Bigmouth Buffalo(1)	Hwy. 60 Bridge***	ND	ND	0.22
9	Sauger(1)	Hwy. 60 Bridge***	ND	0.43	0.61

ND - Not Detected
(e)- Denotes estimated maximum concentration
*MP 7.9 to 8.3
**MP 11.3 to 12.0
***MP 0.7 to 1.1

Table 3. Summary of Dioxin and Furan Results for Westvaco Effluent and Sludge Samples, 1987-1990				
	Effluent (ppq)		Sludge (ppt)	
	Dioxin	Furan	Dioxin	Furan
No. Results Reported	20	20	20	20
No. of Non Detects	8	1	11	3
Max. Value	84	452	21	235
Min. Value	10	10	0.1	1.1
Positive Value Average	25.6	114.7	3.8	22.9
Std. Dev.	20.76	104.90	5.03	52.98

Table 4. Dioxin and Furan Analysis of River Fish From Locations Above and Below the Westvaco Wickliffe Mill

Mississippi River Downstream	Date Collected	(Dioxin) 2,3,7,8 TCDD, ppt*	(Furan) 2,3,7,8 TCDF, ppt*
Catfish (F)	5/24/88	5.375	2.538
Carp (WB)	5/24/88	2.144	4.113
Bass (F)	6/13/88	1.918	3.314
Mississippi River Upstream			
Catfish (F)	6/7,15/88	4.71	2.542
Carp (WB)	6/7/88	2.794	4.078
Ohio River			
Catfish (F)	6/8,14/88	3.220	2.221
Carp (WB)	6/8,14/88	ND	8.383
Bass (F)	6/11/88	1.653	3.367

F = Fillet sample
WB = Wholebody sample

*Parts per trillion
Mill discharge located at river mile 950.0.
Mississippi River downstream samples collected at river mile 948.5.
Mississippi River upstream samples collected at river mile 12 (16 miles above mill outfall).
Ohio River upstream (Bass-river mile 962, 18 miles above mill.) (Catfish and carp caught at river mile 967, 13 miles above mill.)

Table 5. Dioxin and Furan Analysis of River Fish from Locations Above and Below the Westvaco Wickliffe Mill

	Date Collected	(Dioxin) 2,3,7,8 TCDD, ppt*	(Furan) 2,3,7,8 TCDF, ppt*
Mississippi River Downstream			
Carp (WB)	9/89	2.8	2.9
Catfish (F)	9/89	3.5	0.23
White Bass (F)	9/89	2.1	1.8
Mississippi River Upstream			
Carp (WB)	9/89	1.9	0.66
Catfish (F)	9/89	9.7	0.68
White Bass (F)	9/89	5.6	6.6
Ohio River Upstream			
Carp (WB)	9/89	2.3	2.5
Catfish (F)	9/89	2.3	0.86
White Bass (F)	9/89	1.6	3.4

F = Fillet
WB = Wholebody
*Parts per trillion
Mississippi River downstream samples were collected 2 miles below discharge.
Mississippi River upstream samples were collected 8 miles above discharge.
Ohio River upstream samples were collected 7-14 miles above mill discharge.
Analysis performed by Triangle Laboratories, Raleigh, North Carolina.

CORRECTIONS CABINET
(Proposed Amendment)

501 KAR 6:050. Luther Luckett Correctional Complex.

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

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

LLCC 01-08-01	Institutional Legal Assistance
LLCC 01-09-01	Public Information and News Media Access
LLCC 01-12-01	Duty Officer Responsibilities [(Amended 6/14/91)]
LLCC 02-01-02	Fiscal Management: Accounting Procedures (Revised 10/15/91)
LLCC 02-01-03	Fiscal Management: Agency Funds
LLCC 02-01-04	Fiscal Management: Insurance (Revised 10/15/91)
LLCC 02-03-01	Fiscal Management: Audits (Revised 10/15/91)
LLCC 02-06-01	Property Inventory
[LLCC 02-07-01	Screening Disbursements from Inmate Personal Accounting (Deleted 10/15/91)]
LLCC 08-01-01	Offender Records
LLCC 08-04-01	Storage of Expunged Records
LLCC 08-05-01	Psychological and Psychiatric Reports
LLCC 10-03-09	Duties and Responsibilities of Building 1 and 2 Officer
LLCC 11-03-01	LLCC Population Categories
LLCC 11-07-01	Adjustment Procedures for Minor Rule Violations
LLCC 11-09-01	Rules and Regulations of the Unit
LLCC 11-13-01	Inmate Dress and Use of Access Areas
LLCC 11-15-01	Postparole Furloughs
LLCC 11-16-01	Restoration of Forfeited Good Time
LLCC 11-18-02	Use of Monitor Telephone
LLCC 11-19-01	Unit Shakedowns/Control of Excess Property
LLCC 11-20-01	Program Services for "Special Needs"/Mentally Ill Inmates
LLCC 12-01-01	Special Management Inmates
LLCC 12-01-02	Disciplinary Segregation Time Calculation (WTR)
[LLCC 12-04-01	Guidelines for (7E) PC Unit/General Living Conditions (Deleted 10/15/91)]
LLCC 13-01-01	Dining Room Guidelines
LLCC 13-04-01	Food Service: Meals
LLCC 13-04-02	Food Service: Menu, Nutrition and Special Diets
LLCC 13-05-02	Medical Screening of Food Handlers
LLCC 13-06-01	Food Service: Inspections and Sanitation
LLCC 13-07-01	Food Service: Purchasing, Storage and Farm Products
LLCC 13-08-01	OJT Food Service Training Placement
LLCC 14-01-01	Sanitation, Living Condition Standards, and Clothing Issue
LLCC 14-05-01	Institutional Inspections
LLCC 15-01-01	Health Maintenance Services; Sick Call and Pill Call
LLCC 15-02-01	Mental Health/Psychological Services
LLCC 15-03-01	Pharmacy
LLCC 15-03-02	Use of Psychotropic Medications
LLCC 15-04-01	Dental Services
LLCC 15-05-02	Licensure and Training Standards
LLCC 15-06-02	Specialized Health Services
LLCC 15-06-03	Emergency Medical/Dental Care Services
LLCC 15-06-04	First Aid/CPR Training Program
LLCC 15-06-05	Suicide Prevention and Intervention Program
LLCC 15-07-01	Health Records
LLCC 15-08-01	Special Diets
LLCC 15-12-01	Special Needs Unit
LLCC 15-14-01	Informed Consent
LLCC 15-15-01	Medical Restraints
LLCC 15-16-01	Health Education/Special Health Programs
LLCC 15-17-01	Serious and Infectious Diseases
LLCC 16-01-01	Inmate Rights and Responsibilities
LLCC 16-02-01	Inmate Grievance Procedure
LLCC 16-03-01	Inmate Legal Services
LLCC 17-01-01	Due Process/Disciplinary Procedure
LLCC 18-01-01	Inmate Correspondence
LLCC 18-01-02	Issuance of Legal Mail to Inmate Population
LLCC 18-02-01	Inmate Visiting [(Amended 6/14/91)]
LLCC 18-02-03	Extended Visit and Furloughs
LLCC 18-02-04	Meritorious Visits [(Amended 6/14/91)]
LLCC 18-03-01	Entry and Identification of Visitors for Inmate Visitation [(Amended 6/14/91)]
LLCC 18-03-03	Inmate Visiting Disciplinary Segregation Administrative Segregation [(Amended 6/14/91)]
LLCC 20-01-01	Personal Property Control
LLCC 20-02-01	Authorized Inmate Personal Property
LLCC 20-03-01	Unauthorized Items
LLCC 20-04-02	Inmate Canteen
LLCC 20-04-03	Canteen Purchase Limits
LLCC 20-05-01	Inmate Control of Personal Funds (Revised 10/15/91)
LLCC 20-05-02	Storage and Disposition of Monies Received on Weekends, Holidays, and Between 4 p.m. and 8 a.m. Weekdays (Revised 10/15/91)
LLCC 20-05-03	Theft of Inmate Personal Property (Added 10/15/91)
LLCC 20-06-01	Procedure for Sending Appliances to Outside Dealers for Repair
LLCC 21-02-01	Classification/Security Levels
LLCC 21-03-01	Classification Process
LLCC 22-01-01	OJT/Job Assignments
LLCC 23-01-01	Academic School
LLCC 26-01-01	Religious Services
LLCC 28-01-01	Privileged Trips

LLCC 28-03-01	Temporary Release/Community Center Release
LLCC 28-04-01	Preparole Progress Report
LLCC 28-04-02	Parole Eligibility Dates

JOHN T. WIGGINTON, Secretary
APPROVED BY AGENCY: October 15, 1991
FILED WITH LRC: October 15, 1991 at noon
PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 26, 1991 at 9 a.m., in the Auditorium of the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: Jack Damron and Tom Campbell, Corrections Cabinet, 5th Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jack Damron
(1) Type and number of entities affected: 288 employees of the Luther Luckett Correctional Complex, 1,024 inmates, and all visitors to state correctional institutions.
(a) Direct and indirect costs or savings to those affected:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: None - All of the costs involved with the implementation of the regulations are included in the operational budget.
2. Continuing costs or savings: Same as 2(a)1.
3. Additional factors increasing or decreasing costs: Same as 2(a)1.
(b) Reporting and paperwork requirements: Monthly submission of policy revisions.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None
TIERING: Was tiering applied? No. All policies are administered in a uniform manner.

CORRECTIONS CABINET
(Proposed Amendment)

501 KAR 6:130. Western Kentucky Correctional Complex.

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

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

WKCC 01-09-01	Duty Officers, External and Internal Inspections, and Staff Tours
WKCC 02-01-01	Inmate Funds
WKCC 02-01-02	Inmate Canteen
WKCC 02-00-03	Invoice and Voucher Processing
WKCC 02-00-04	Monetary Receipts During Nonbusiness Hours
WKCC 02-00-06	Purchasing Procedures
WKCC 02-01-01	Inmate Funds
WKCC 02-02-01	Agency Funds and Accounting Procedures
WKCC 02-08-01	Property Receipt and Inventory Procedures
WKCC 04-01-01	Travel Reimbursement for Official Business in Attendance at Professional Meetings
WKCC 04-02-01	Employee Training and Development
WKCC 04-04-01	Educational Assistance Program
WKCC 05-01-01	Research, Consultants, and Student Interns
WKCC 06-00-01	Offender Records and Information Access
WKCC 06-00-02	Court Orders, Orders of Appearance, Warrants, Detainers, Etc.
WKCC 09-00-01	Drug Abuse and Alcohol Testing
WKCC 10-02-01	Special Management Inmates
WKCC 11-00-02	Food Service Inmate Work Responsibilities, Evaluations, and Health Requirements
WKCC 11-00-03	Food Service Inspections, Sanitation, Purchasing, and Storage of Food
WKCC 11-00-04	Food Service Security
WKCC 11-00-05	Food Service General Guidelines
WKCC 11-03-01	Food Service Meals, Menus, Nutrition and Special Diets
WKCC 12-01-01	Inmate Clothing
WKCC 13-00-01	Special Health Programs (Revised 10/15/91)
WKCC 13-01-01	Use of Pharmaceutical Products
WKCC 13-02-01	Health Care Services
WKCC 14-00-01	Inmate Rights and Responsibilities
WKCC 14-04-01	Legal Services Program
WKCC 14-06-01	Inmate Grievance Procedure
WKCC 15-01-01	Hair and Grooming Standards
WKCC 15-02-01	Inmate Offenses and Penalties
WKCC 15-03-01	Meritorious Good Time
WKCC 15-05-01	Restoration of Forfeited Good Time
[WKCC 15-06-01	Adjustment Procedures and Programs (Deleted 10/15/91)]
WKCC 16-01-01	Visiting Policy and Procedures (Revised 10/15/91) [(Amended 8/15/91)]
WKCC 16-02-01	Inmate Correspondence

WKCC 16-03-01	Inmate Access to Telephones
WKCC 16-04-01	Inmate Packages
WKCC 17-01-01	Inmate Personal Property
WKCC 17-02-01	Inmate Reception and Orientation
WKCC 18-01-01	Structure, Guidelines, and Functions of the Classification Committee
WKCC 19-03-01	Inmate Wage Program
WKCC 19-04-01	Work/Program Assignments
WKCC 20-03-01	Vocational Education Program
WKCC 20-04-01	Academic Education Program
WKCC 22-00-01	Inmate Recreation and Leisure Time Activities
WKCC 22-00-02	Inmate Clubs and Organizations
WKCC 23-00-01	Religious Services (Revised 10/15/91)
WKCC 25-01-01	Gratuities
WKCC 25-02-01	Inmate Release Process
WKCC 25-03-01	Prerelease Programs
WKCC 26-01-01	Volunteer Services Program

JOHN T. WIGGINTON, Secretary
APPROVED BY AGENCY: October 15, 1991
FILED WITH LRC: October 15, 1991 at noon
PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 26, 1991 at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: Jack T. Damron and Tom Campbell, Office of General Counsel, 5th Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jack Damron
(1) Type and number of entities affected: 168 employees of the Western Kentucky Farm Center, 369 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 6:150. Eastern Kentucky Correctional Complex.

RELATES TO: KRS Chapters 196, 197, 439
STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640
NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorizes the secretary to adopt, amend or rescind regulations necessary and suitable for the proper administration of the cabinet or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. 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 October [March] 15, 1991, are incorporated by reference and shall [, hereinafter should] be referred to as the Eastern Kentucky Correctional Complex Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Corrections Cabinet, State Office Building, Frankfort, Kentucky 40601 or may be reviewed at the Office of General Counsel weekdays from 8 a.m. to 4:30 p.m.

EKCC 01-01-01	Institutional Legal Assistance
EKCC 01-02-01	Public Information and News Media Access
EKCC 01-06-01	Inmate Death
EKCC 01-06-02	Crime Scene Camera
EKCC 01-07-01	Institutional Tours of EKCC
EKCC 01-07-02	EKCC Cooperation with Outside Bodies Including Courts, Governmental, Legislative, Executive, and Community Agencies
EKCC 01-07-03	Outside Consultation and Research
EKCC 01-08-01	Monthly Reports
EKCC 01-09-01	Duty Officer Responsibilities
EKCC 01-10-01	Annual Planning Document and Conference
EKCC 01-10-02	Organization and Assignment of Responsibility
EKCC 01-10-03	Institutional Planning
EKCC 01-13-01	Organization of Operations Manual
EKCC 01-13-02	Monitoring of Operations, Policies and Procedures
EKCC 01-13-03	Formulation and Revision of EKCC Operating Procedures
EKCC 01-13-04	Meetings Conducted and Their Purpose
EKCC 02-01-01	Canteen Cards: Issuance and Distribution
EKCC 02-01-02	Inmate Canteen
EKCC 02-02-01	Fiscal Management: Agency Funds
EKCC 02-05-01	Fiscal Management: Budget
EKCC 02-08-01	Property Inventory
EKCC 02-08-02	Warehouse Operation and Inventory Control
EKCC 02-11-01	Purchase and Supply Requisition
EKCC 02-12-01	Fiscal Management: Audits
EKCC 02-13-01	Fiscal Management: Accounting Procedures
EKCC 02-14-01	Screening Disbursements from Inmate Personal Accounts
EKCC 03-01-01	Construction Crew Entry/Exit
EKCC 03-08-01	Replacement of Damaged or Destroyed Personal Property

EKCC 03-09-01 Use of Interns and Students
EKCC 03-18-01 Fiscal Management: Insurance
EKCC 04-01-01 Staff Participation in Professional Organizations and Conferences; Provision for Leave and Reimbursement for Expenses
EKCC 04-02-01 Emergency Preparedness Training
EKCC 05-01-01 Inmate Participation in Authorized Research
EKCC 05-02-01 Information System
EKCC 06-01-01 Confidentiality of Information, Roles and Services of Consultants, Contract Personnel and Volunteers
EKCC 06-03-01 Offender Records
EKCC 08-02-01 Fire Safety
EKCC 08-02-02 Fire Procedures
EKCC 08-02-03 Fire Prevention
EKCC 08-03-01 Emergency Preparedness Manual
EKCC 08-03-03 Emergency Medical Transportation
EKCC 08-05-01 Emergency Squad: Selection, Training and Evaluation
EKCC 09-04-01 Inmates Immediate Family, Bedside Visits; and Funeral Trips
EKCC 09-06-01 Unauthorized Items
EKCC 09-08-01 Unit Searches/Control of Excess Property
EKCC 09-08-02 Contraband, Dangerous Contraband, Search Policy
EKCC 09-09-01 Transportation of Inmates
EKCC 09-10-01 Institutional Inspections
EKCC 09-12-01 Key Control
EKCC 09-13-01 Institutional Post Orders
EKCC 09-14-01 Count Procedures
EKCC 09-15-01 Standards for Maintaining Perimeter Safety
EKCC 09-15-02 Lobby/Reception: Entry and Exit Procedure
EKCC 09-19-01 Contraband Outside Institutional Perimeter
EKCC 09-20-01 Drug Abuse/Intoxicants Testing
EKCC 09-21-01 Collection, Preservation of Evidence
EKCC 09-22-01 Restricted Areas
EKCC 09-23-01 Regulation of Inmate Movement
EKCC 09-24-01 Guidelines for Unit Staff
EKCC 09-25-01 Procedures for Prohibiting Inmate Authority over Other Inmates
EKCC 09-26-01 Security Activity Logs
EKCC 10-02-01 Special Management Unit: Operating Procedures and Living Conditions
EKCC 10-02-02 Special Management Inmates: Assignment, Classification, Reviews and Release
EKCC 10-02-03 Grooming Standards for Special Management
EKCC 11-02-01 Meal Planning for General Population
EKCC 11-02-02 Food Service: Purchasing, Storage and Farm Products
EKCC 11-03-01 Food Service: Menu, Nutrition and Special Diets
EKCC 11-04-01 Food Service: Inspections and Sanitation
EKCC 11-04-02 Medical Screening of Food Handlers
EKCC 11-05-01 Food Service: Security
EKCC 11-06-01 Food Service: Kitchen and Dining Room Inmate Worker Responsibilities
EKCC 11-07-01 Dining Room Guidelines
EKCC 11-08-01 OJT Food Service Training Placement
EKCC 12-01-01 Vermin and Insect Control
EKCC 12-02-01 Inmate Dress and Use of Access Areas
EKCC 13-01-01 Pharmacy Policy [(Added 3/15/91)]
EKCC 13-02-01 Emergency Medical Procedure [(Amended 3/15/91)]
EKCC 13-02-02 Disaster and Mass Casualty Plan
EKCC 13-02-03 Consultations [(Added 3/15/91)]
EKCC 13-02-04 Hospital Services [(Added 3/15/91)]
EKCC 13-01-05 Health Evaluations [(Added 3/15/91)]
EKCC 13-02-06 Sick Call [(Added 3/15/91)]
EKCC 13-02-07 First Aid Kits [(Added 3/15/91)]
EKCC 13-02-08 Transportation of Injured or Ill Staff [(Added 3/15/91)]
EKCC 13-02-09 Emergency Dental Care [(Added 3/15/91)]
EKCC 13-02-10 Dental Services for Special Management Units [(Added 3/15/91)]
EKCC 13-05-01 Aids and Hepatitis B [(Added 3/15/91)]
EKCC 13-07-01 Serious Illness, Major Injuries, Death [(Added 3/15/91)]
EKCC 13-08-01 Psychiatric and Psychological Services [(Added 3/15/91)]
EKCC 13-08-02 Psychiatric and Psychological Services Team [(Added 3/15/91)]
EKCC 13-09-01 Optometric Services [(Added 3/15/91)]
EKCC 13-10-01 Detoxification [(Added 3/15/91)]
EKCC 13-11-01 Therapeutic Diets [(Added 3/15/91)]
EKCC 13-12-02 Resident Transfer/Medical Profiles [(Added 3/15/91)]
EKCC 13-13-01 Syringes, Needles and Sharps Control [(Added 3/15/91)]
EKCC 13-14-01 Fire and Emergency Evacuation Plan [(Added 3/15/91)]
EKCC 13-15-01 Medical Department - General Housekeeping, Sanitation and Protection Standards and Requirements [(Added 3/15/91)]
EKCC 14-02-01 Personal Hygiene Items: Issuance and Replacement Schedule
EKCC 14-04-01 Inmate Legal Services (Amended 10/15/91)
EKCC 14-06-01 Inmate Grievance Procedure
EKCC 15-05-01 Restoration of Forfeited Good Time
EKCC 15-06-01 Due Process/Disciplinary Procedure
EKCC 16-01-01 Inmate Visiting
EKCC 16-02-01 Inmate Correspondence
EKCC 16-05-01 Inmate Access to and Communication with EKCC Staff
EKCC 16-05-02 Unit Bulletin Boards
EKCC 17-01-01 Authorized Inmate Personal Property
EKCC 17-01-02 Personal Property Control
EKCC 17-02-01 Assessment/Orientation
EKCC 17-04-01 Inmate Reception Process at the EKCC
EKCC 18-01-01 Inmate Classification
EKCC 18-10-01 Preparole Progress Report
EKCC 19-04-01 Inmate Work Program
EKCC 21-01-01 Library Services
EKCC 23-01-01 Religious Services
EKCC 23-01-02 Muslim Services - Ramadan
EKCC 25-02-01 Inmate Discharge Procedure
EKCC 25-03-01 Prerelease Preparation
EKCC 25-04-01 Extended Visits (Furlough)
EKCC 25-06-01 Community Center Program
EKCC 26-01-01 Citizens Involvement and Volunteers

JOHN T. WIGGINTON, Secretary
APPROVED BY AGENCY: October 15, 1991
FILED WITH LRC: October 15, 1991 at noon
PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 26, 1991 at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: Jack Damron or Tom Campbell, Office of General Counsel, 2nd Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jack Damron
(1) Type and number of entities affected: 302 employees of the Eastern Kentucky Correctional Complex, 984 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.

WORKFORCE DEVELOPMENT CABINET
Department for Adult and Technical Education
(Proposed Amendment)

780 KAR 3:020. Compensation plan.

RELATES TO: KRS 151B.035
STATUTORY AUTHORITY: KRS 151B.035
NECESSITY AND FUNCTION: KRS 151B.035 requires the State Board for Adult and Technical Education to promulgate comprehensive regulations consistent with the provisions of KRS 151B.035 which govern the pay plan for all certified and equivalent staff and unclassified staff in the Department for Adult and Technical Education. This regulation is to assure uniformity and equity in administration of the pay plan in accordance with statutory requirements.

Section 1. Appointments. New certified or equivalent employees or reentering certified or equivalent employees shall be appointed at the salary specified on the salary structure for certified and equivalent employees commensurate with education rank and experience. A classified employee in another state agency who has been working with no break in service may be appointed up to his/her current salary or may be placed on the salary schedule. An employee in an administrative position may be provided an index adjustment commensurate with the scope of administrative or supervisory responsibility in addition to the base salary as specified for the particular job classification.

Section 2. Salary Adjustments. (1) Promotion.
(a) A certified or equivalent employee who is promoted shall receive a salary increase of not less than five (5) percent unless his current salary is beyond the minimum on the salary schedule. If the employee's salary is above the minimum, then the five (5) percent increase shall be at the discretion of the appointing authority.
(b) A certified or equivalent employee promoted to an unclassified position in the Department for Adult and Technical Education shall receive a salary increase of not less than five (5) percent upon promotion unless his current salary is beyond the minimum. If the employee's salary is above the minimum, then the salary increase shall be at the discretion of the appointing authority. In no case shall the employee's salary be below the minimum rate of the higher classification following promotion. If the promotion is to a position which constitutes an unusual increase in the level of responsibility, the commissioner may grant upon promotion a ten (10) percent to twenty (20) percent salary increase over the employee's previous salary. Upon the successful completion of a one (1) year promotional probationary period, a certified or equivalent employee may receive at the discretion of the commissioner a five (5) percent promotional increase at the beginning of the month following completion of the probationary period.
(2) Demotion. A certified or equivalent employee in the Department for Adult and Technical Education who is demoted shall have his salary adjusted to the proper cell or to the previous salary plus normal salary adjustments awarded to certified and equivalent employees on July 1 of each year. An unclassified employee in the Department for Adult and Technical Education who is demoted to a certified or equivalent position shall have his salary adjusted to the proper cell or to the previous certified or equivalent salary plus normal salary adjustments awarded to certified and equivalent employees on July 1 of each year while in the unclassified system on the salary structure for certified and equivalent employees.
(3) Rank changes. A certified or equivalent employee shall have a salary adjustment retroactive to July 1 for educational rank changes which are confirmed by September 1 of each year.
(4) Other salary adjustments.
(a) The Commissioner for Adult and Technical Education may authorize performance bonuses in lump sum payments for outstanding job performance for nonprobationary status employees in any fiscal year in which monies are available. The criteria for such awards shall be approved by the State Board for Adult and Technical Education.
(b) Educational achievement increases will be honored for those employees who have an approved educational achievement award agreement on file in the Division of Personnel Services as of July 1, 1990. This provision will expire when previous commitments have been met.

Section 3. Salary Advancements. (1) The salary structure for certified and equivalent employees shall be adjusted by September 30 of each year. All certified and equivalent staff will receive a salary increase not less than the percentage increase provided other state employees. Such increase shall be provided July 1. Salary adjustments for those entitled employees shall be retroactive to July 1 of each year once the salary schedule is confirmed by September 30 of each year.

(2) Annual salary increments for unclassified employees shall occur commensurate with each person's established increment date.

Section 4. Paid Overtime. When applicable, certified and equivalent employees and unclassified employees shall be awarded overtime payments in accordance with the Fair Labor Standards Act, 29 US §201 et seq.

C. RICHARD WARNER, Chairman
APPROVED BY AGENCY: September 19, 1991
FILED WITH LRC: October 7, 1991 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 22, 1991 at 9 a.m. (EDT) in the Third Floor Conference Room, Room 306, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 17, 1991, five days prior to hearing, of their intent to attend. Those persons wishing to attend and testify shall contact in writing: Audrey T. Carr, Secretary, State Board for Adult and Technical Education, Room 302, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601. If no notification of intent to attend the hearing is received by this date, the hearing may be cancelled.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Beverly Haverstock
(1) Type and number of entities affected: Any state employee outside the Department for Adult and Technical Education who may be qualified for a certified or equivalent position in the department and wishes to transfer. Estimate no more than 2-3 per year.
(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: Would enable recruitment of employees in other state agencies.
(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: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: This is an administrative option that allows for fair treatment of employees in a state agency who wish to transfer in a similar or like position responsibility into certified or equivalent position without a wage penalty.
TIERING: Was tiering applied? No. Tiering was considered but it is not appropriate for this regulation. A uniform policy is needed for all people who may be affected by this regulation.

PUBLIC PROTECTION AND REGULATION CABINET
Kentucky State Racing Commission
(Proposed Amendment)

810 KAR 1:003. Licensing.

RELATES TO: KRS 230.210 to 230.360
STATUTORY AUTHORITY: KRS Chapter 13A
NECESSITY AND FUNCTION: To regulate conditions under which thoroughbred racing shall be conducted in Kentucky. The function of this regulation is to outline the licensing procedures and requirements.

Section 1. License Required. No person, legal entity, or association shall conduct any thoroughbred race for any stakes, purse, or reward in the Commonwealth without first securing a license therefor from the commission. No person shall participate in thoroughbred racing in the Commonwealth as a horse owner, trainer, jockey, apprentice jockey, agent, stable employee, racing official, association employee, or employee of a person or concern contracting with the association to provide a service or commodity and which employment requires their presence on association grounds during a race meeting, or veterinarian, farrier, horse dentist, or supplier of food, tack, medication, or horse feed, without first securing a license therefor from the commission.

Section 2. Conditions Precedent to Issuance of License. Thoroughbred racing and participation therein in the Commonwealth shall be privileges, not rights, granted only by the commission by license subject to the hereinafter set out conditions precedent. Acceptance of a license shall be construed as consent and agreement to the following conditions precedent by the licensee and failure to comply therewith shall be grounds for immediate voidance or revocation of such license:
(1) Representations made or with license application are complete and correct.
(2) Licensee shall abide by all rulings, and decisions of the stewards and all such decisions by the stewards shall remain in force unless reversed or modified only by the commission upon proper appeal thereto. All rulings and decisions of the stewards may be appealed to the commission except those made by the stewards as to findings of fact as occurred during and incident to the running of a race and as to determination of the extent of disqualification of horses in a race for fouls committed during such race, and all such excepted rulings and decisions by the stewards shall be final with no right of review thereof by the commission or courts.

(3) Licensee shall consent to a reasonable search of his person and property in his possession by the commission or its representatives, such property being restricted to that on association grounds and including, without limiting thereby, tack rooms, living or sleeping quarters, motor vehicles, trunks, boxes, and containers of any sort, and licensee shall consent to seizure of any object which may be evidence indicating a rule violation. Licensee shall cooperate in every way with the commission or its representatives during the conduct of an investigation, to include responding correctly under oath to the best of his knowledge to all questions asked by the commission or its representatives pertaining to racing matters.

(4) A licensed trainer shall be responsible for the condition of horses in his charge and shall be held to a high standard of care in taking all precautions as are reasonable and necessary to safeguard such horses from tampering. Upon a finding of a positive for a prohibited medication, drug, or substance, in a saliva, urine, or blood specimen taken from a horse, the trainer of such horse shall have the burden of proof showing freedom from negligence in the exercise of a high degree of care in safeguarding such horse from tampering.

Section 3. Standards for Granting Licenses and Racing Dates to Associations. The commission may issue a license to any association which applies for same to conduct a thoroughbred race meeting on such days as the commission may deem appropriate, if the commission finds that the proposed conduct of racing by such association would be in the best interest of the public health, safety, and welfare of the immediate community as well as to the Commonwealth, and if by reason of financial stability, track location, traffic flow, facilities for the public, facilities for racing participants and horses, character and reputation for honesty of all persons identified with the association, competence of proposed racing officials and association employees, absence of conflict with other race meetings in time and patronage area, sentiment of the community in which such association proposed to conduct a race meeting, and capability to comply with the rules and rulings of the commission, the licensing of such association would serve to nurture, promote, develop, and improve the thoroughbred industry in the Commonwealth. As a condition precedent to the issuance of such license, the commission may require a surety bond or other surety conditioned upon the payment of all taxes due the Commonwealth under KRS 137.170, 138.480, and 138.510, together with the payment of operating expenses including purses and awards to owners of horses participating in races.

Section 4. Standards for Granting Licenses to Participants in Racing. The commission may issue a license to any person who applies for same to participate in thoroughbred racing in the Commonwealth as a horse owner, trainer, jockey, apprentice jockey, agent, stable employee, racing official, association employee, or employee of a person or concern contracting with the association to provide a service or commodity and which requires their presence on association grounds during a race meeting, or veterinarian, farrier, horse dentist, or supplier of food, tack, medication, or horse feed, if the commission finds that the financial responsibility, age, experience, reputation, competence, and general fitness of the applicant to perform the activity permitted by a license, are consistent with the best interest of racing and the maintenance of the honesty, integrity, and high quality thereof.

Section 5. Grounds for Refusal, Suspension, or Revocation of a License. The commission in its discretion may refuse to issue a license to an applicant, or may suspend or revoke a license issued, or order disciplinary measures, on the following grounds:

(1) Denial of a license to an applicant, or suspension or revocation of a license in another racing jurisdiction; the commission may require reinstatement in the original racing jurisdiction where applicant was denied a license or where his license was suspended or revoked;

(2) Conviction of a crime or violation of any regulation dealing with a controlled substance;

(3) Falsification, misrepresentation, or omission of required information in license application to the commission; failure to disclose to the commission complete ownership or beneficial interest in a horse entered to be raced; misrepresentation or attempted misrepresentation in connection with the sale of a horse or other matter pertaining to racing or registration of thoroughbreds;

(4) Making false or misleading statements to the commission or the stewards, in the course of an investigation;

(5) Failure to comply with any order or ruling of the commission, stewards, or racing official pertaining to a racing matter;

(6) Ownership of any interest in, or participation by any manner in, any bookmaking, pool-selling, touting, bet solicitation, or illegal enterprise, or association with any person so engaged in such activity;

(7) Person less than sixteen (16) years of age;

(8) Person unqualified by experience or competence to perform the activity permitted by license as determined by standard examination prescribed by the stewards;

(9) Intoxication, use of profanity, fighting or any conduct of a disorderly nature, on association grounds;

(10) Employment or harboring of unlicensed persons required by these rules to be licensed;

(11) Discontinuance of or ineligibility for activity for which license was issued;

(12) Possession on association grounds, without written permission therefor from the commission or stewards, of:

(a) Firearms;

(b) Battery, or buzzer, or electrical device, or other appliance other than an ordinary whip which could be used to alter the speed of a horse in a race or workout.

(13) Possession on association grounds by a person other than a licensed veterinarian of:

(a) Hypodermic needle, or hypodermic syringe, or other device which could be used to administer any substance to a horse;

(b) Narcotics, or medication, or drugs, or substance which could be used to alter the speed of a horse in a race.

(14) Use of profane, abusive, or insulting language to or interference with a commissioner, member of the commission staff, or racing

official, while such persons are in the discharge of their duties;
(15) Cruelty to a horse or neglect of a horse entrusted to a licensee's care;
(16) Offering, promising, giving, accepting, or soliciting a bribe in any form, directly or indirectly, to or by a person having any connection with the outcome of a race, or failure to report knowledge of same immediately to the stewards;
(17) Causing, or attempting to cause, or participation in any way in any attempt to cause the prearrangement of a race result, or failure to report knowledge of same immediately to the stewards;
(18) Entering, or aiding and abetting the entering of, a horse ineligible or unqualified for the race entered;
(19) Drug addiction, bad moral character, intemperate habits, bad reputation for honesty, truth and veracity, or involvement in a subject of public notice as involved in any activity which, in the opinion of the commission, would be inconsistent with the best interests of racing by reflection on the honesty and integrity of the sport of racing, or association with persons so characterized;
(20) Violation of any rule of the commission, or aiding or abetting any person in violation of any such rule.

Section 6. License Applications for Associations. Any person or legal entity desiring to conduct thoroughbred racing in the Commonwealth may apply to the commission for association license. Such application shall be made in writing on application forms prescribed by the commission and filed at the commission general office on or before September 1 of the year preceding the calendar year in which the license is to be in force. Such application shall contain:
(1) Name and location of track. Initial applications shall be accompanied by such physical information as the commission may require.
(2) Names and addresses of all officers, directors, stockholders, and other persons owning or controlling a beneficial interest in the association with such degree of ownership or type of interest shown; names and addresses of all persons capable of exercising any control over affairs of the association as trustee or guardian or lessor, or mortgagee, or fiduciary. Any corporation, partnership, or other legal entity which owns or controls a beneficial interest in the association directly, or through other corporations or legal entities, shall similarly file with the application lists showing the names and addresses of all officers, directors, stockholders, and other persons owning or controlling a beneficial interest in such legal entities with such degree of ownership or type of interest thereunto pertaining. No application shall be acted upon by the commission until the commission is satisfied a full disclosure has been made.
(3) Days and hours thereof on which racing is requested to be conducted, and number of races to be run on each day.
(4) Names of racing officials and persons responsible for track security and fire protection.
(5) Proposed purse schedule, showing minimum purse, average daily distribution, added money for each stake, if any.
(6) An operating report on forms prescribed by the commission if applicant is currently licensed.
(7) Such other information as the commission may from time to time require to ascertain the fitness of the applicant to conduct thoroughbred racing.

Section 7. License Application for Participants in Racing. (1) Any person other than an association required to be licensed by Section 1 of this regulation and desiring to participate in thoroughbred racing in the Commonwealth may apply to the commission for a license. Such application shall be made in writing on application forms prescribed by the commission and filed at the commission general office or with the commission license administrator at the association on or after January 2 of the calendar year in which the license is to be in force, but not later than twenty-four (24) hours after applicant has arrived on association grounds.
(2) Applications from persons not previously licensed in Kentucky shall include the names of two (2) reputable persons who will attest to the good reputation of the applicant and to the capability and general fitness of the applicant to perform the activity permitted by the license.
(3) Applications from persons whose age is not readily ascertainable by the licensing committee shall be accompanied by an attested copy of birth certificate or work permit showing applicant is sixteen (16) years or older.
(4) Fingerprint identification shall be required of all licensees unless waived by the commission (i.e., absentee owners and casual delivery personnel who do not enter the stable area).
(5) Applications from persons, corporations, partnerships, lessors, or other legal entities involving more than one individual person desiring to race horses in the Commonwealth shall, in addition to designating the person or persons to represent the entire ownership of such horses, be accompanied by documents which fully disclose the identity and degree and type of ownership held by all individual persons who own or control a present or reversionary interest in such horses. No application shall be acted upon by the commission until the commission is satisfied a full disclosure has been made.
(6) Applications from persons desiring to treat, or prescribe for, or attend any horse on association grounds as a practicing veterinarian, shall be accompanied by evidence that such person is currently licensed as a veterinarian by the Commonwealth of Kentucky. An accredited practicing veterinarian not licensed by the commission or the Commonwealth, however, may with permission of the stewards in an emergency be called in as a consultant, or to serve as a veterinarian for one (1) horse on a temporary basis, and shall not thereby be considered as participating in racing in this state.
(7) Applications from persons desiring to treat, or prescribe for, or attend any horse on association grounds as a dental technician shall be accompanied by the name of a licensed veterinarian who will attest to the technical competence of such applicant and under whose sponsorship and direction such applicant will

work on association grounds.

(8) Applications from persons not previously licensed in the capacity of farrier shall not be forwarded with recommendation to the commission by the licensing committee until such applicant has been administered a standard examination by an experienced farrier known to the stewards so as to provide the licensing committee a reasonable basis for recommendation as to the technical proficiency of such applicant for a farrier's license.

(9) The following annual fees shall accompany the application and shall not be refundable:

(a) Thirty-five (35) dollars - owner license, trainer, assistant trainer, veterinarian, dental technician, blacksmith, farrier, or apprentice farrier license; jockey, farm manager/agent, racing official, steward, commission veterinarian, commission supervisor of pari-mutuel betting, commission director of security, commission license administrator, commission inspector, commission horse identifier; commission chemist, testing laboratory employee; racing department employee license, racing secretary, assistant racing secretary, director of racing, starter and assistant starter, paddock judge, patrol judge, placing judge, timer;

(b) Twenty-five (25) dollars - veterinarian assistant, stable-area supplier license (suppliers of horse feed, tack, medication, or food vendors); person employed by a concern contracting with the association to provide a service or commodity and which employment requires their presence on association grounds during a race meeting, jockey apprentice;

(c) Forty-five (45) dollars - jockey agent;

(d) Ten (10) dollars - association employee and occupational license, valet, jockey room custodian, clerk of scales, entry clerk, photo finish operator, film patrol or video tape operator and projectionist, flagman, or outrider, association security department including police chief, detectives, policemen, watchmen, firemen, ambulance drivers and attendants; track superintendent, groundsmen, mechanics, carpenters; maintenance department manager and employees, admission department manager and employees; concessions manager and employees, parking manager and employees; all other persons employed by the association;

(e) Five (5) dollars - stable employee license (foreman, exercise boy, groom, hotwalker, watchman, or pony boy);

(f) Twenty (20) dollars - mutuel department employee license, manager, calculator, sheet writer, supervisor, ticket checker, ticket seller, ticket cashier, messenger, runner, outbook clerk, program clerk, porter, information and change clerk, boardman, ticket room and money room clerk, assistant, totalizator employee;

(g) Thirty (30) dollars - life colors.

[(a) $25 - Owner license and annual color registration;]

[(b) $25 - Trainer, jockey, apprentice jockey, or jockey's agent license;]

[(c) $25 - Veterinarian, veterinarian assistant, dental technician, assistant trainer, farrier, or apprentice farrier license;]

[(d) $5 - Stable employee license (foreman, authorized agent, exercise boy, groom, hotwalker, watchman, or pony boy);]

[(e) $10 - Farm manager/agent, stable-area supplier license (supplier of horse feed, tack, medication, or food vendors);]

[(f) $10 - Racing department employee license, steward, racing secretary, assistant racing secretary, director of racing, starter and assistant starter, paddock judge, patrol judge, placing judge, timer, commission veterinarian, commission chemist, commission supervisor of pari-mutuel betting, commission director of security, commission license administrator, commission inspector, association veterinarian, testing laboratory employee, horse identifier, valet, jockey room custodian, clerk of scales, entry clerk, photo finish operator, film patrol or video tape operator and projectionist, flagman, or outrider, association security department including police chief, detectives, policemen, watchmen, fire, ambulance drivers and attendants; track superintendent, groundsmen, mechanics, carpenters; maintenance department manager and employees;]

[(g) $10 - Mutuel department employee license, manager, calculator, sheet writer, supervisor, ticket checker, ticket seller, ticket cashier, messenger runner, outbook clerk, program clerk, porter, information and change clerk, boardman, ticket room and money room clerk, assistant, totalizator employee;]

[(h) $10 - Occupational license, admission department manager and employees; concessions manager and employees; parking manager and employees; all other persons employed by the association or employed by a person or concern contracting with the association to provide a service or commodity and which employment requires their presence on association grounds during a race meeting.]

[(i) $5 - Temporary occupational license for persons to be employed in occupations listed in paragraph (h) above for ten (10) days or less during a calendar year.]

Section 8. Licensing Committee. The commission may appoint a licensing committee including the commission secretary and commission steward or their designated representative. Such licensing committee shall review all applications for all licenses, and forward all such applications to the commission with recommendations thereon, subject to security checks, for final action. Such licensing committee may issue to a license applicant a temporary permit to participate in the activity for which such license application was made pending administrative processing and final action on such license application by the commission.

Section 9. Term of License. Licenses issued by the commission for participation in thoroughbred racing shall be valid from the date of issuance through the calendar year shown on such license at all race meetings conducted by associations in the Commonwealth during such calendar year, unless sooner suspended, revoked, or voided. The commission may renew any license and any such renewal shall not be construed to be a waiver of or to condone any violation which occurred prior to such renewal and shall not prevent subsequent proceedings against the licensee therefor.

Section 10. Possession of License Required. No person required to be licensed by these rules may participate in any activity required to be licensed on association grounds during a race meeting without having been issued a valid license therefor and having same in his

possession. All licenses specified under Section 7(9)(b) to (f) of this regulation shall include a color photograph of the licensee and shall be openly displayed on the backside of association grounds at all times.

Section 11. Applicability of Rules and Rulings to Household. Rules pertaining to, and rulings against, licensees shall apply in like force to the spouse and members of the immediate family or households of the licensee, unless there is a showing on the part of an affected spouse, or affected member of the immediate family or household of the licensee, and the stewards in their discretion so find, that the continuation of participation in racing by such affected person will in no way circumvent the intent of the rule, or effect of the ruling, by permitting a person under the control or direction of the licensee to serve in essence as a substitute for a suspended licensee, or person ineligible to participate in a particular activity.

Section 12. Notice for Discontinuance of Employment. Licensed associations, racing officials, owners, trainers, jockeys, agents, farriers, stable employees, and all other licensees who have accepted with advance notice the conditions under which a race meeting is planned to be conducted, shall before terminating employment, engagements, or activities under such conditions, so notify the commission and respective interested persons or associations of such intention at least fifteen (15) days before such termination. The commission shall upon notice to parties in interest conduct a hearing on the matter. If the commission finds that the cause of termination is unreasonable, unlawful, or contrary to these rules, the commission shall so advise all parties in interest and shall take appropriate action against offending parties. If the commission finds that the cause of termination is reasonable, lawful, and not contrary to these rules, the commission shall so advise all parties in interest and shall use its best efforts to settle the dispute.

Section 13. This administrative regulation shall expire on adjournment of the next regular session of the General Assembly.

LYLE G. ROBEY, Chairman
APPROVED BY AGENCY: October 1, 1991
FILED WITH LRC: October 8, 1991 at 9 a.m.
PUBLIC HEARING: A public hearing will be held on November 21, 1991 at 10 a.m., at the offices of the Kentucky State Racing Commission at the Kentucky Horse Park, 4063 Iron Works Pike, Building B, Lexington, Kentucky. Those interested in attending the hearing should contact in writing: Michael W. Lankford, Chief Administrative Officer, Kentucky State Racing Commission, 4063 Iron Works Pike, Bldg. B., Lexington, Kentucky 40511.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Michael Lankford
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected:
1. First year: $50,000
2. Continuing costs or savings: $50,000/year
3. Additional factors increasing or decreasing costs (note any effects upon competition): (See tables following regulation)
(b) Reporting and paperwork requirements: N/A
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs: N/A
(b) Reporting and paperwork requirements: N/A
(3) Assessment of anticipated effect on state and local revenues: $50,000
(4) Assessment of alternative methods; reasons why alternatives were rejected: (See tables following regulation)
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:
(a) Necessity of proposed regulation if in conflict: N/A
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A
(6) Any additional information or comments: (See tables following regulation)
TIERING: Was tiering applied? No. Not applicable.

LICENSE FEES IN OTHER STATES

	A-1	B-1	C-1	C-2	D-1	E-1	E-2	E-3	F-1	F-3	G-1	H-1	J-1
Arkansas	25.00	20.00	20.00	10.00	5.00	5.00	5.00	20.00	20.00	20.00	5.00	5.00	10.00
California	150.00	150.00	150.00	75.00	35.00	75.00	75.00	75.00	150.00	150.00	75.00	35.00	150.00
Florida	40.00	40.00	40.00	10.00	10.00	40.00	150.00	10.00	40.00	40.00	10.00	10.00	40.00
Illinois	25.00	25.00	25.00	25.00	5.00	25.00	25.00	5.00	25.00	25.00	25.00	5.00	25.00
Ky-Harness	25.00	25.00	25.00	25.00	5.00	25.00	12.00	25.00	25.00	25.00	12.00	12.00	25.00
Louisiana	25.00	25.00	100.00	25.00	25.00	25.00	25.00	25.00	25.00	25.00	25.00	12.50	25.00
Maryland	95.00	85.00	10.00	5.00	2.00	0.00	2.00	2.00	10.00	10.00	2.00	2.00	5.00
Missouri	25.00	25.00	50.00	50.00	5.00	10.00	50.00	5.00	25.00	25.00	10.00	5.00	10.00
New Jersey	50.00	50.00	50.00	25.00	5.00	5.00	25.00	15.00	25.00	25.00	15.00	5.00	25.00
New York	50.00	30.00	30.00	20.00	5.00	10.00	10.00	10.00	50.00	20.00	10.00	10.00	5.00
Ohio	25.00	25.00	25.00	10.00	10.00	25.00	25.00	10.00	25.00	25.00	10.00	10.00	25.00
Oklahoma	50.00	50.00	50.00	50.00	25.00	25.00	50.00	25.00	50.00	50.00	25.00	25.00	50.00
Tennessee	25.00	25.00	50.00	50.00	10.00	10.00	10.00	10.00	25.00	25.00	10.00	10.00	10.00
Texas	50.00	50.00	50.00	40.00	20.00	50.00	50.00	50.00	50.00	50.00	20.00	20.00	10.00
Washington	15.00	15.00	15.00	15.00	5.00	5.00	5.00	5.00	15.00	5.00	5.00	5.00	5.00
W. Virginia	12.50	12.50	12.50	20.00	4.00	12.50	20.00	4.00	12.50	7.50	5.00	4.00	6.00
AVERAGE	42.97	40.78	43.91	28.44	11.00	21.72	33.69	18.50	35.78	32.97	16.50	10.97	26.63
MEAN	68.75	68.75	68.75	35.00	15.50	35.00	72.50	35.50	68.75	77.50	36.50	16.50	72.50
KENTUCKY	25.00	25.00	25.00	25.00	5.00	10.00	10.00	10.00	25.00	25.00	10.00	10.00	10.00
AVE vs. KY	17.97	15.78	18.91	3.44	6.00	11.72	23.69	8.50	10.78	7.97	6.50	0.97	16.63
MEAN vs. KY	43.75	43.75	43.75	10.00	10.50	25.00	62.50	25.50	43.75	52.50	26.50	6.50	62.50

KENTUCKY THOROUGHBRED LICENSE FEE STRUCTURE COMPARISON – 1990

The following comparison of the license fee structures of other states should enable us to better position OUR fee structure. For simplicities sake we shall use our Alpha-Numa Codes. They are as follows:

A-1 – Owner
B-1 – Trainer
C-1 – Vet
C-2 – Blacksmith
D-1 – Stable Employee
E-1 – Racing Official
E-2 – Vendor
E-3 – Association Employee
F-1 – Jockey
F-3 – Jockey Agent
G-1 – Mutual
H-1 – Occupational
J-1 – Farm Mgr/Agent

PUBLIC PROTECTION AND REGULATION CABINET
Kentucky State Racing Commission
(Proposed Amendment)

810 KAR 1:012. Horses.

RELATES TO: KRS 230.210 to 230.360
STATUTORY AUTHORITY: KRS Chapter 13A
NECESSITY AND FUNCTION: To regulate conditions under which thoroughbred racing shall be conducted in Kentucky. The function of this regulation is to outline the requirements for horses entered to be raced.

Section 1. Registration Required. No horse may be entered or raced in this state unless duly registered and named in the registry office of the Jockey Club in New York and unless the registration certificate or racing permit issued by the Jockey Club for such horse is on file with the racing secretary; except, however, the stewards may for good cause, in their discretion, waive this requirement if the horse is otherwise correctly identified to the stewards' satisfaction. Jockey Club registration certificate of each horse must be filed with the horse identifier within forty-eight (48) hours after the horse's arrival on the grounds.

Section 2. Ringers Prohibited. (1) No horse may be entered or raced in this state designated by a name other than the name under which such horse is currently registered with the Jockey Club in New York. In the event a horse's name is changed by the Jockey Club, such horse's former name shall be shown parenthetically in the daily race program the first three (3) times such horse races after such name change.

(2) No person shall at any time cause or permit the correct identity of a horse to be concealed or altered, nor shall any person refuse to reveal the correct identity of a horse he owns, or which is in his care, to a racing official or member of the regular news media.

(3) No horse shall race in this state without a legible lip tattoo number applied by agents of the Thoroughbred Racing and Protective Bureau effective January 1, 1989. Prior to January 1, 1989, the stewards may for good cause, in their discretion, waive this requirement if the horse is otherwise correctly identified to the stewards' satisfaction.

(4) No horse may be entered or raced in this state if previously involved in a "ringer" case to the extent that: a person having control of such horse knowingly entered or raced such horse while designated by a name other than the name under which such horse was registered with the Jockey Club; or such person having control of such horse participated in or assisted in the entry or racing of some other horse under the name registered as belonging to such horse in question.

Section 3. Denerving. (1) Any horse on which a neurectomy has been performed shall have such fact designated on its registration certificate or racing permit. It shall be the joint responsibility of the practicing veterinarian who performed the operation and the trainer of such denerved horse to insure that such fact is designated on the registration certificate or racing permit.

(2) Any horse whose ulnar, radial, or median nerve has been either blocked or removed (known as high nerved), or whose volar or plantar nerve

has been blocked or removed bilaterally, shall not be entered or raced in this state.

(3) Any horse whose volar or plantar nerve has been removed unilaterally or which has had a posterior digital neurectomy (known as low nerved), may be permitted to race provided such denerving has been reported by the trainer to the stewards, and such horse has been approved for racing by the commission veterinarian prior to being entered for a race.

(4) In the event a horse races in violation of this rule and participates in the purse distribution, then no protest thereon will be considered unless submitted in writing to the stewards within forty-eight (48) hours after such race.

(5) In the event a horse races in violation of this rule and is claimed, then no protest thereon will be considered unless the successful claimant submits such protest in writing forty-eight (48) hours requesting the claim be voided. Should the claim be voided, the horse shall be returned to the owner who started such horse in such race, and the claim price shall be returned to the claimant.

(6) A list of all denerved horses shall be posted in the racing secretary's office. No person shall report a horse as having a neurectomy when in fact such horse has not.

Section 4. Bleeders. Effective January 1, 1989, any horse that bleeds either during or after a race or workout that is not on bleeder medication may race on bleeder medication at the discretion of the commission veterinarian. Horses that bleed while on bleeder medication shall be placed on the veterinarian's list and shall remain on the list until removed by the commission veterinarian after consultation with the practicing veterinarian. If the commission veterinarian and the practicing veterinarian disagree on the removal of the horse from the veterinarian's list, then a third veterinarian shall be appointed by the chairman of the commission or his designee and his opinion shall be delivered to the secretary of the commission or his designee who shall then decide the issue.

Section 5. Health Certificate Required. No horse may be stabled on association grounds unless, within ten (10) days prior to arrival on association grounds, such horse has been examined by an accredited practicing veterinarian who certifies as to the identity of such horse, temperature at time of examination, and that to the best of his knowledge and belief such horse is free from any infectious or contagious disease or exposure thereto and observable ectoparasites, and further certifies as to such other matters as may be required from time to time by the Kentucky State Veterinarian in Frankfort. Notice of this requirement shall accompany stall applications and be included in the condition book.

Section 6. Workouts. No horse may be schooled in the paddock, or taken onto a track on association grounds for training or workout, other than during normal training hours posted by the association, without special permission of the stewards.

Section 7. Age Restrictions. No maiden six (6) years of age or older which has made five (5) life time starts on the flat may be entered or start.

Section 8. Fillies and Mares Bred. Any filly or mare that has been covered by a stallion shall be so reported to the racing secretary prior to being entered in a race. A list of all fillies and mares so reported, showing the names of stallions to which they have been bred, shall be posted in the racing secretary's office. No filly or mare that has been covered by a stallion may be entered in a claiming race unless a written release from the stallion owner is attached to such filly or mare's registration certificate indicating that the stallion service fee has been paid or satisfied.

Section 9. Serviceable for Racing. No horse may be entered or raced that:

(1) Is not in serviceable, sound racing condition. The stewards may at any time cause a horse on association grounds to be examined by a qualified person.

(2) Is posted on a veterinarian's list, or stewards' list, or starter's list, or is suspended, in any racing jurisdiction.

(3) Has been administered any drug in violation of 810 KAR 1:018.

(4) Is blind or has seriously impaired vision in both eyes.

(5) Is not correctly identified to the satisfaction of the stewards.

(6) Is owned wholly or in part by, or is trained by, an ineligible person.

Section 10. Equipment. (1) Whips and blinkers must be used consistently on a horse. Permission to change use of any equipment used on a horse in its last previous start must be obtained from the stewards. A horse's tongue may be tied down during a race with a clean bandage or gauze. A horse's bridle may weigh no more than two (2) pounds; <u>bits must be of a metallic alloy base (stainless steel or aluminum) and may be encased in rubber, plastic, or leather;</u> war bridles are prohibited. No horse may race in ordinary training shoes; bar shoes may be used for racing only with permission of the stewards.

(2) Use on a horse either in a race or workout of any goading device, or chain, or spurs, or electrical or mechanical device, or appliance other than the ordinary whip which could be used to alter the speed of such horse, is prohibited.

(3) No whip shall be used that weighs more than one (1) pound or is longer than thirty (30) inches with one (1) popper. No stingers or projections extending through the hole of a popper or any metal part on a whip shall be permitted. Indiscriminate or brutal use on a horse of an ordinary whip, as determined by the stewards in their sole discretion, is prohibited.

Section 11. Sex Alteration. Any alteration in the sex of a horse must be reported by such horse's trainer to the racing secretary promptly, and the racing secretary shall note same on such horse's registration certificate.

Section 12. Postmortem Examination. Each horse which suffers a breakdown on the race track, in training, or in competition, and is destroyed, and/or each horse which expires while stabled on a race track under jurisdiction of the Racing Commission, shall undergo a postmortem examination at the University of Kentucky at the

discretion of the commission steward and/or the commission veterinarian.

LYLE G. ROBEY, Chairman
APPROVED BY AGENCY: October 1, 1991
FILED WITH LRC: October 8, 1991 at 9 a.m.
PUBLIC HEARING: A public hearing will be held on November 21, 1991 at 10 a.m., at the offices of the Kentucky State Racing Commission at the Kentucky Horse Park, 4063 Iron Works Pike, Building B, Lexington, Kentucky. Those interested in attending the hearing should contact in writing: Michael W. Lankford, Chief Administrative Officer, Kentucky State Racing Commission, 4063 Iron Works Pike, Bldg. B., Lexington, Kentucky 40511.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Michael Lankford
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected:
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A
(b) Reporting and paperwork requirements: N/A
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs: N/A
(b) Reporting and paperwork requirements: N/A
(3) Assessment of anticipated effect on state and local revenues: N/A
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: 1:012 Section 10
(a) Necessity of proposed regulation if in conflict: Safer races.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Yes
(6) Any additional information or comments: Inexpensive plastic bits have been used and horses bite through the, thus losing bridle and endangering both horse and jockey.
TIERING: Was tiering applied? No. Not applicable.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings & Construction
Division of Building Codes Enforcement
(Proposed Amendment)

815 KAR 7:070. Requirements for certification of Kentucky Building Code inspectors.

STATUTORY AUTHORITY: KRS 198B.040(3), 198B.050(3)(c), (6), 198B.090
PURSUANT TO: KRS 198B.050(5)
NECESSITY AND FUNCTION: The department is required by KRS 198B.090 to create and administer a building official's certification program which is designed to ensure uniform statewide enforcement of applicable state building codes. This regulation establishes the testing, training and continuing education requirements for two (2) specifically designated professional classifications of building code inspectors: building inspector and plans and specifications inspector. This amendment is necessary to upgrade the criteria for enrolling, actively pursuing certification and for full certification to provide for better qualified inspectors under the Kentucky Building Code.

Section 1. Definitions and Categories of Inspectors. The scope of authority for each category of inspector identified is specifically limited according to the following description of responsibilities. Depending on the type and level of responsibility assumed by the jurisdiction, certification in more than one (1) category may be required.

(1) "Actively pursuing departmental certification" means that each person who is seeking certification pursuant to this regulation shall sit for examination of at least one (1) module of the NCPCCI per year. Failure of any candidate to receive a passing score on each required module within three (3) years of employment shall terminate that person's ability to qualify under this definition. Limited certificates may continue to be renewed after three (3) years. EXCEPTION: The commissioner, in his discretion, may waive the literal requirements of this subsection, as applied to an entire class of candidates, whenever circumstances warrant a waiver because changes in testing procedures, standards or dates or other reasons would render strict application unfair.

(2) [(1)] "Certified building inspector" means a person classified under this definition as either a level I, level II or level III building inspector whose responsibility it is to inspect buildings as part of a permit application, to determine that the structures are free from conditions that would present a life safety, health or fire hazard to persons using the [such] buildings, and to determine that the buildings are constructed in accordance with the Kentucky Building Code. [This person must have been tested for competency in NCPCCI modules 1B and 3B and otherwise met the requirements of the department. This person is authorized by this regulation to make on-site inspections of all buildings, including one (1) and two (2) family dwellings within his/her jurisdiction, regardless of size. This person is further authorized to review and approve plans on those buildings which are the responsibility of local governments under KRS 198B.060(2).]

(a) "Level I inspector" means a person who has been tested for competency in NCPCCI modules 1B and 3B and otherwise met the requirements of this regulation. This person shall be deemed qualified to review and approve plans and make on-site inspections only on those buildings which are the responsibility of local governments under KRS 198B.060(2).

(b) "Level II inspector" means a person who has been tested for competency in NCPCCI modules 1B, 3B and 4B and otherwise met the requirements of this regulation. This person shall be deemed qualified to review and approve plans for buildings which are the responsibility of local government under KRS 198B.060(2) and to make on-site inspections of all buildings, regardless of size, pursuant to KRS 198B.060(4).

(3) [(2)] "Certified plans and specifications inspector (level III inspector)" means a person

whose responsibility it is to determine that the plans submitted as part of a building permit application comply with the Kentucky Building Code and referenced standards, and who has been tested for competency in NCPCCI modules 1B, 1C, 3B, [and] 3C and 4B and otherwise met the requirements of the department as set forth in this regulation. This person shall also be deemed qualified to review and approve plans and [is further authorized] to make on-site inspections of all buildings [within his/her jurisdiction], regardless of size, within the inspector's jurisdiction as established pursuant to KRS 198B.060 to determine if those buildings are constructed in accordance with the plans and in accordance with the Kentucky Building Code.

(4) [(3)] "Limited certificate" means a document [limited authorization] issued by the department which represents the level of competency for which a person has been tested. [The department will issue a document specifying on its face that the person is qualified to perform the stated activity only.] This certificate shall be issued only after the person has met the training requirements stated in Section 3 of this regulation.

(5) [(4)] NCPCCI means "National Certification Program for Construction Code Inspectors" and are exam modules developed by the national code enforcement organizations in collaboration with the Educational Testing Service for the purpose of providing nationally recognized evidence of competence and professionalism in construction code enforcement and shall be used to meet the module testing requirements required herein. Other required training or testing shall be provided through the department.

Section 2. Inspection Operations. (1) It is the specific intention of this regulation to ensure that all Kentucky Building Code inspection programs require plan review and on-site inspection of buildings only by persons who comply with [have been tested for competency under] this regulation.

(2) Any [Each] person who has successfully completed any NCPCCI exam module as listed in this regulation may apply for [shall be given] a "limited certificate." The [This] certificate shall be issued and shall qualify the individual only for that inspection or plan review function on which the individual [he/she] has been tested. For example, persons holding a limited certificate for NCPCCI Module Building One (1) and Two (2) Family-1A are deemed qualified to inspect and review plans for single family and duplex residential buildings only. Each person must renew the certification as required by Section 5(2) of this regulation and otherwise comply with this regulation.

(3) Each local government and the department shall provide for the services of certified inspectors. In circumstances where the jurisdiction chooses to distribute the inspection or plan review functions to more than one (1) person, each person shall be certified in the [his/her] respective area of responsibility.

(4) Certification of plumbing, elevator and electrical inspectors are not covered by this regulation.

Section 3. Training and Testing Requirements to Become Certified as a Kentucky Building Code Inspector. [(1)] Each candidate seeking certification shall comply with the provisions of this section [possess the ability to read and write the English language and possess a general educational level satisfactory to perform his duties].

(1) [(2)] Each candidate seeking to become certified pursuant to this regulation shall be required to be trained [and/]or tested on the administrative and accessibility sections of the Kentucky Building Code as set forth in 815 KAR 7:010 and 7:060 [as determined by the board].

(2) [(3)] Each candidate seeking certification shall successfully complete the NCPCCI exam module[(s)] which is[/are] applicable to the category of inspector [activity in] which the [said] candidate is applying for [shall be engaged]. Unless the candidate qualifies as actively pursuing departmental certification under Section 4 of this regulation, no person shall be responsible for any inspection or plan review activity unless the person has [for which he/she has not] been tested and passed the appropriate [said] tests. The testing modules are as follows:

(a) Building One (1) and Two (2) Family - 1A;
(b) Building General - 1B;
(c) Fire Protection General - 3B;
(d) Building Plan Review - 1C;
(e) Fire Protection Plan Review - 3C;
(f) Mechanical - 4B.

(3) [(4)] Continuing education. [From time to time,] The department shall establish continuing education programs for the purpose of keeping the inspectors updated on code requirements. Participation in these programs shall be mandatory for all inspectors in order to maintain certification.

Section 4. Minimum Requirements [Deadline] for Certification. (1) All persons charged with the responsibility of inspecting buildings or [and] reviewing building plans for compliance with the Kentucky Building Code shall be certified or enrolled and actively pursuing departmental certification within ninety (90) days after employment of the [such] inspector. All [Such] persons shall register with the department, complete the necessary application forms and pay the required fees stated in Section 5 of this regulation, within the ninety (90) day [said] timetable.

(2) Except where personnel rules have been established by local ordinance for any jurisdiction, the minimum requirements set forth in paragraphs (3)(a) through (d) of this section shall apply.

(3) No applicant shall be enrolled for the purpose of actively pursuing certification unless and until the applicant shows proof that he possesses at least one (1) of the following credentials:

(a) High school graduate or general education diploma (GED); plus three (3) years experience in a responsible directly related construction position, such as a foreman, requiring the ability to effectively read and interpret building plans and specifications, or three (3) years experience in an architect's or engineer's office performing building design or drafting duties; or

(b) College or university graduate with an associate degree in construction related subject; or

(c) College or university graduate with a bachelor degree in architecture, engineering,

fire science or building technology; or

(d) Successful passage of at least one (1) examination module listed in Section 3(2) of this regulation.

(4) If an applicant seeks to be enrolled to actively pursue certification and he does not meet at least one (1) of the requirements in subsection (3)(a) through (d) of this section, he shall show proof that he complies with the personnel rules of the jurisdiction for which he is employed.

[(2) "Actively pursuing departmental certification" means that each person who is seeking certification pursuant to this regulation shall sit for examination of at least one (1) module of the NCPCCI per year. Failure of any candidate to receive a passing score on each required module within three (3) years of employment shall terminate that person's ability to qualify under this definition. Limited certificates may continue to be renewed after three (3) years.]

[EXCEPTION 1: Where any candidate has been employed by a local jurisdiction and his three (3) years have expired, he shall be allowed one (1), and only one (1), additional year from the date of his original employment to achieve certification, upon written petition of the jurisdiction to the commissioner and still be covered by this definition. This exception is available only to those candidates who have passed at least one (1) required NCPCCI test module within the three (3) year period. No candidate shall be allowed to use this exception more than once. The petition must be filed prior to the expiration date of the certificate holder and prior to June 30, 1988.]

[EXCEPTION 2: The commissioner, in his discretion, may waive the literal requirements of this section, as applied to an entire class of candidates, whenever circumstances warrant such waiver because changes in testing procedures, standards or dates or other reasons would render such strict application unfair.]

[(3) Time constraints for certification as stated in subsection (2) of this section shall not apply to those persons seeking certification who are not engaged in an inspection or plan review capacity.]

Section 5. Application for Training and Certification. (1) Each person seeking to become a candidate for certification pursuant to this regulation shall submit an application on a form provided by the department, together with a fee of twenty-five (25) dollars to cover the administrative costs of processing the application, establishing the training program and issuing certificates.

(2) Each certified inspector and each candidate enrolled and actively pursuing certification shall be required to pay an additional annual renewal fee [of the sum] of twenty-five (25) dollars no later than June 30, of each year in order to maintain [his/her] certification.

Section 6. Suspension and Revocation of Certification. (1) Formal written complaints concerning an inspector must be submitted to [through] the Department [to the Board] of Housing, Buildings and Construction for review and appropriate action.

(2) No action shall be taken against any building inspector governed under this regulation unless after a hearing to review the inspector's procedures, the department determines that the inspector is not enforcing the Kentucky Building Code. [If, upon investigation, the board determines that there is reason to believe that the certified inspector has willfully, negligently or recklessly violated his/her duties as set forth in this regulation, the board may take action for the revocation or suspension of his/her certificate. No such action shall be taken unless the inspector is afforded the opportunity to be heard.]

Section 7. "Grandfather Clause." Any person enrolled and actively pursuing certification prior to the effective date of this amended regulation shall be governed by the applicable requirements of the law in existence at the time of their enrollment or certification.

CHARLES A. COTTON, Commissioner
THEODORE T. COLLEY, Secretary
APPROVED BY AGENCY: October 11, 1991
FILED WITH LRC: October 15, 1991 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1991 at 3 p.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 November 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 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 persons interested in being employed to review plans or make inspections under the KBC and all local government and state government with code enforcement programs.

(a) Direct and indirect costs or savings to those affected: No costs or savings involved - merely sets qualifications and competency criteria.

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: Sole effect on department is to create a broader but more competent pool of building officials.

(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 anticipated effect on revenue.
(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternate method of certification is to have similar training and testing for all levels of certified inspectors but chose tiering because level of expertise varies with size and type of occupancy of buildings.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no known conflicting law.
(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. There are 3 levels of inspector expertise for 2 different jurisdictional levels (less credentials for small buildings with less occupants and more for larger, more complex structures). Plan review of larger more complex structures needs the highest level of qualifications.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings & Construction
Office of State Fire Marshal
(Proposed Amendment)

815 KAR 25:010. Mobile homes.

RELATES TO: KRS 227.550 through 227.660, 227.990
STATUTORY AUTHORITY: KRS 227.570, 227.590
NECESSITY AND FUNCTION: KRS 227.590 requires the Mobile Home Certification and Licensure Board to establish rules and regulations governing the standards for manufacture, sale, installation and alteration of mobile homes; and the office of the State Fire Marshal to license mobile home dealers pursuant to KRS 227.610 and to issue certificates of acceptability pursuant to KRS 227.580. These regulations are intended to assure safety for owners and occupiers of mobile homes. This amendment is necessary to clarify that all mechanical systems in mobile homes are to be inspected when dealers sell used mobile homes, to create a definition of installation, to tier the licensing of dealers whose only activity is brokering mobile homes owned by others located on private property and to make it unlawful for a dealer to sell a mobile home if he cannot provide its title. [This amendment is necessary to upgrade the quality of inspections and otherwise provide efficient administration of the law. This amended regulation was approved by the Mobile Home Board on May 9, 1991.]

Section 1. Definitions. In addition to the following definitions, the definitions of National Fire Protection Association Pamphlet Number 501(b) and the HUD Act shall apply:
(1) "Act" means the Mobile Home and Recreational Vehicle Act, KRS 227.550 to 227.660.
(2) "Agency, testing" means an independent organization which is:
(a) Primarily interested in testing and evaluating equipment and installations;
(b) Qualified and equipped for, or to observe experimental testing to approved standards;
(c) Not under the jurisdiction or control of any manufacturer or supplier of any industry;
(d) Makes available a published report in which specific information is included stating that the equipment and installations listed or labeled have been tested and found safe for use in a specific manner; and
(e) Approved by the board.
(3) "Alteration or conversion" means the replacement, addition, modification or removal of any equipment or installations which may affect the body and frame design and construction, plumbing, heat-producing, cooling, fuel burning systems or electrical systems or smoke detectors or their function unless excluded by this regulation.
(4) "ANSI" means the American National Standards Institute.
(5) "Board" means the Mobile Home Certification and Licensure Board defined in KRS 227.550(1).
(6) "Certificate of acceptability" means the certificate provided to the manufacturer signifying the manufacturer's ability to manufacture, import or sell mobile homes within the state to licensed Kentucky dealers.
(7) "Certified Kentucky dealer" means a dealer who is approved by the State Fire Marshal to inspect used mobile homes before registration or title in [which are brought into] Kentucky, and repair them, if necessary, under NFPA 501(B) before placing a "B" seal upon them.
(8) "Class "A" seal" as defined by KRS 227.550(2) is for application on new mobile homes not covered by the HUD Act.
(9) "Class "B" seal" as defined by KRS 227.550(3) is for application on used mobile homes.
(10) "Dealer" as defined by KRS 227.550(4).
(11) "Established place of business" as defined by KRS 227.550(5).
(12) "Hard surfaced lot" means an area open to the public during business hours with a surface of concrete, asphalt/macadam, compacted gravel or stone, or other material of similar characteristics.
(13) "HUD Act" or "federal act" as defined by KRS 227.550(6).
(14) "Installation" means the set-up and connection of utilities of the mobile home upon delivery to the consumer and includes all activities for the set-up, such as site design and foundation systems, attachment of water service and electrical facilities, and all additions to the unit.
(15) [(14)] "Manufacturer" as defined by KRS 227.550(8).
(16) [(15)] "Manufactured housing" as defined by KRS 227.550(7).
(17) [(16)] "Mobile home or manufactured home" as defined by KRS 227.550(9). Homes or recreational vehicles known as "park trailers" under the HUD Act are regulated by 815 KAR 25:020.
(18) [(17)] "NFPA" means National Fire Protection Association pamphlets published by and available from the National Fire Protection Association, Batterymarch Park, Quincy, Massachusetts 02269.

(19) [(18)] "Offer for sale" means to display, exhibit or otherwise advertise a mobile home. It also means negotiating the purchase and sale or exchange of mobile homes for a fee, commission, compensation, or other valuable consideration.

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

(21) [(20)] "Red tag" means a written notice which is applied to a mobile home by a representative of the State Fire Marshal's Office in accordance with Section 10 of this regulation signifying that the mobile home is not in compliance with applicable laws.

(22) [(21)] "Registration" means the transfer of title or any other official recording of change of ownership.

(23) [(22)] "Salvage unit" means any used mobile home which is identified by the State Fire Marshal and the dealer, or by title, to not be subject to "B" seal requirements because it is not to be sold or used for habitable purposes.

(24) [(23)] "Suitable sign" means a sign with the dealership name and type of dealership in letters of a minimum height of six (6) inches and minimum width of one and one-half (1 1/2) inches.

(25) [(24)] "Used mobile home" means any mobile home unit which is offered for sale after the original purchase. These units are not covered by the HUD Act.

Section 2. Authorization and Enforcement. (1) These rules are authorized by KRS 227.590 and established pursuant to the rule making procedures set forth in KRS Chapter 13A, in order to implement, interpret, and carry out the provisions of laws of 1974, as amended in 1976, KRS Chapter 227, relating to mobile homes. Title VI of the Federal Housing and Community Development Act of 1974 (HUD Act), shall govern all new mobile homes.

(2) Subject to the provisions of applicable law, the Office of the State Fire Marshal shall administer and enforce all the provisions of the Mobile Home and Recreational Vehicle Act. Any officer, agent, or employee of the State Fire Marshal's office is authorized to enter any dealer's place of business in order to inspect any mobile home for which the office has issued a seal of approval, or to inspect the mobile home's equipment and its installations to insure compliance with the Act, the code and the HUD Act and these regulations. Upon complaint and request by the owner or occupant, a privately owned mobile home requiring [bearing] a seal may be entered to determine compliance with these regulations. When it becomes necessary to determine compliance, the inspector may require that a portion of the mobile homes be removed or exposed in order that a compliance inspection can be made.

Section 3. Scope and Purpose of the Act and Regulations. Except to the extent otherwise stated in the Act, this regulation shall govern the design, manufacture, installation and sale of new and used mobile homes not covered by the HUD Act, which are manufactured, sold or leased for use within or outside of the Commonwealth by dealers and manufacturers. Any person, firm or corporation who sells or offers for sale in Kentucky three (3) or more mobile homes in any consecutive twelve (12) month period shall be considered a dealer subject to all requirements set forth in this regulation and KRS 227.550 to 227.660. These regulations apply to mobile homes manufactured in manufacturing facilities located within or outside the Commonwealth. Mobile homes brought into this state for exhibition use only, in accordance with Section 9(4) of this regulation, and which shall not be sold in this state, shall be exempt from the requirements of this regulation if inspections reveal no condition hazardous to health or safety.

Section 4. Standards for Manufactured Homes in Manufacturers' or Dealers' Possession. (1) The office shall enforce standards and requirements for the installation of plumbing, heating, cooling, fuel burning systems, electrical systems and smoke detectors in mobile homes not covered by the HUD Act, as it determines are reasonably necessary to protect the health and safety of the occupants and the public.

(2) The office shall also enforce the standards and requirements for the body and frame design, construction and installation of mobile homes.

(3) All new mobile homes not covered by the HUD Act, manufactured for sale within the Commonwealth of Kentucky, shall be constructed in accordance with NFPA 501(B), 1977 edition, hereby adopted by reference. Copies of this publication are available from the National Fire Protection Association, 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269-9101. This material is available for public inspection 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.

(4) NFPA 501(B), which is adopted by reference in subsection (3) of this section shall be the standard for all used mobile homes, unless otherwise provided in this regulation, and it shall be used by the dealer upon inspection in accordance with subsection (7) of this section to determine and certify:

(a) The safe and adequate working condition of the electric, heating, cooling, fuel burning and plumbing systems; and

(b) The door, window, and general structural integrity of the unit; and

(c) The sealing of all exterior holes to prevent the entrance of rodents, and repaired if necessary; and

(d) The existence of adequate and operable smoke detection equipment; and

(e) The existence of storm windows.

(5) All mobile homes taken in trade by the dealer shall be reinspected and certified that they are in compliance with requirements of subsection (4) of this section. The existing Class "A" or Class "B" seal shall be removed and a new seal affixed to the unit or a new seal may be affixed over the existing seal or label. When a new mobile home purchased under the provision of the HUD Act is resold, it becomes a used mobile home and subject to the provisions of this section. "A" and "B" seals shall not be required if the dealer submits to the office an affidavit that the unit is a salvage unit. No salvage unit shall be sold until it has been authorized, in writing, by the office to be labeled "salvage only" and the label has been affixed to the unit by the dealer. Upon prior approval of the office, one (1) licensed dealer may sell units to another licensed dealer without applying seals.

(6) All mobile homes shall be installed in

accordance with manufacturer's instructions or ANSI A225.1/NFPA 501A, Manufactured Home Installations, 1982 Edition, hereby adopted by reference. Copies of this publication are available from the National Fire Protection Association, 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269-9101. This material is available for public inspection 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.

(7) All new mobile homes purchased outside the Commonwealth of Kentucky not bearing a Class "A" seal of approval or a HUD label and all used mobile homes purchased outside the Commonwealth of Kentucky, regardless of the type seal or label affixed, shall be inspected by a certified Kentucky dealer or the office and a Class "B" seal of approval affixed prior to registration of the home. This inspection shall consist of the following:

(a) Inspection of the plumbing and waste systems, to determine operability and absence of leaks.

(b) Inspection of the heating, cooling or fuel burning system [unit] to determine adequacy of system.

(c) Inspection of the electrical system, including the main circuit box and all outlets/switches, to detect any damaged coverings, lost screws, or improper installations.

(d) Inspection for the existence of adequate and operable smoke detection equipment.

(e) Inspection for storm windows. EXCEPTION: This paragraph and paragraph (4)(e) of this subsection shall not apply to mobile homes built prior to the HUD Act.

(8) Any licensed Kentucky mobile home dealer that maintains the capability to perform minor maintenance of plumbing, heating, cooling, fuel burning systems, and electrical systems of mobile homes shall be permitted to inspect and certify those mobile homes purchased in another state for use within the Commonwealth of Kentucky. Any dealer desiring to perform this service, shall make application to the Office of the State Fire Marshal for appropriate certification as a certified Kentucky dealer. The office shall maintain a list of all certified mobile home dealers.

(9) Any unit found to be in noncompliance with the requirements of Section 4(5) or (7) of this regulation, shall be corrected prior to the dealer certifying the unit or offering the unit for sale unless the unit has been issued a salvage label in accordance with this regulation. All units requiring repairs or correction prior to unit certification, shall be reported to the office specifying the repairs required to correct the deficiencies. Appropriate reporting forms shall be made available to qualified dealers performing inspection.

(10) The fee for the inspection of mobile homes shall be twenty (20) dollars per hour plus twenty-two (22) cents per mile and a twenty-five (25) dollar seal fee when performed by a certified Kentucky dealer. Inspections performed by the office shall be thirty-five (35) dollars inspection fee and twenty-five (25) dollars seal fee.

Section 5. Applicability and Interpretation of Code and Regulation Provisions. Any questions regarding the applicability or interpretation of any provisions of the HUD Act, the code or regulation adopted shall be submitted to the office, in writing, by any interested person. It is the policy of the office that with respect to questions regarding NFPA 501(B), that the questions shall, whenever feasible, first be submitted to the NFPA for their recommendation; however, the office shall answer these questions and render the official interpretations and the decision of the office shall be in writing.

Section 6. Certificate of Acceptability. (1) No manufacturer shall manufacture, import, or sell any mobile home in this state unless he has procured a certificate of acceptability from the board. Compliance shall be enforced through KRS 227.992. Mobile homes not covered by the HUD Act, manufactured in this state and designed for delivery to and for sale in a state that has a code that is inconsistent with NFPA 501(B) shall not comply with this provision.

(2) Requirements for issuance.

(a) The manufacturer shall submit and the office shall approve in-plant quality control systems.

(b) A $500 fee shall accompany the application. The fee shall be paid by check or money order and shall be made payable to Kentucky State Treasurer.

(c) The manufacturer shall furnish and maintain with the office a certificate of insurance from a Kentucky authorized insurance company for general liability insurance to include lot and completed operations insurance in the minimum amount of $300,000 bodily injury or death for each person, $400,000 bodily injury or death for each accident, and $100,000 property damage.

(3) Quality control measures shall be provided for all mobile units not covered by the HUD Act (i.e., all office and used units). To obtain in-plant quality control approval, a manufacturer shall submit a system for in-plant control pursuant to paragraph (b) of this subsection and submit to inspection by the office for field certification of satisfactory quality control. Applications for approval of in-plant quality control systems shall contain the following:

(a) A certified copy of the plans and specifications of a model or model-group for body and frame design, construction, electrical, heating, cooling, fuel burning systems and plumbing systems. All plans shall be submitted on sheets, the minimum possible size of which is eight and one-half (8 1/2) inches by eleven (11) inches and the maximum possible size of which is twenty-four (24) inches by thirty (30) inches. The manufacturer shall certify that the systems comply with NFPA 501(B).

(b) Also, a copy of the procedure which will direct the manufacturer to construct mobile homes in accordance with the plans, specifying:

1. Scope and purpose.
2. Receiving and inspection procedure for basic materials.
3. Material storage and stock rotation procedure.
4. Types and frequency of product inspection
5. Sample of inspection control form used.
6. Responsibility for quality control programs, indicating personnel, their

assignments, experience and qualifications.
7. Test equipment.
8. Control of drawings and material specifications.
9. Test procedures.

(4) A unit certification format certifying compliance with the Act and this regulation shall be submitted to the office no later than the end of the first week of each month for those units manufactured under the state code and not bearing a HUD label, i.e., mobile offices, add-a-rooms, duplex units, etc. The unit certification format shall contain the information in the format as outlined in Section 13 [12] of this regulation.

(5) A manufacturer to which a certificate of acceptability has been issued shall not modify in any way its manufacturing specifications without prior written approval of the office.

(6) If the manufacturer is also a dealer, he shall also comply with dealer licensing provisions.

(7) If the applicant does not conform with these regulations, the applicant shall be so notified in writing by the office within ten (10) working days of the date received. If the applicant fails to submit a corrected application in accordance with the information supplied on the application correction notice, the application shall be deemed abandoned and twenty (20) percent of fees due shall be forfeited to the office. Any additional submission shall be processed as a new application.

(8) Manufacturers shall notify the office, in writing, within thirty (30) days of any of the following occurrences:

(a) The corporate name is changed;

(b) The main address of the company is changed;

(c) There is a change in twenty-five (25) percent or more of the ownership interest of the company within a twelve (12) month period;

(d) The location of any manufacturing facility is changed;

(e) A new manufacturing facility is established; or

(f) There are changes in the principal officers of the firm.

(9) Any information relating to building systems or in-plant quality control systems which the manufacturer considers proprietary, shall be so designated at the time of plans submission, and shall be so held by the office, and by the inspection, evaluation, and local enforcement agencies unless the board determines in each case that disclosure is necessary to carry out the purposes of the Act.

(10) If the office determines that the standards for mobile home units are at least equal to NFPA 501(B) because they comply with the Kentucky Building Code, it may issue a certificate of acceptability for the mobile homes.

(11) Under proceedings for the suspension of a certificate of acceptability for any of the violations enumerated in the Act, the holder of a certificate of acceptability may have the alternative, subject to the approval of the board, to pay in lieu of part or all of the days of any suspension the sum of fifty (50) dollars per day.

Section 7. Serial Numbers, Model Numbers, Date Manufactured. A clearly designated serial number, model number, and date manufactured shall be stamped into the mobile home tongue, or front cross member of the frame at the lower left hand side (while facing the unit), and if there is no tongue or cross member, then a data plate with this information shall be affixed on the outside in a conspicuous place.

Section 8. Dealer License. (1) A dealer of mobile homes shall not engage in business in this state without a license issued by the office upon application.

(2) Application shall contain the following information:

(a) Name and address of the chief managing officer;

(b) Location of each and every established place of business;

(c) Social security number and date of birth of chief managing officer;

(d) Affidavit certifying compliance with the Act and regulations;

(e) Names of offices, if dealership in corporate form;

(f) Names of partners, if dealership in partnership form;

(g) A copy of a valid Kentucky sales tax certificate;

(h) Any other information the office deems commensurate with safeguarding of the public interest in the locality of the proposed business;

(3) All licenses shall be granted or refused within thirty (30) days after application, and shall expire, unless revoked or suspended, on December 31 of the calendar year for which they are granted.

(4) The license fee shall be $200. The fee shall be paid by check or money order and shall be made payable to the Kentucky State Treasurer.

(5) The license shall be conspicuously displayed at the established place of business. If the business location is changed, the office shall endorse the change of location on the license without charge if it is located within the same municipality. A change of location to another municipality shall require a new license.

(6) The dealer shall furnish and maintain with the office a certificate of insurance to certify proof of liability insurance in the minimum amount of $200,000 bodily injury or death for each person, $300,000 bodily injury or death for each accident, and $100,000 property damage.

(7) Dealers shall maintain a record of all units sold, new and used, to include serial numbers, Kentucky seal numbers ("A" or "B"), date manufactured, make, and the name and address of the purchaser. This report shall be in the format depicted in Section 14 [13] of this regulation. The report shall be made available to the field inspector on a monthly basis.

(8) A dealer shall not have the authority to make any alterations to any mobile home manufactured under the HUD Act or NFPA 501(B) without the express permission of the manufacturer; except that in the case of used mobile homes, permission may be obtained from the State Fire Marshal's Office in accordance with this regulation. Any dealer altering a mobile home, shall be guilty of a federal violation and shall be subject to the penalties provided in KRS 227.990. Alteration of a mobile home shall include but is not limited to: addition or deletion of windows, doors, or partitions; conversion of a heating, cooling,

fuel burning systems [producing appliance] from one (1) fuel to another, i.e., electric to gas or gas to electric or oil; addition of an electrical circuit to accommodate a washer or dryer; addition of central air conditioning when the unit is not designed for that purpose; improper or improperly listed materials for the repair of a unit; installing an unlisted heating, cooling, or fuel burning [producing] appliance, etc. The following shall not constitute an alteration or conversion: replacement of equipment in kind, i.e., gas furnace with gas furnace; replacement or changing of furniture to accommodate the consumer and any other cosmetic repairs.

(9) Notification of a change in the application information shall be made within thirty (30) days of any of the following occurrences:

(a) Dealership name is changed;

(b) Established place of business is changed (move to a different county requires a new license);

(c) There is a change in twenty-five (25) percent or more of the ownership interest of the dealership within a twelve (12) month period; or

(d) There are changes in the principal officers of the firm.

(10) Out-of-state dealers with valid Kentucky licenses. Exception: any applicant whose place of business is in another state and who possesses a valid dealers license in another state shall be licensed upon application and approval by the office in accordance with this regulation. These out-of-state dealers shall provide Kentucky seals for units actually sold for delivery into Kentucky.

(11) If any person who sells mobile homes does not take possession or ownership of the mobile homes and offers for sale used mobile homes only as a negotiation or broker for a fee, commission, compensation or other valuable consideration, the person shall apply for and be issued a license as a dealer for that limited function pursuant to this regulation with the following conditions:

(a) His established place of business may be his business address and the dealer shall not be required to have a hard surfaced lot for display and repair; and

(b) The unit shall be inspected by the office or a certified Kentucky dealer and the "B" seal of approval or salvage label shall be affixed to the unit prior to offering it for sale.

Section 9. Temporary License. (1) No person, other than one duly licensed in Kentucky pursuant to Section 8 of this regulation, shall show or offer mobile homes within the Commonwealth of Kentucky; except that, for the express purpose of retailing the units to the general public at a specified location, the person or company may purchase from the Office of the State Fire Marshal a temporary license. The temporary license shall not exceed fifteen (15) days duration and the license fee shall be $100 for each authorized event. The applicant for the license shall notify the department at least thirty (30) days in advance of any event at which he plans to exhibit mobile homes for sale giving the name, location and time of the proposed event.

(2) Applicant shall meet the following requirements before a temporary license is granted:

(a) Be a duly licensed dealer in a state other than Kentucky;

(b) Furnish to the office a certificate of insurance to certify that the dealership has proper liability insurance in the minimum amount of $200,000 bodily injury or death for each person, $300,000 bodily injury or death for each accident, and $100,000 property damage;

(c) Provide satisfactory assurance to the office by way of a physical inspection by an authorized representative of this office that each new unit not covered by the federal Act the dealer intends to display, show or offer for sale, bears a Kentucky Class "A" seal of approval. Used mobile homes shall not be permitted to be shown or offered for sale within the Commonwealth of Kentucky by nonresident dealers at any time;

(d) Possess a valid Kentucky Sales Tax Certificate;

(e) Provide all other information required by the office;

(f) The state in which the applicant is licensed shall have reciprocal provisions for temporary licensing of Kentucky dealers.

(3) Temporary licenses shall be prominently displayed at the location where the applicant is transacting business.

(4) Temporary licenses shall not be required for those dealers attending a mobile home show within the Commonwealth of Kentucky if they do not sell or offer for sale to the general public new or used mobile homes, and if the dealer has notified the department, in writing, at least thirty (30) days in advance of any event at which he plans to exhibit mobile homes, giving the name, location and time of the proposed event.

Section 10. Seals. (1) A manufacturer who has received a certificate of acceptability from the office shall not sell or offer for sale to Kentucky dealers in this state mobile homes not covered by the HUD Act, unless they bear a Class "A" seal of approval issued by and purchased from the office. This provision shall not apply to vehicles sold or offered for sale for shipment out of state.

(2) A dealer who has received a license from the office shall not sell or offer for sale a mobile home except as permitted between licensed dealers, pursuant to Section 4(5) of this regulation, unless it has either a HUD seal, an "A" seal, a "B" seal or a salvage label, except as otherwise provided in this regulation. Any dealer who has acquired a used mobile home without a seal, shall apply to the office for a Class "B" seal by submitting an affidavit certifying either that all electrical, heating, cooling, fuel burning systems and plumbing equipment has been checked, and if necessary, repaired, and is now in safe working condition, or that the unit meets the applicable code.

(a) Acquisition of seal.

1. Any manufacturer, except one altering a new mobile home not covered by the HUD Act bearing a seal, shall qualify for acquisition of a Class "A" seal by obtaining a certificate of acceptability pursuant to KRS 227.580 and Section 6 of this regulation.

2. Any dealer, except one altering a mobile home bearing a seal, shall qualify for acquisition of a Class "B" seal by giving an affidavit certifying either that all electrical, heating, cooling, fuel burning systems and

plumbing equipment has been checked, if necessary, repaired, and is now in safe working condition or that the unit meets the applicable code.

(b) Application for seals.

1. Any person who has met the applicable requirements of Section 6 or 8 of this regulation shall apply for seals in the form prescribed by the office. The application shall be accompanied by the seal fee of twenty-five (25) dollars for each Class "A" seal or twenty-five (25) dollars for each Class "B" seal.

2. If the applicant has qualified to apply for seals pursuant to the in-plant quality control approval method, the seal application shall include the certificate of acceptability number.

(c) Alteration or conversion of a unit bearing a seal.

1. Any alteration of the construction, plumbing, heat-producing, cooling, fuel burning systems equipment, electrical equipment installations or fire safety in a mobile home not covered by the HUD Act, which bears a seal, shall void the approval and the seal shall be returned to the office.

2. The following shall not constitute an alteration or conversion for those mobile homes not covered by the HUD Act:

a. Repairs with approved component parts.

b. Conversion of listed fuel-burning appliances in accordance with the terms of their listing.

c. Adjustment and maintenance of equipment.

d. Replacement of equipment in kind.

e. Any change that does not affect those areas covered by NFPA 501(B) or the HUD Act.

3. Any dealer proposing an alteration to a mobile home not covered by the HUD Act bearing a seal, shall make application to the office. The application shall include:

a. Make and model of mobile home.

b. Serial number.

c. State seal number.

d. A complete description of the work to be performed together with plans and specifications, when required.

e. Location of the mobile home where work is to be performed.

f. Name and address of the owner of the mobile home.

4. Upon completion of the alteration, the applicant shall request the office to make an inspection.

5. The applicant may purchase a replacement seal, based on inspection of the alteration for a fee of two (2) dollars.

(d) Denial and repossession of seals. If inspection reveals that a manufacturer is constructing mobile homes not covered by the HUD Act (such as office units) according to NFPA 501(B); or, if inspection reveals that any dealer failed to repair a used mobile home under the standards and procedures set forth in this regulation and KRS 227.550 to 227.660 or failed to comply with any other provision for placement of seals and labels; and the dealer or manufacturer, after having been served with a notice setting forth in what respect the provisions of these rules and the code have been violated, continues to manufacture, sell or offer for sale mobile homes in violation of these rules and the code, applications for new seals shall be denied and the seals previously issued and unused shall be confiscated and credit given. Upon satisfactory proof of compliance, the manufacturer or dealer shall resubmit an application for seal.

(e) Seal removal. If a mobile home not covered by the HUD Act is found to be in violation of these rules, the office shall attach to the vehicle a notice of noncompliance or a "red tag" and furnish the manufacturer or dealer a copy of same. The office, dealer or manufacturer shall not remove the noncompliance "red tag" until corrections have been made, and the owner or his agent has requested an inspection in writing to the office and given an affidavit certifying compliance. Removal of any "red tag" shall result in repossession of all seals held by the dealer or manufacturer until the facility is once again in full compliance with the Act and this regulation.

(f) Placement of seals.

1. Each seal shall be assigned and affixed to a specific mobile home not covered by the HUD Act. Assigned seals shall not be transferable unless assigned between dealers and shall be void when not affixed as assigned, and all seals shall be returned to or may be confiscated by the office. The seal shall remain the property of the office and may be seized by the office in the event of violation of the Act or regulations.

2. The seal shall be securely affixed by the door on the handle side at approximately handle height.

3. No other seal, stamp, cover, or other marking shall be placed within two (2) inches of the seal.

(g) Lost or damaged seals.

1. When a seal becomes lost or damaged, the office shall be notified immediately in writing by the owner. The owner shall specify the manufacturer, the mobile home serial number, and when possible, the seal number.

2. All damaged seals shall be promptly returned. Damaged and lost seals shall be replaced by the office with a replacement seal upon payment of the replacement seal fee of two (2) dollars.

3. A dealer shall not display, sell or offer for sale a mobile home not covered by the HUD Act unless an "A" or "B" seal or salvage label is affixed.

Section 11. Examination for Installation of Manufactured Homes. The office shall administer an examination designed to determine qualifications based on NFPA 501A and other applicable standards adopted by regulation by the board. Any dealer or other person who successfully completes the examination shall be deemed qualified to install manufactured homes. The dealer shall be responsible for the proper installation of the manufactured home as required by the standards adopted by the board.

Section 12. No dealer shall sell or offer for sale any mobile home upon which he cannot present a marketable title to the purchaser.

Section 13. [12.] Mobile Home Unit Certification Format.

MOBILE HOME
UNIT CERTIFICATION FORMAT

_____
Name of Manufacturer

Mailing Address _____ County _____

City _____, State _____ Zip Code _____

I hereby certify that the mobile homes as described hereon have been constructed in compliance with NFPA 501 B.

No.	Serial #	KY Seal #	Date Mfg.	Model	Size	Dealer
1						
2						
3						
4						
5						

This form shall be used in reporting units to the Office of the State Fire Marshal. The form shall be completed in duplicate with the original to be sent to the Office of the State Fire Marshal, and the copy retained by the manufacturer. This form shall be mailed to the State Fire Marshal when the last entry has been filled or not later than the first week of each month.

Date _____ BY _____ Person Authorized to Certify These Units

Section 14. [13.] Dealer Certification Format.

DEALER CERTIFICATION FORMAT

Name of Dealer _____

Mailing Address _____ County _____

City _____, State _____ Zip Code _____

I hereby certify that the used units described hereon have been inspected and are in compliance with the standards as required by KRS 227.550 through KRS 227.660 and regulations thereto and that the new mobile homes described hereon have the appropriate HUD label.

No.	Serial #	HUD LABEL #/ KY Seal #	Date Mfg.	Make	Purchaser & Address

This form shall be used in reporting units to the field inspector.

Date _____ Signature _____

CHARLES A. COTTON, Commissioner
THEODORE T. COLLEY, Secretary
APPROVED BY AGENCY: October 14, 1991
FILED WITH LRC: October 15, 1991 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1991 at 2 p.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 November 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 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 persons or companies in the mobile home business and those persons seeking to lawfully "broker" mobile homes.
(a) Direct and indirect costs or savings to those affected: License fee for "broker" dealers.
1. First year: $200 for each license.
2. Continuing costs or savings: Same as first year.
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: Same as regular licensing.
(2) Effects on the promulgating administrative body: This amendment makes administration of the mobile home program more equitable and efficient.
(a) Direct and indirect costs or savings: There are no additional costs incurred by this amendment. The department will receive additional fee as stated above. This additional fee will help take the program out of the red and allow sufficient personnel, etc. to be paid from agency fees.
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 anticipated effect on state or local revenue created by this amendment.
(4) Assessment of alternative methods; reasons why alternatives were rejected: For those who act as brokers but never take possession of homes, to have a hard surface lot sufficient to show and repair homes seemed unreasonable.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: Not aware of any conflicting, overlapping or duplicating law.
(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. See Necessity and Function section (reason for amendment).

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Title VI, National Mobile Home Construction and Safety Standards Act of 1974.
2. State compliance standards. NFPA 501B.
3. Minimum or uniform standards contained in the federal mandate. Uniform standards.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

CABINET FOR HUMAN RESOURCES
Department for Social Services
(Proposed Amendment)

900 KAR 1:040. [Ombudsman] Guardianship responsibilities.

RELATES TO: KRS 210.290
STATUTORY AUTHORITY: KRS 194.050
NECESSITY AND FUNCTION: Pursuant to [As prescribed by] KRS 210.290, the Cabinet for Human Resources may be appointed by the court to act as executor, administrator, guardian, limited guardian, conservator, or limited conservator for persons who have been determined to be mentally, partially disabled, or disabled and no other suitable person or entity is available and willing to act as limited guardian, guardian, limited conservator, or conservator. Pursuant to KRS 194.050 [provides that] the Secretary of the Cabinet for Human Resources shall, by regulation, develop policies and operate programs concerned with the welfare of the citizens of the Commonwealth. This [proposed] regulation sets forth the policies and procedures which shall [will] be employed by the Cabinet for Human Resources when administering the guardianship program.

Section 1. Cabinet for Human Resources [Ombudsman] Guardianship Responsibilities. (1) The responsibility to act as guardian, limited guardian, conservator, or limited conservator shall be administered by the Department for Social Services [Office of the Ombudsman].
(2) The Department for Social Services [Office of the Ombudsman] shall assume responsibility to act as executor, administrator, guardian, limited guardian, conservator, or limited conservator for a Kentucky resident [only] after an application has been filed by the Department for Social Services [Office of the Ombudsman] through its designated worker [officer] in the district court of the county in which the determination is made for appointment.
(3) Requests for guardianship services may be made on behalf of mentally disabled or partially disabled persons to the Department for Social Services [Office of the Ombudsman].
(4) The Department for Social Services [ombudsman] shall designate a worker [an agent] who shall [will] act on behalf of a person for whom the Cabinet for Human Resources has been appointed guardian, limited guardian, conservator, or limited conservator.

LARRY MICHALCZYK, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: September 26, 1991
FILED WITH LRC: October 4, 1991 at 4 p.m.
PUBLIC HEARING: A public hearing on this regulation will be held on November 21, 1991, at 9 a.m. in the Department for Employment Services Conference Room, 2nd Floor, CHR Building, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office by November 16, 1991: Ryan Halloran, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Nancy Varney
(1) Type and number of entities affected: On September 16, 1989, a total of 2,560 CHR Guardianship cases were transferred from the Office of the Ombudsman to the Department for Social Services. Since that time the total caseload has increased to 2,719.
(a) Direct and indirect costs or savings to those affected: There will not be any direct and indirect costs or savings to the affected entities as the proposed regulations only clarify the correct terminology in order to improve the existing regulations.
1. First year: There will not be any direct and indirect costs or savings to the affected entities as the proposed regulations only clarify the correct terminology in order to improve the existing regulations.
2. Continuing costs or savings: There will not be any continuing costs or savings to the affected entities as the proposed regulations only clarify and correct terminology in order to improve the existing regulations.
3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors that would increase or decrease costs or effect competition for the affected entities because the proposed regulations only clarify and correct terminology in order to improve the existing regulations.
(b) Reporting and paperwork requirements: There will not be any change in the affected entities reporting and paperwork requirements.
(2) Effects on the promulgating administrative body: There will not be any cost or savings to the Department for Social Services as the proposed regulations only clarify and correct terminology in the current regulations. The proposed regulations will improve the language of the regulation but does not effect the way in which the department administers the guardianship program but only transfers it from one program to another.
(a) Direct and indirect costs or savings: There will not be any direct or indirect cost or savings to the Department for Social Services as the proposed regulation only clarifies and corrects terminology in the existing regulations.
1. First year: There will not be any direct or indirect cost or savings during the first year for the Department for Social Services as the proposed regulation only clarifies and corrects

terminology in the existing regulations.

2. Continuing costs or savings: There will not be any continuing costs or savings to the affected entities as the proposed regulations only clarify and correct terminology in order to improve the existing regulations.

3. Additional factors increasing or decreasing costs: There are no additional factors that would increase or decrease costs or effect competition for the Department of Social Services because the proposed regulations only clarify and correct terminology in order to improve the existing regulations.

(b) Reporting and paperwork requirements: There will not be any change in the Department for Social Services reporting and paperwork requirements.

(3) Assessment of anticipated effect on state and local revenues: There will not be any anticipated effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No other alternate methods were considered because the proposed regulations only clarify and correct terminology in order to improve the existing regulations.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate in the proposed regulations.

(a) Necessity of proposed regulation if in conflict: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate in the proposed regulation.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate in the proposed regulation.

(6) Any additional information or comments: There are no additional information or comments of which we are aware.

TIERING: Was tiering applied? No. This regulation was not tiered as it moved the entire guardianship program statewide from the Office of the Ombudsman to the Department for Social Services.

CABINET FOR HUMAN RESOURCES
Office of Policy and Budget
(Proposed Amendment)

900 KAR 1:060. Protection of human subjects.

RELATES TO: 45 CFR 46.101 to 46.409 [KRS 194.050]

STATUTORY AUTHORITY: KRS 194.050, 45 CFR 46.101 to 46.409

NECESSITY AND FUNCTION: The cabinet is required, by 45 CFR 46.101 through 46.409, to have an Institutional Review Board for the Protection of Human Subjects [(IRB)] to protect the rights and welfare of human subjects of research conducted or sponsored by the cabinet. [KRS 194.050 authorizes the Secretary for Human Resources to adopt such regulations as are necessary to qualify for the receipt of federal funds.] This regulation: (a) incorporates [adopts,] by reference, applicable federal regulations and publications which set forth the type of projects covered, definitions, assurances, membership, functions and operations, review procedures, criteria for approval of research, record requirements, informed consent requirements, consent documentation, ethical principles and guidelines, a listing of research activities which may be reviewed through expedited review procedures and other relevant matters; and (b) covers specific requirements for protecting human subjects in studies sponsored or funded by the Cabinet for Human Resources within the larger requirements defined by federal regulation.

Section 1. Definitions. As used in this regulation the following terms shall have the meanings set forth below:

(1) "Board" means the cabinet's Institutional Review Board established by this regulation and attached to the Office of Policy and Budget.

(2) "Health risk project" means a project in which the intervention variable is judged by the board to have a potential for adversely affecting the health of human research subjects.

(3) "Research" shall have the meaning set forth in 45 CFR 46.102(e) and in addition shall include descriptive and exploratory research activities, that lay the ground work for contributions to knowledge.

[(4)] Research shall be considered ["]sponsored["] by the Cabinet for Human Resources if:

(a) It is supported financially by the cabinet;

(b) [if] It uses staff or facilities provided by the cabinet; or

(c) [if] It is sponsored or endorsed by cabinet policy makers.

(4) [(5)] "Auxiliary review board" means an independently functioning local board [IRB] within the Cabinet for Human Resources established to serve a particular facility or institution.

(5) "Cabinet for Human Resources" shall be referred to as the cabinet.

(6) "Principal investigator" is the investigator involved in the research project who has responsibility for making decisions regarding the research study.

[Section 2. Incorporation by Reference. The cabinet hereby incorporates by reference 45 CFR 46.101 through 45 CFR 46.409, revised as of 3/8/83, pertaining to the Protection of Human Subjects. The decisions of the board concerning the protection of human subjects shall be guided by the "Belmont Report: Ethical Principles and Guidelines for the Protection of Human Subjects of Research, Report of the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research," published 4/18/79. The federal regulations incorporated by reference and the Belmont Report are available upon request from the Office of Policy and Budget, Kentucky Cabinet for Human Resources and as a two (2) volume appendix (DHEW Publication No.(OS) 78-0013 and No.(OS) 78-0014) from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.]

Section 2. [3.] Institutional Review Board. (1) An Institutional Review Board [(IRB)] for the Protection of Human Subjects within the

cabinet [for Human Resources (CHR)] is hereby created. The board shall be attached to the Office of Policy and Budget [(OPB)].

(2) The board [IRB] shall consist of not less than five (5) nor more than eleven (11) members appointed by the secretary. Members representing various professional and academic fields shall be nominated by department commissioners or by office heads and appointed by the secretary. The board shall meet as needed to review projects. The board shall include a chairman appointed by the secretary of the cabinet.

(3) The Executive Director of the Office of Policy and Budget shall provide the necessary staff and administrative support and shall serve as liaison between the board and the U.S. Department of Health and Human Services. Staff appointed by the Executive Director of the Office of Policy and Budget shall ensure the following:

(a) Maintenance of appropriate records;

(b) Conduct a preliminary review of submitted projects on a timely basis;

(c) Refer all projects, to which the regulations are applicable, to the board; and

(d) Make recommendations to the board on the disposition of the applicable projects.

Section 3. [4.] Project Submission. (1) It shall be the responsibility of the appropriate division director, commissioner, or office head to direct the project administrators under their jurisdiction to submit research projects, involving human subjects, to the Office of Policy and Budget [OPB] for possible consideration by the board. Project submission shall include three (3) copies each where applicable of the following:

(a) Institutional Review Board for the Protection of Human Subjects, request for approval of research activity form; [a request for approval form,]

(b) A narrative description of the project's purpose and proposed research procedures;

(c) The research instrument(s) to be used;

(d) A narrative description of how subject confidentiality will be addressed; and

(e) The research subject consent form that is appropriate for the research project.

(2) No modification in the research protocol or design of an approved research project, that could increase the level of risk to the subjects shall be implemented unless first approved by the board. If [In the event that such] alterations are necessary, it shall be the responsibility of the research administrator to obtain the prior approval of the board. Failure to obtain such approval may result in the suspension or termination of the initial board approval and the requirement that all research activity be stopped.

Section 4. [5.] Scope of Board Approval. (1) Board approval of a project represents only a judgment that human subjects have been adequately protected and shall not in any way represent a judgment concerning its ultimate research value or a policy decision regarding the value of the research to the cabinet [for Human Resources].

(2) The board shall have the ultimate responsibility of reviewing all research projects involving human subjects, when the research is sponsored by the Cabinet for Human Resources and when it is not specifically exempted from board review. Where the primary review is performed by an approved auxiliary review board, the board may limit its review to the findings and recommendations of the auxiliary review board or the board may choose to conduct its own review of the project.

(3) A research administrator may request a reconsideration of an adverse decision by the board by submitting a written request for reconsideration to the Executive Director of the Office of Policy and Budget.

(4) The [Such a] request shall [must] be made within thirty (30) days of the principal investigator's notification of adverse decision.

(5) Upon receipt, the request for reconsideration and any related documents shall be conveyed to the board chairman for reconsideration. [Such] A reconsideration shall be made in the same manner as the initial review.

Section 5. [6.] Board Responsibilities. (1) The board chairman shall, in coordination with the Office of Policy and Budget, call [such] meetings as needed to conduct board business on a timely basis.

(2) Reviews and recommendations concerning projects shall be consistent with the criteria specified in the federal regulations 45 CFR 46.101 to 46.409 incorporated by reference and using the Institutional Review Board for the Protection of Human Subjecst Request for Approval for Research Activity [guidelines and] form[s] adopted by the board.

Section 6. [7.] Responsibilities of Principal Investigators. (1) If any changes are made in research design or protocol that in any way affect the level of risk to subjects, confidentiality procedures, or consent procedures, such changes shall be submitted, before implementation, to the board for approval.

(2) Any unanticipated problems involving risks to subjects or others as a result of research activity, are to be reported to the board within ten (10) working days.

(3) [(2)] If a project is defined as a ["]health risk project["] by the board, the principal investigator shall report to the board all research subject deaths, which become known to him [or her], whether the death appears likely to be related to participation in the research project. Reports of such deaths shall be made to the board in writing within seven (7) days of the principal investigator's knowledge of the death.

(4) Prepare annual reports and submit annual requests for reapproval of ongoing research studies. Submit a copy of final research finding and conclusions.

Section 7. [8.] Auxiliary Review Boards. (1) The chief executive of the cabinet [CHR] institutions or facilities conducting research, subject to the federal regulations pertaining to human subjects, may form auxiliary review boards to conduct the required review of such projects. The establishment of auxiliary review boards shall be approved by the Secretary of the cabinet [for Human Resources].

(2) Auxiliary review boards, as institutional review boards, shall conduct reviews consistent with these administrative regulations.

(a) The findings and recommendations of the auxiliary review board on all research studies involving risk to human subjects shall be

forwarded, at least five (5) working days before initiation of the research, to the Office of Policy and Budget for review by the board.

(b) The board shall respond to the auxiliary review board, within twenty-one (21) days of the board's receipt of the auxiliary review board's finding and recommendations.

Section 9. Confidentiality. [Except as otherwise provided by law or by regulation of the cabinet,] Research information that identifies individual subjects shall be regarded as confidential and shall not be disclosed to persons outside the research project staff or published without the subject's prior written authorization. Nothing contained herein shall be deemed to prevent the release of raw or summary data, that does not identify subjects.

Section 10. Material Incorporated by Reference. The cabinet incorporates by reference the following: 45 CFR 46.101 through 45 CFR 46.409, revised as of October 1, 1990, pertaining to the protection of human subjects. The decisions of the board concerning the protection of human subjects shall be guided by the "Belmont Report: Ethical Principles and Guidelines for the Protection of Human Subjects of Research, Report of the National Commission for the Protection of the Human Subjects of Biomedical and Behavioral Research," published April 18, 1979. The Institutional Review Board for the Protection of Human Subjects, Request for Approval of Research Activity form which was adopted October, 1981. This form shall be submitted by the IRB to request approval for projects involving human subjects. Material incorporated by reference is available for inspection at the Cabinet for Human Resources, Office of Policy and Budget, Fourth Floor West, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. through 4:30 p.m.

FRANK J. WILLEY, Executive Director
DONALD G. DIXON, Secretary
APPROVED BY AGENCY: October 14, 1991
FILED WITH LRC: October 15, 1991 at 11 p.m.
PUBLIC HEARING: A public hearing on this regulation will be held on November 21, 1991, at 9 a.m. in the Department for Employment Services 2nd Floor Conference Room, CHR Building, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office by November 16, 1991: Ryan Halloran, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Frank J. Willey
(1) Type and number of entities affected: The CHR, all facilities and contracting agency.
(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): Such a board is a prerequisite for receiving federal research funds.
(b) Reporting and paperwork requirements: Maintenance of Documentation of Board action.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: Such a board is a prerequisite for receiving federal research funds.
(b) Reporting and paperwork requirements: As specified in this regulation.
(3) Assessment of anticipated effect on state and local revenues: Such a board is a prerequisite for receiving federal research funds.
(4) Assessment of alternative methods; reasons why alternatives were rejected: A board is necessary and the present procedures have been satisfactory since 1981.
(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. All applicants are treated in accordance with state and federal regulations.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 45 CFR 46.101-46.409.
2. State compliance standards. This regulation specifies the scope of CHR responsibilities for protection of human subjects.
3. Minimum or uniform standards contained in the federal mandate. Federal and state requirements are compatible.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The requirements are not stricter but better define the responsibilities of researches.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not stricter.

CABINET FOR HUMAN RESOURCES
Department for Health Services
Division of Maternal and Child Health
(Proposed Amendment)

902 KAR 4:010. Lay-midwifery.

RELATES TO: KRS 211.090, 211.180
STATUTORY AUTHORITY: KRS 194.050, 211.090
NECESSITY AND FUNCTION: KRS 211.180 authorizes the Cabinet for Human Resources to regulate the practice of lay-midwifery in Kentucky, including the issuance of permits and the supervision of persons who practice lay-midwifery. This regulation does not authorize the issuance of new permits to practice lay-midwifery. It does, however, authorize the renewal of existing permits to practice lay-midwifery provided a need for such services exists locally.

Section 1. Practice of Lay-midwifery Defined. The practice of lay-midwifery means [is defined as, and limited to, such] assistance, or offer of assistance, [as may be] rendered by a [any]

person, other than a physician or nurse-midwife, to a [any] woman in normal childbirth, without using any instrument or artificial, forcible or mechanical means and without performing or attempting to perform any version or removing or attempting to remove adherent placenta and without prescribing, using or advising the use of any drug except silver nitrate for the eyes of the newborn.

Section 2. Practice of Lay-midwifery without Permit Prohibited. A person shall not [No person shall] engage or attempt to engage in the practice of lay-midwifery within the state, unless he [such person] holds a valid and effective permit issued as herein provided.

Section 3. Lay-midwife Permits. New applications to practice lay-midwifery in the State of Kentucky shall not be accepted after April 9, 1975. Provided, however, that persons who have actively engaged in the practice of lay-midwifery in this state for a period of one (1) year prior to April 9, 1975 and who hold a valid and effective permit issued by the former Department of Health may, upon furnishing proof thereof, be entitled to renewal of their existing permit upon recommendation of the local board of health certifying a need for such services.

Section 4. Lay-midwife Practice Standards. Lay-midwives shall be under the supervision of the local board of health and shall comply with the following practice standards and requirements. In such practice, the lay-midwife shall:

(1) Refer expectant mothers to a physician or to the local health department for a prenatal examination and blood test;

(2) Report all expected deliveries to the local health department;

(3) Neither give nor prescribe drugs of any kind except silver nitrate for the eyes of the newborn;

(4) Not use instruments of any kind, nor assist labor by artificial, forcible or mechanical means, nor insert hands or fingers into the birth canal or rectum; and

(5) Call a physician if:

(a) The mother has convulsions or other complications;

(b) There is any abnormal bleeding;

(c) The baby shows a presenting other than the head or is not born after twenty (20) hours of active labor in the primpara or ten (10) hours in the multipara; or

(d) There is any other evidence of abnormality.

Section 5. Permit Renewals. Lay-midwife permits issued under this regulation shall expire on December 31 of each year, but may be renewed upon recommendation of the local health department where the midwife practices and upon certification of the local health department that a need for such services exists.

Section 6. Denial, Revocation or Suspension of Permit. The Cabinet for Human Resources may deny, revoke, probate, suspend or refuse to renew the permit of any lay-midwife who has:

(1) Been convicted of a felony involving moral turpitude;

(2) Become habitually intemperate or is addicted to the use of habit-forming drugs;

(3) Knowingly made or caused to be made or abetted in the making of any false statement in procuring or attempting to procure a permit or in the making of a birth or death certificate;

(4) Developed such physical or mental disabilities that continued practice would be dangerous to the public or patients;

(5) Engaged in dishonorable, unprofessional conduct of a character likely to deceive or defraud the public; or

(6) Violated any of the provisions of this regulation or any other regulation of the Cabinet for Human Resources relating to the practice of lay-midwifery.

C. HERNANDEZ, M.D., Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 3, 1991
FILED WITH LRC: October 11, 1991 at 3 p.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 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 November 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: Pat Pennington

(1) Type and number of entities affected: N/A. Revision contains technical wording changes that are necessary to comply with KRS 13.222. Impact remains unchanged.

(a) Direct and indirect costs or savings to those affected:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body: N/A

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: N/A

(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: N/A

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. Tiering was not applied because the regulation applies to all lay-midwives.

CABINET FOR HUMAN RESOURCES
Department for Health Services
Division of Maternal and Child Health
(Proposed Amendment)

902 KAR 4:090. Lead poisoning prevention.

RELATES TO: KRS 211.900, 211.905, 211.994
STATUTORY AUTHORITY: KRS 194.050, 211.090, 211.901(5)
NECESSITY AND FUNCTION: KRS 211.901(6) provides that local boards of health may by the adoption of local regulations establish programs for the prevention, screening, diagnosis and treatment of lead poisoning; provided that such regulations are the same as the provisions of KRS 211.900 to 211.905 and 211.994 and the regulations promulgated by the Secretary for Human Resources pursuant to subsection (5) of KRS 211.901. The function of this regulation is to set forth the criteria that must be included in local board of health regulations relating to the prevention, screening, diagnosis and treatment of lead poisoning.

Section 1. Definitions. As used in this regulation:
(1) "Board" shall mean the board of health of any county, city-county or district including the Louisville and Jefferson County Board of Health and the Lexington-Fayette Urban-County Board of Health.
(2) "Department" shall mean the department of health of any county, city-county or district health department including the Louisville and Jefferson County Health Department and the Lexington-Fayette Urban-County Health Department.
(3) "Director" shall mean the chief administrative officer of any county, city-county or district health department including the Louisville and Jefferson County Health Department and the Lexington-Fayette Urban-County Health Department.
(4) "Cabinet" shall mean the Cabinet for Human Resources.
(5)"Secretary" shall mean the Secretary for Human Resources or his authorized representative.
(6) "Chewable surface" shall include but not be limited to such surfaces as windowsills, window frames, door frames, handrails, toys, furniture, food utensils and other appurtenances offering a biting surface to a child or other person. [Lead based substance" shall mean any substance containing more than 0.06 percent lead by weight of nonvolatile content as provided in KRS 217.801.]
(7) "Dwelling" shall mean any structure, all or a part of which is designed for human habitation.
(8) "Dwelling unit" shall mean any room or group of rooms or other interior areas of a dwelling designed or used for human habitation.
(9) "Elevated blood lead level" shall mean a confirmed concentration of lead in whole blood of twenty-five (25) micrograms (ug) per deciliter (dl) or greater.
(10) "Exposed surface" shall mean all interior surfaces of a dwelling or dwelling unit and those exterior surfaces of a dwelling or dwelling unit which are readily accessible to children under six (6) years of age, such as stairs, decks, porches, railings, windows, doors and siding. All areas in the vicinity of a dwelling or dwelling unit subject to contamination from flaking or peeling lead based materials are also considered an exposed surface.
(11) "Lead based substance" is defined as provided in KRS 211.900.
(12) [(9)] "Owner" shall mean any person who, alone, jointly, or severally with others, has legal title to, charge, care, or control of any dwelling or dwelling unit as owner, agent of the owner, or as executor, administrator, trustee, conservator or guardian of the estate of the owner.
(13) [(10)] "Occupant" shall mean any person living, sleeping, cooking, eating in or having actual possession of a dwelling unit or rooming unit.
[(11) "Elevated blood lead level" shall mean a confirmed concentration of lead in whole blood of twenty-five (25) micrograms (ug) per deciliter (dl) or greater.]
(14) [(12)] "Surface" shall mean the outermost layer or superficial area of the materials of which a dwelling unit is constructed, excluding paint, plaster or putty of the interior or exterior of a dwelling unit, including but not limited to the outermost layer of superficial area of walls, ceilings, floors, stairs, windows, windowsills, window frames, window sashes, doors, door frames, baseboard and woodwork of a dwelling or dwelling unit.
[(13) "Exposed surface" shall mean all interior surfaces of a dwelling or dwelling unit and those exterior surfaces of a dwelling or dwelling unit which are readily accessible to children under six (6) years of age, such as stairs, decks, porches, railings, windows, doors and siding. All areas in the vicinity of a dwelling or dwelling unit subject to contamination from flaking or peeling lead based materials are also considered an exposed surface.]
[(14) "Chewable surface" shall include but not be limited to such surfaces as windowsills, window frames, door frames, handrails, toys, furniture, food utensils and other appurtenances offering a biting surface to a child or other person.]

Section 2. Lead Based Paint Health Hazard. (1) Any lead based substance shall be considered a health hazard to children under six (6) years of age if:
(a) Said lead based substance exists in or about a dwelling, dwelling unit, household, school or day care facility in which children commonly reside or visit; and
(b) Said lead based substance is determined to be on any surface, exposed surface or chewable surface and contains more than 0.06 percent lead by weight of nonvolatile content or in excess of seven-tenths (0.7) milligrams per square centimeter of surface when tested by radioisotope x-ray fluorescent analyzer.
(2) Any lead based substance found to be a health hazard under subsection (1) of this section shall be corrected within the time period specified by the director in a written order. Failure to correct the health hazard within the specified time period shall result in the appropriate court action against the owner, operator or occupant for noncompliance unless an extension is granted by the director due to undue hardship.
(3) Correction procedures shall be approved by the director and shall include one (1) or more of the following:
(a) Stripping of the surface to the bare

underlying materials which do not contain lead at the unsafe levels.

(b) The covering of such surfaces which contain lead at unacceptable levels with permanently affixed coverings, the surfaces of which are lead free and which with said permanently affixed coverings, are incapable of being readily chewed through, torn from the surface, pierced, or otherwise removed in such manner as to expose the hazardous surface.

Section 3. Inspections. (1) If [there is found the presence of] flaking, peeling, chipping, or loose paint, plaster, or structural material is found in or around any building used for housing, specimens of the flaking, chipped or loose paint, plaster or structural material shall be collected to determine whether or not the materials contain lead. In lieu of taking samples, the surface may be tested with an "in situ" analyzer approved by the director.

(2) The chemical determination of the lead content in surface materials may be made by the quantitative measurements of samples of those materials.

(3) The physical determination of the lead content of surface material may be made by nondestructive measurements using radioisotope x-ray fluorescent analyzers (XRF) or other instruments approved by the director.

(4) When a dangerous level of lead is found in a dwelling, the director may cause to have examined all children under six (6) years of age, and [such] other children [as] he may find advisable to examine, residing or who have recently resided in said dwelling. The results of these [such] examinations shall be reported to the director, the affected individual and his parent or legal guardian.

Section 4. Hazard Abatement. (1) If [When] the director determines that the presence of lead based substances in any dwelling or dwelling unit or premises creates a health hazard to children under six (6) years of age, he shall issue a written order to the owner, operator or occupant to eliminate the hazard within a time period not to exceed thirty (30) days. Methods for compliance shall be in accordance with Section 2 of this regulation.

(2) Upon completion of the correction procedure, an inspection shall be made by the department to determine if the hazard has been satisfactorily eliminated.

(3) If [In the event] the dwelling or dwelling unit or premises in which such are located is vacated by the occupant who occupied same at the time of the issuance of corrective order, the [such] dwelling, dwelling unit or premises shall not be let or occupied by any other person until the [such] corrective order is complied with.

C. HERNANDEZ, M.D., Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 2, 1991
FILED WITH LRC: October 15, 1991 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation will be held on November 21, 1991, at 9 a.m. in the Department for Employment Services 2nd Floor Conference Room, CHR Building, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office by November 16, 1991: Ryan Halloran, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sarah Wilding
This amendment includes technical changes to comply with KRS 13A.222. Since no programmatic changes are involved, the amendment will not have an impact.
(1) Type and number of entities affected: N/A
(a) Direct and indirect costs or savings to those affected:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements:
(2) Effects on the promulgating administrative body: N/A
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: N/A
(4) Assessment of alternative methods; reasons why alternatives were rejected:
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: N/A
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? No. Tiering was not applied because the regulation applies equally to all communities.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 10:010. Public restrooms.

RELATES TO: KRS 211.180
STATUTORY AUTHORITY: KRS 194.050, 211.090, 211.990
NECESSITY AND FUNCTION: KRS 211.180 authorizes the Cabinet for Human Resources [Cabinet] to regulate the sanitation of public restrooms. This regulation provides standards for public restrooms in order to protect the health of the public.

Section 1. Citation of Regulation. This regulation may be cited as the "Kentucky Public Restroom Regulation".

Section 2. [Section 1.] Definitions. The following definitions shall apply in the interpretation and enforcement of this regulation:
(1) "Cabinet" means the Cabinet for Human Resources [Cabinet] and the local health department having jurisdiction and their duly designated representatives.
(2) "Public rest room" means a [any] facility that provides toilet and hand-washing facilities for the general public.

(3) "Septic tank" means a watertight receptacle which receives the discharge of a building sanitary drainage system (or part thereof) and is designed and constructed so as to digest organic matter through a period of detention that allows the liquids to discharge into the soil outside the tank through a system of open joints or perforated piping, or a seepage pit.

Section 3. [2.]. Water Flushed Toilet Facilities. If [Whenever] water flushed toilet facilities are provided for the accommodation of the public or patrons at [any] public places:

(1) The floors shall be of smooth construction and relatively impervious to water.

(2) The walls and ceilings shall have a smooth washable surface and shall be painted or finished in light color and shall be maintained in good condition.

(3) All openings shall be effectively screened against flies and other insects.

(4) All doors shall be self-closing.

(5) The plumbing installations shall comply with the state plumbing code.

(6) All wastes resulting from flush toilets, lavatories or other fixtures shall be disposed of in a public sewer or, in the absence of a public sewer, by a method approved by the Natural Resources and Environmental Protection Cabinet.

(7) An adequate supply of toilet tissue shall be provided at each toilet facility at all times.

(8) The rooms shall be adequately lighted and ventilated.

(9) If drinking water is provided, it shall be from a source approved by the Natural Resources and Environmental Protection Cabinet.

(10) If drinking fountains are provided, they shall be installed in accordance to the state plumbing code and shall be maintained in a sanitary manner.

(11) The use of the common drinking cup is prohibited.

(12) Hand-washing facilities, including running water, soap and individual cloth or paper towels, or [any] other method for drying hands approved by the cabinet, shall be provided.

(13) The use of the common towel is prohibited.

(14) All trash or refuse shall be kept in nonabsorbent containers and removed from the premises as frequently as necessary to prevent an unsanitary condition from developing. A covered waste container shall be provided in each women's toilet facility.

(15) The rooms, including all fixtures therein, shall be kept clean, in good repair and free from dust, dirt, insects and other contaminating material.

Section 4. [3.] Earth Pit Privies. Outdoor toilets (earth pit privies) not connected to a public sewerage system or septic tank shall be prohibited within the boundaries of cities of the first or second class as provided by KRS 381.780. In other areas, if [whenever] water under pressure is not available, earth pit privies may be used for the accommodation of the public or patrons at [any] public place provided they comply with the following requirements:

(1) Construction of pit privies.

(a) The pit shall not be located within 100 feet of any source of water supply and shall have a capacity of not less than fifty (50) cubic feet and shall be not less than four and one-half (1/2) feet or more than six (6) feet deep, measured from the original ground surface.

(b) The pit shall be lined with curbing of sound lumber, concrete, or other material approved by the cabinet and extend to the full depth of the pit.

(c) The floor and seat riser shall be constructed of impervious material or tongue and groove lumber, and in a manner to exclude insects and rodents. The seat riser shall be so constructed and bonded with the floor as to prevent seepage through the riser onto the floor and the seat opening shall be elevated at least twenty (20) inches above floor level.

(d) The superstructure of the privy shall be constructed of substantial material fastened solidly to the floor.

(2) Maintenance of pit privies.

(a) The floor, seat and other fixtures shall be kept in good repair and clean at all times.

(b) An adequate supply of toilet tissue shall be provided.

(c) If [When] the pit is filled to within eighteen (18) inches of the floor, the pit shall be cleaned or a new pit shall be constructed. Old pits shall be filled and mounded with earth.

(d) The privy shall be adequately ventilated.

C. HERNANDEZ, M.D., Commissioner
HARRY J. COWHERD, M.D., Secretary

APPROVED BY AGENCY: October 2, 1991

FILED WITH LRC: October 15, 1991 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation will be held on November 21, 1991, at 9 a.m. in the Department for Employment Services 2nd Floor Conference Room, CHR Building, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office by November 16, 1991: Ryan Halloran, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: James T. Corum

(1) Type and number of entities affected: 135 youth camps.

(a) Direct and indirect costs or savings to those affected: No change as amendments to existing regulation are solely editorial in nature.

1. First year: No change

2. Continuing costs or savings: No change

3. Additional factors increasing or decreasing costs (note any effects upon competition): None - See (1)(a) above.

(b) Reporting and paperwork requirements: No change.

(2) Effects on the promulgating administrative body: No change.

(a) Direct and indirect costs or savings: No change.

1. First year: No change.

2. Continuing costs or savings: No change.

3. Additional factors increasing or decreasing costs: No change.

(b) Reporting and paperwork requirements: No change.

(3) Assessment of anticipated effect on state and local revenues: No change.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Current regulation is adequate to meet intent,

amendments are solely editorial to comply with mandates of KRS Chapter 13A and Chapter 15.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: State Building Code, State Plumbing Code.

(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: Amendments eliminate conflicts.

TIERING: Was tiering applied? No. The intent of this regulation applies to all public restrooms.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 10:110. Issuance of on-site sewage disposal system [installation] permits [and certification of installers].

RELATES TO: KRS 211.350 to 211.380, 211.990(2)

STATUTORY AUTHORITY: KRS 194.050, 211.090(3), 211.180(1)(d) [(3)]

NECESSITY AND FUNCTION: KRS 211.350 provides that no person, firm, or corporation shall construct, install, alter or cause to be constructed, installed, or altered any on-site sewage disposal system subject to regulation by the cabinet without having first obtained an on-site sewage disposal permit from the cabinet. The purpose [function] of this regulation is to set forth the requirements for issuance of [such] permits [and to provide for the certification of installers].

Section 1. Definitions. As used in this regulation the following terms shall have the meanings set forth below: [Citation of Regulation. This regulation may be cited as the "On-site Sewage Disposal System Installation Permit and Certification of Installers Regulation."]

(1) "Alter" means to make a physical change in the original design, sizing, layout, components, location, or method of operation (individually or in any combination of changes) of an existing on-site sewage disposal system, as a result of necessary repair or a change in wasteload volume or wasteload characteristics.

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

(3) "Certified inspector" means a person employed by the cabinet or by a local health department who has met the requirements for certification contained in KRS 211.360.

(4) "Certified installer" means a specific individual person who has met the requirements for certification contained in KRS 211.357 and 902 KAR 10:140.

(5) "Component" means any device used in the construction, installation or alteration of an on-site sewage disposal system which forms an integral part of that disposal system, and is necessary to its proper operation and maintenance. It includes, but is not limited to:

(a) Sewage pretreatment units, holding tanks, grease traps, pump or dosing tanks, and necessary equipment and appurtenances;

(b) Distribution boxes, alternating valves, filters, and similar devices; and

(c) Piping, fittings, valves, and leaching chambers.

(6) "Construct" means the physical assembly of various necessary components and materials into an on-site sewage disposal system and includes all necessary design, site layout, excavation, backfilling and additional site fill work that may be required to produce a finished on-site system. The term "install" shall be considered to have the same meaning.

(7) "Homeowner" means a specific individual person who actually occupies the single family residence that a proposed new on-site sewage disposal system is intended to serve, or that an existing system that is proposed to be altered serves, or who proposes to construct or have constructed a single family residence for his personal use and occupancy that a proposed new on-site system is intended to serve. This term shall not include any person who is a builder or contractor who engages in a business of constructing or rehabilitating residential structures for sale or resale.

(8) "On-site sewage disposal system" means a complete system installed on a parcel of land, under the control or ownership of any person, which accepts sewage for treatment and ultimate disposal under the surface of the ground. The common terms "on-site sewage system" or "on-site system" also have the same meaning. This definition includes, but is not limited to, the following:

(a) A conventional system consisting of a sewage pretreatment unit(s), distribution box(es), and lateral piping within rock-filled trenches or beds;

(b) A modified system consisting of a conventional system enhanced by shallower trench or bed placement, artificial drainage systems, dosing, alternating lateral fields, fill soil over the lateral field, or other necessary modifications to the site, system or wasteload to overcome site limitations;

(c) An alternative system consisting of a sewage pretreatment unit(s), necessary site modifications, wasteload modifications, and subsurface soil absorption system using other methods and technologies than a conventional or modified system to overcome site limitations;

(d) Cluster systems which accept effluent from more than one (1) structure's or facility's sewage pretreatment unit(s) and transport the collected effluent through a sewer system to one (1) or more common subsurface soil absorption system(s) of conventional, modified or alternative design; and

(e) A holding tank which provides limited pretreatment and storage for off-site disposal where site limitations preclude immediate installation of a subsurface soil absorption system, or connection to a municipal sewer.

(9) "Person" means any individual, firm, association, organization, partnership, business trust, corporation, company or governmental unit.

Section 2. Issuance of Permits. (1) Except as otherwise provided by subsection (2) of this section, permits to construct, install or alter on-site sewage disposal systems shall be issued only to certified installers.

(2) Permits to construct, install or alter on-site sewage disposal systems may be issued to homeowners [who desire to install such systems for homes actually occupied by them or for a

home to be constructed by them for their own personal residential use,] provided:

(a) Application is made for a [the] permit as specified in 902 KAR 10:085, Section 3(1)(d) [on forms provided by the cabinet] prior to construction of any portion of the proposed on-site sewage disposal system [the beginning of the work]; and

(b) All work is performed in compliance with 902 KAR 10:081, 902 KAR 10:085 [the on-site sewage disposal systems laws] and this regulation(s); and

(c) All [the] work is personally performed by the homeowner, except that necessary excavation and backfilling work may be performed by a certified installer if notification of intent is made at the time of application for a permit, and the certified installer's name and certification number are included on the application; and

(d) If local electrical codes require electrically operated components of an on-site sewage disposal system to be connected to electrical service only by a certified or licensed professional electrician, and do not permit homeowner performed work, that work shall also be excepted from the requirements of paragraph (c) of this subsection; and

(e) No person shall be issued more than one (1) homeowner permit to construct or alter an on-site sewage disposal system in any five (5) year period, except in instances of necessary repair or alteration of the originally permitted on-site system.

[Section 3. System Construction, Installation, or Alteration. (1) All work in the construction, installation, or alteration of an on-site sewage disposal system shall be performed by a certified installer, except those systems for which a homeowner has secured a permit to personally perform such work.]

[(2) Persons certified as installers except master plumbers licensed pursuant to KRS Chapter 318 shall pay a fee of twenty-five (25) dollars for such certification.]

C. HERNANDEZ, M.D., Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 10, 1991
FILED WITH LRC: October 15, 1991 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation will be held on November 21, 1991, at 9 a.m. in the Department for Employment Services 2nd Floor Conference Room, CHR Building, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office by November 16, 1991: Ryan Halloran, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dr. James T. Corum

(1) Type and number of entities affected: Approximately 8,000 applicants for on-site sewage disposal system construction permits per year.

(a) Direct and indirect costs or savings to those affected:

1. First year: Should reduce "down time" costs to certified installers of on-site systems as qualifications for permit issuance are clearly defined.

2. Continuing costs or savings: Work requiring a permit is now defined as opposed to existing regulations need for frequent interpretation on when a permit is required. Work delays awaiting an interpretation will be eliminated, however, an exact dollar figure in savings is not obtainable.

3. Additional factors increasing or decreasing costs (note any effects upon competition): Should decrease costs to most certified installers, as elimination of variability of interpretation of permitting requirements on the local level will occur. This will encourage competitive bidding for work as all installers will now be able to know in advance the permit requirements without having to revise bids due to interpretation variations from county to county. Also, the amendment provides opportunities for additional jobs for certified installers by allowing them to perform supportive work on system installations being constructed under a homeowners permit by the homeowner.

(b) Reporting and paperwork requirements: These requirements should remain unchanged from current status under the existing regulation. While certain work will now require a permit in all instances and may increase paperwork for some installers, the elimination of variable interpretation of when a permit is required and the additional paperwork generated to request interpretation will result in a balancing decrease in paperwork.

(2) Effects on the promulgating administrative body: No net change, other than slight decrease in administration costs when need for generating frequent interpretations is eliminated.

(a) Direct and indirect costs or savings: Slight savings of staff time, paperwork generation, and processing costs, when need for frequent interpretations is eliminated.

1. First year: Same as (a).

2. Continuing costs or savings: Same as (a).

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Paperwork requirements should decrease due to elimination of need for frequent interpretations.

(3) Assessment of anticipated effect on state and local revenues: Some small increase in state and local revenues will occur as local interpretations of when a permit is needed are eliminated and the uniformity of definition imposed by the amendment takes effect. Permit fees collected by local health departments, including the state fee (when applicable), should increase as some local interpretations of the existing regulation erroneously caused no permit to be issued when one should have been required.

(4) Assessment of alternative methods; reasons why alternatives were rejected: A "no change" alternative would have continued the present confusion and nonuniformity of interpretation of permit need. An alternative requiring full permit fees regardless of the amount and type of work being performed would conflict with KRS 211.350-211.380 requirements of fees covering the costs of the state and local program administration, but not exceeding those costs. An alternative requiring a permit and fees only for construction of a complete system would conflict with KRS 211.350-211.380 requirements for permits to construct, install, or alter an

on-site system, and would not provide protection to the system owner, his neighbors, community or the environment, if repairs or changes to an existing system were not regulated to insure such work were properly done.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(6) Any additional information or comments: None

TIERING: Was tiering applied? No.Tiering in the normal sense was not applied as KRS 211.350 requires permits for construction, installation, or alteration of all on-site sewage disposal system impacted by the statute. However, tiering is inherent within KRS 211.350-211.380 in that the cabinet and local health departments are directed to establish a schedule of permit fees, which implies differing fee levels based upon the amount and type of permitted work being performed. As this amended regulation does not speak to specific fees and levels of work to which they apply, but only to whom may obtain a permit and when one is required, tiering of this regulation is not necessary as it applies uniformly to all permits.

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) Relates to local health departments and services provided by their certified on-site sewage system inspectors under KRS 211.350-211.380 and 902 KAR 10:085.

2. State what unit, part or division of local government this administrative regulation will affect. Will affect only local health department certified inspectors who carry out the on-site sewage disposal systems program.

3. State the aspect or service of local government to which this administrative regulation relates. Relates to permit issuance services necessary for compliance with KRS 211.350-211.380 and 902 KAR 10:085.

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 amendments to this existing regulation will clarify and redefine existing requirements for on-site sewage disposal system permit issuance. This will eliminate confusion and improve the qualification process for permit issuance on the local level.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 13:010. Definitions.

RELATES TO: KRS 211.960 to 211.968, 211.990(5)

STATUTORY AUTHORITY: KRS 211.964

NECESSITY AND FUNCTION: KRS 211.964 directs the Cabinet for Human Resources to adopt rules and regulations relating to emergency medical technicians (EMTs). The function of this regulation is to define terms that are used in regulations promulgated by the cabinet relating to emergency medical technicians.

Section 1. Definitions. As used in cabinet regulations relating to EMTs, the following terms shall have the meanings set forth below unless the context requires otherwise:

(1) "Applicant" means a [any] person applying for training or certification as an EMT or EMT-first responder under this regulation.

(2) "Cabinet" means the Cabinet for Human Resources.

(3) "Certificate" means the certificate issued by the cabinet [pursuant to this regulation] to an [any] individual qualified [qualifying pursuant to this regulation] to perform the duties of an [any] EMT or EMT-first responder.

(4) "Certified" means a person [one] who holds a certificate issued pursuant to this regulation.

(5) "Committee" means the emergency medical services [technician's training] advisory committee (EMSAC) [as] appointed by the secretary of [for] the cabinet [for Human Resources] to act in an advisory capacity.

(6) "Emergency situation" means an unforeseen circumstance or combination of circumstances, regardless of place of occurrence, requiring immediate and continued medical response and intervention to safeguard the life or physical well-being of a [any] patient.

(7) "Emergency medical technician (EMT)" means an [a qualified] individual [currently] certified by the [Kentucky] cabinet [for Human Resources] as an emergency medical technician or as an emergency medical technician-ambulance and who is trained to provide immediate emergency medical care and intervention to stabilize a patient's condition at the scene of an emergency and enroute to definitive medical care.

(8) "Emergency medical technician instructor" means a person [qualified to teach emergency medical technician or EMT-first responder courses and who is] certified [to do so] by the [Kentucky] cabinet to teach emergency medical technician and EMT-first responder courses [for Human Resources].

(9) "Emergency medical technician instructor trainee" means a certified emergency medical technician undergoing approved instruction and evaluation as an emergency medical technician instructor under the supervision of a certified emergency medical technician instructor.

(10) "Emergency medical technician instructor trainer" means a person certified by the cabinet to teach emergency medical technician instructor courses and evaluate emergency medical technician instructor trainees.

(11) [(12)] "Emergency medical technician-first responder (EMT-first responder)" means an [a qualified] individual [currently] certified by the [Kentucky] cabinet [for Human Resources] to perform a portion of

the patient care skills of certified EMTs in order to stabilize a patient's condition until an EMT or other higher level of certified or licensed emergency medical services (EMS) personnel arrives.

(12) [(13)] "Emergency medical technician-first responder instructor" means a person, other than an emergency medical technician instructor or emergency medical technician instructor trainer, who is qualified to teach EMT-first responder courses and who is certified [approved to do so] by the cabinet to teach EMT-first responder courses [for Human Resources].

(13) [(11)] "Implementing agency" means a [any] public or private organization, other than an instructor, instructor trainee, or instructor trainer, approved by the cabinet to [, other than an instructor, instructor trainee, or instructor trainer, who is] conduct[ing], supervise [ing], coordinate [ing], and [or otherwise] operate [ing] an emergency medical technician or EMT-first responder training course.

C. HERNANDEZ, M.D., Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 3, 1991
FILED WITH LRC: October 10, 1991 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 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 November 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: Robert P. Calhoun

(1) Type and number of entities affected: This amendment is to comply with KRS Chapter 13A. No entities will be affected.

(a) Direct and indirect costs or savings to those affected: This amendment is to comply with KRS Chapter 13A and will not affect direct or indirect costs.

1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: This amendment is to comply with KRS Chapter 13A. No reporting or paperwork will be required.

(2) Effects on the promulgating administrative body: This amendment is to comply with KRS Chapter 13A. There will not be any effects on the promulgating administrative body.

(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: This amendment is to comply with KRS Chapter 13A. No reporting or paperwork will be required.

(3) Assessment of anticipated effect on state and local revenues: This amendment is to comply with KRS Chapter 13A. There will be no effect on state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: This amendment is to comply with KRS Chapter 13A. No alternative methods were considered.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: This amendment is to comply with KRS Chapter 13A and does not conflict, overlap, or duplicate any statute, administrative regulation or government policy.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. Tiering is not appropriate for these KRS Chapter 13A amendments.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 13:020. Applicants' requirements; priority for training.

RELATES TO: KRS 211.960 to 211.968, 211.990(5)
STATUTORY AUTHORITY: KRS 211.964
NECESSITY AND FUNCTION: KRS 211.964 directs the Cabinet for Human Resources to adopt rules and regulations relating to emergency medical technicians (EMTs). The function of this regulation is to establish requirements for applicants and priority of applicants for training.

Section 1. Requirements for Applicants. Each applicant shall:

(1) Be eighteen (18) years of age or older;
(2) Be of good moral character;
(3) Not be habitually addicted to or an abuser of alcoholic beverages, drugs, or controlled substances;
(4) Understand and be able to read, speak, and write the English language;
(5) Submit a signed application on the "Application for Emergency Medical Technician" form dated 9-30-91 and herein incorporated by reference. This application may be obtained from the Emergency Medical Services Branch, Department for Health Services, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621, between 8 a.m. and 4:30 p.m., Monday through Friday. [a form prescribed by the cabinet].

Section 2. Priority of Applicants for Training. [(1) The priority of] Applicants for

training in courses offered to the public by implementing agencies [which are open to the public and not otherwise exempted by the cabinet] shall be accepted according to the following priorities:

(1) [(a)] First priority: ambulance personnel;

(2) [(b)] Second priority: emergency room personnel and related emergency medical service personnel, including, but not limited to, public safety agencies, rescue and extrication, industrial safety, nursing personnel, and certified public school teachers designated as first aid personnel; and

(3) [(c)] Third priority: all others.

(4) [(2)] Applications shall be filed with the implementing agency ten (10) working days prior to the beginning of the course. The final selection of applicants for each course shall be made by the implementing agency.

C. HERNANDEZ, M.D., M.P.H., Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 3, 1991
FILED WITH LRC: October 11, 1991 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1991, at 9:00 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 November 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 on written comments on the proposed administrative regulation to: Ryan M. Halloran, General Counsel, Cabinet for Human Resource, 275 E. Main Street, 4th West, Frankfort, KY 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Robert P. Calhoun

(1) Type and number of entities affected: This amendment is to comply with KRS Chapter 13A. No entities will be affected.

(a) Direct and indirect costs or savings to those affected: This amendment is to comply with KRS Chapter 13A and will not affect direct or indirect costs.

1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: This amendment is to comply with KRS Chapter 13A. No reporting or paperwork will be required.

(2) Effects on the promulgating administrative body: This amendment is to comply with KRS Chapter 13A. There will not be any effects on the promulgating administrative body.

(a Direct and indirect costs or savings:

1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: This amendment is to comply with KRS Chapter 13A. No reporting or paperwork will be required.

(3) Assessment of anticipated effect on state and local revenues: This amendment is to comply with KRS Chapter 13A. There will be no effect on state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: This amendment is to comply with KRS Chapter 13A. No alternative methods were considered.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: This amendment is to comply with KRS Chapter 13A and does not conflict, overlap, or duplicate any statute, administrative regulation or government policy.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. Tiering is not appropriate for these Chapter 13A amendments.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 13:040. Exemptions.

RELATES TO: KRS 211.960 to 211.968, 211.990(5)
STATUTORY AUTHORITY: KRS 211.964
NECESSITY AND FUNCTION: KRS 211.964 directs the Cabinet for Human Resources to adopt rules and regulations relating to emergency medical technicians (EMTs). The function of this regulation is to define exemptions from the [cabinet's] EMT regulations of the cabinet.

Section 1. Exemptions from EMT Regulations. 902 KAR 13:050 relating to [The provisions of the cabinet's regulations requiring] the certification of emergency medical technicians shall not apply to:

(1) United States military corpsmen while engaged in the performance [within this state] of their official duties under federal laws; or [and]

(2) An EMT[s] certified in another state who infrequently come into Kentucky to transport patients inside, through, or outside the State of Kentucky.

C. HERNANDEZ, M.D., Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 3, 1991
FILED WITH LRC: October 10, 1991 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 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 November 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: Robert P. Calhoun
(1) Type and number of entities affected: This amendment is to comply with KRS Chapter 13A. No entities will be affected.
(a) Direct and indirect costs or savings to those affected: This amendment is to comply with KRS Chapter 13A and will not affect direct or indirect costs.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: This amendment is to comply with KRS Chapter 13A. No reporting or paperwork will be required.
(2) Effects on the promulgating administrative body: This amendment is to comply with KRS Chapter 13A. There will not be any effects on the promulgating administrative body.
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: This amendment is to comply with KRS Chapter 13A. No reporting or paperwork will be required.
(3) Assessment of anticipated effect on state and local revenues: This amendment is to comply with KRS Chapter 13A. There will be no effect on state or local revenues.
(4) Assessment of alternative methods; reasons why alternatives were rejected: This amendment is to comply with KRS Chapter 13A. No alternative methods were considered.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: This amendment is to comply with KRS Chapter 13A and does not conflict, overlap, or duplicate any statute, administrative regulation or government policy.
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? No. Tiering is not appropriate for these KRS Chapter 13A amendments.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 13:070. Instructors and trainers.

RELATES TO: KRS 211.960 to 211.968, 211.990(5)
STATUTORY AUTHORITY: KRS 211.964
NECESSITY AND FUNCTION: KRS 211.964 directs the Cabinet for Human Resources to adopt rules and regulations relating to emergency medical technicians (EMTs). The function of this regulation is to establish requirements for attaining certification as an emergency medical technician-instructor and emergency medical technician instructor-trainer.

Section 1. In order to become certified by the cabinet as an EMT instructor, a person shall have [No person shall hold himself out as an EMT-instructor unless he has]:
(1) Been certified as an EMT by the cabinet;
(2) Been recommended by a certified EMT-instructor as having outstanding ability in the EMT field;
(3) Attended an approved EMT-training seminar and successfully passed a written proficiency examination;
(4) Assisted an EMT-instructor for a minimum of one (1) complete EMT training course in which he:
(a) Participated in the conduct of each lesson;
(b) Conducted, under supervision, at least one (1) complete lesson during the course;
(c) Served as a small-group instructor during practical exercises;
(d) Conducted class demonstrations of manipulative skills;
(e) Performed other related duties as directed by the EMT-instructor;
(f) Been recommended, in writing, for final evaluation by the EMT-instructor for whom the applicant assisted in teaching the complete EMT training course; [, upon completion of the course; and]
(5) Been evaluated by a panel of EMT-instructor-trainers; [,] and [received a score of eighty (80) percent or higher.]
(6) Received an evaluation score of eighty (80) percent or higher.

Section 2. Reevaluation of Instructor-trainees by Panel. If [In the event] an EMT-instructor-trainee fails to score eighty (80) percent or higher on his initial evaluation, he shall be given another opportunity, upon application, to be reevaluated. If [In the event] he again fails to obtain a score of eighty (80) percent or higher, but scores at least seventy (70) percent or higher, he shall, upon application, be given another [an] opportunity to be reevaluated.

Section 3. Certification of EMT-instructor-trainers. A [No] person shall not be certified [hold himself out] as an EMT-instructor-trainer unless he has:
(1) Complied with all requirements of Section 1 of this regulation; and
(2) Been evaluated by the EMS [EMT] advisory committee and recommended to the cabinet for certification as an EMT-instructor-trainer.

Section 4. Renewal of EMT-instructor Certification. Unless renewed, the certification of an EMT-instructor['s certification] shall

become invalid two (2) years from the date of issue [unless renewed]. In order to obtain renewal, the EMT-instructor shall meet all requirements of 902 KAR 13:050, Section 5(4).

Section 5. EMT-instructors Certified in Other States. A person who is certified in another state as an EMT-instructor and who wishes to become certified in Kentucky as an EMT-instructor, shall:

(1) Comply with the requirements of Sections 1 and 2 of this regulation; and

(2) Comply with the challenge examination procedures outlined in 902 KAR 13:050, Section 7. [Upon proper application, EMT-instructors certified in other states may take the Kentucky "Challenge Examination" consisting of both written and practical parts for certification as an EMT. In addition, such persons shall meet the requirements of Sections 1 and 2 of this regulation.]

C. HERNANDEZ, M.D., Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 3, 1991
FILED WITH LRC: October 10, 1991 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 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 November 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: Robert P. Calhoun
(1) Type and number of entities affected: This amendment is to comply with KRS Chapter 13A. No entities will be affected.
(a) Direct and indirect costs or savings to those affected: This amendment is to comply with KRS Chapter 13A and will not affect direct or indirect costs.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: This amendment is to comply with KRS Chapter 13A. No reporting or paperwork will be required.
(2) Effects on the promulgating administrative body This amendment is to comply with KRS Chapter 13A. There will not be any effects on the promulgating administrative body.
(a) Direct and indirect costs or savings:
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3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: This amendment is to comply with KRS Chapter 13A. No reporting or paperwork will be required.
(3) Assessment of anticipated effect on state and local revenues: This amendment is to comply with KRS Chapter 13A. There will be no effect on state or local revenues.
(4) Assessment of alternative methods; reasons why alternatives were rejected: This amendment is to comply with KRS Chapter 13A. No alternative methods were considered.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: This amendment is to comply with KRS Chapter 13A and does not conflict, overlap, or duplicate any statute, administrative regulation or government policy.
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? No. Tiering is not appropriate for these KRS Chapter 13A amendments.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 13:090. Disciplinary actions.

RELATES TO: KRS 211.960 to 211.968, 211.990(5)
STATUTORY AUTHORITY: KRS 211.964
NECESSITY AND FUNCTION: KRS 211.964 directs the Cabinet for Human Resources to adopt rules and regulations relating to emergency medical technicians. The function of this regulation is to establish procedures for taking disciplinary action against a certified emergency medical technician, EMT-first responder, EMT-first responder instructor and emergency medical technician-instructor.

Section 1. Denial, Revocation, and Suspension of Certificates. The cabinet may deny, revoke, or suspend the certificate of a [any] person who:
(1) Has engaged in dishonorable, unethical, or unprofessional conduct of a character likely to deceive, defraud, or harm the public;
(2) Becomes a drug dependent person or drug abuser as defined in KRS 222.011(8);
(3) Becomes an alcoholic person who suffers from alcoholism as defined in KRS 222.011(3);
(4) Develops such physical or mental disability or other condition that continued practice or performance of his duties may be dangerous to patients or the public; or
(5) Fails to comply with an administrative [any] regulation of the cabinet relating to the certification of an EMT[s].

Section 2. Hearings. The cabinet shall furnish the certificate holder with written notice setting out the substance of each offense charged with sufficient detail to reasonably apprise such person of the nature, time and place thereof. The certificate holder shall have

the right to be present in person or be represented by counsel, and to present evidence and to be heard in opposition to the charges which may be instituted. The cabinet shall make a finding of fact and conclusion of law. The hearing may be conducted by a hearing officer appointed by the cabinet.

C. HERNANDEZ, M.D., Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 3, 1991
FILED WITH LRC: October 10, 1991 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 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 November 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: Robert P. Calhoun
(1) Type and number of entities affected: This amendment is to comply with KRS Chapter 13A. No entities will be affected.
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3. Additional factors increasing or decreasing costs:
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(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 these KRS Chapter 13A amendments.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 13:110. EMT-first responder training, examination, and certification.

RELATES TO: KRS 211.960 to 211.968, 211.990(5)
STATUTORY AUTHORITY: KRS 211.964
NECESSITY AND FUNCTION: KRS 211.964 directs the Cabinet for Human Resources to adopt rules and regulations relating to emergency medical technicians (EMTs). The function of this regulation is to establish a new classification of emergency medical technician, the Emergency medical technician-first responder (EMT-first responder), and to establish requirements for training, examinations, and certifications.

Section 1. Training Course Requirements. The EMT-first responder training course shall:
(1) Include the curriculum of the "Emergency Medical Services: First Responder Training Course" published March 1979 by the U.S. Department of Transportation, National Highway Traffic Safety Administration, Washington, D.C. 20590, the accompanying text [en]titled "First Responder," Third [Second] Edition, published by The Brady Company, Prentice-Hall, Inc., Englewood Cliffs, N.J. 07632[, and such additions to the curriculum as specified by the cabinet]. A copy of these publications is hereby incorporated [, included] by reference and [as if fully incorporated herein,] shall be on file in the office of the Emergency Medical Services Branch, Department for Health Services, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40601, and shall be available for public inspection Monday through Friday from 8 a.m. until 4:30 p.m.;
(2) Be at least forty (40) hours in duration;
(3) Utilize equipment, texts, and other materials approved by the cabinet;
(4) Not be started until all equipment, texts, and other materials specified are available, in proper quantities, in proper working condition, and placed in secure storage;
(5) Not share equipment between courses unless such equipment is available equally to all EMT-first responder classes;
(6) Be taught by an instructor approved by the cabinet [for Human Resources] pursuant to Section 2 of this regulation;
(7) Have an appropriate number of assistant instructors available for practice sessions so that there are no more than ten (10) students

per assistant. A certified emergency medical technician or paramedic may be used as an assistant for practice sessions;

(8) Have a class certification number assigned by the cabinet;

(9) Be limited to a maximum of thirty (30) students;

(10) Not permit more than one (1) lesson absence per student, unless made up at the discretion of the instructor, or made up in a subsequent EMT-first responder course;

(11) Require each student to sign in for each lesson on attendance sheets provided by the cabinet; and

(12)(a) Require the instructor at the end of each course, to provide the cabinet with the following: "Final Course Records Form" [master grade sheet], "Answer Sheet" [for the written exam], "Final Practical Exams", "Application for Certification" with the prescribed fee outlined in 902 KAR 13:030, Section 1(3), two (2) "Master Student Attendance Sheets" [master attendance form] and "Attendance sheets" for each lesson.

(b) The following forms: "Final Course Records Form", dated 11/87, "Kentucky First Responder Examination Answer Sheet", dated 88-89, "Application for Certification", dated 7/90, "Master Student Attendance Sheet", dated 11/87, and "Attendance Sheet", dated 11/87 are hereby incorporated by reference. These forms may be obtained from the Emergency Medical Services Branch, Department for Health Services, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621, between 8 a.m. and 4:30 p.m., Monday through Friday.

Section 2. EMT-First Responder Instructors. A [No] person shall not hold himself out as an EMT-first responder instructor unless he is an EMT-instructor certified by the cabinet, or has been approved by the cabinet to teach the EMT-first responder course. [The following shall be eligible for such approval] Upon submission of appropriate documentation to the cabinet, the following shall be eligible for approval:

(1) An individual certified by the Kentucky Law Enforcement council to teach the first responder course who is also certified by the cabinet [for Human Resources] as an EMT or EMT-first responder.

(2) An individual certified by the Commission on Fire Protection Personnel Standards and Education as a fire protection instructor and who is also certified by the cabinet [for Human Resources] as an EMT or EMT-first responder.

(3) A physician, registered nurse, paramedic, or emergency medical technician who has completed a basic instructional methodology course approved by the cabinet and has experience or is active in teaching or providing emergency medical services.

Section 3. Requirements for Applicants. Each applicant shall:

(1) Be eighteen (18) years of age or older;

(2) Be of good moral character;

(3) Not be habitually addicted to or an abuser of alcoholic beverages, drugs, or controlled substances; and

(4) Understand and be able to read, speak, and write the English language. [; and]

[(5) Submit a signed application on a form prescribed by the cabinet.]

Section 4. EMT-First Responder Certification Examination. The cabinet shall prescribe the format and content of the EMT's certification examination, which shall consist of two (2) parts:

(1) Written. A passing grade of seventy-five (75) percent shall be required. If [In the event that] an applicant's grade average is less than seventy-five (75) percent, but is seventy (70) percent or more, the applicant may, upon proper application, retake the written examination. However, should the applicant again fail, he shall be required to retake the entire EMT-first responder course before being eligible for reexamination.

(2) Practical. The applicant shall successfully pass all parts of the final practical examination. If [In the event] he fails to successfully pass all portions of the final practical examination, he shall be permitted one (1) opportunity to retake the part which he failed to pass. However, should the applicant again fail to pass that [the] particular part of the examination, he shall be required to retake the entire EMT-first responder training course before being eligible for reexamination.

(3) Examiners. EMT-instructors certified by the cabinet or EMT-first responder instructors approved by the cabinet pursuant to Section 2 of this regulation shall be used as examiners for EMT-first responder course practical examinations. An instructor who is employed by the organization for whom the EMT-first responder course is conducted shall not be used as an examiner in the practical examination of that course.

Section 5. Expiration of Certification. All EMT-first responder certificates shall expire three (3) years from the date of issuance.

Section 6. Renewal of Certification: In-service Training or Continuing Education Requirements. (1) In order to renew a certificate, the EMT-first responder shall, during his period of certification, attain at least twelve (12) hours of in-service training or continuing education, or a combination thereof, and show evidence of certification in cardiopulmonary resuscitation (CPR) as required by the American Heart Association or the American National Red Cross. Evidence of training and CPR certification shall be submitted to the cabinet not less than thirty (30) days prior to the expiration of his EMT-first responder certification.

[(1) Subject matter requirements for EMT-first responder in-service training or continuing education.]

(2) [(a)] To receive credit for in-service training or continuing education, the applicant for recertification may take in-service training or continuing education on any subject covered by the U.S. Department of Transportation EMT-First Responder curriculum, or any subject for which instruction is authorized by the cabinet [for Human Resources].

(3) Each subject or training course claimed shall be countersigned by the instructor of the subject or course.

(4) Training received as a requirement for continuing education in medicine, nursing, paramedic, or as an EMT in a coal mining situation required by KRS 351.127 shall be

eligible for in-service training or continuing education credit if it meets the criteria of subsection (2) of this section.

(5) The EMT-first responder shall submit to the cabinet a record of his in-service training or continuing education on a form provided by the cabinet. The form shall be signed by the EMT-first responder and shall contain a certification as to the truth of the information supplied and a statement that misrepresentation of the information may be cause for suspension or revocation of a certificate. This form, "First Responder Official Record of Continuing Education/In-service", dated 9-30-91, is hereby incorporated by reference and may be obtained from the Emergency Medical Services Branch, Department for Health Services, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621, between 8 a.m. and 4:30 p.m., Monday through Friday.

(6) [(b)] The following are not eligible for credit as in-service training or continuing education:

(a) [1.] Ambulance runs, rescues, firefighting, emergency responses, or similar actual emergency activities; and [.]

(b) [2.] Instruction in material, techniques or procedures not authorized to be performed by EMT-first responders.

[(c) Evidence of training and CPR certification shall be submitted to the cabinet not less than thirty (30) days before the expiration of the EMT's certification on forms supplied by the cabinet.]

[(d) The form provided by the cabinet shall contain a certification as to the truth of the information supplied and a statement that all training claimed conforms to the requirements of this regulation and a warning that submission of false information constitutes a violation of law.]

[(e) Each subject or training course claimed shall be countersigned by the instructor of the subject or course.]

[(f) Training received as a requirement for continuing education in medicine, nursing, paramedic, or as an EMT in a coal mining situation required by KRS 351.127 is eligible for in-service training or continuing education credit if it meets the criteria of paragraph (a) of this subsection.]

Section 7. [(2)] Instructor[s] Requirements for EMT-first Responder In-service Training and Continuing Education. The following persons shall be [are] considered [as] qualified to conduct in-service training and continuing education courses for EMT-first responders [emergency medical technicians]:

(a) A physician licensed pursuant to KRS Chapter 311;

(b) A registered nurse licensed pursuant to KRS Chapter 314;

(c) A paramedic certified by the State Board of Medical Licensure;

(d) An emergency medical technician instructor or instructor trainer certified by the Cabinet for Human Resources; or

(e) An instructor who is certified by a state or federal agency to teach [who is teaching] within an [the] area authorized by his certification, a course which shall [will] qualify for EMT-first responder [emergency medical technician] in-service training or continuing education.

(2) [(f)] As applicable, a physician[s], registered nurse[s], paramedic[s] or emergency medical technician instructor[s] currently licensed or certified by another state of the United States of America shall be considered as meeting the requirements of subsection (1)(a) through (e) of this section [paragraphs (a) through (e) of this subsection, as applicable].

Section 8. [(3)] Cardiopulmonary Resuscitation Requirement. (1) During the second year of the certification period, the EMT-first responder shall obtain or renew certification in cardiopulmonary resuscitation and related techniques as follows:

(a) The course shall be conducted by the American Heart Association or the American National Red Cross or, under its authority, by an instructor certified by the American Heart Association or the American National Red Cross;

(b) The course shall be taught for record and shall be certified by the instructor to the American Heart Association or the American National Red Cross as meeting all applicable standards of the organization;

(c) The course shall provide instruction and testing in:

1. One (1) rescuer cardiopulmonary resuscitation;

2. Two (2) rescuer cardiopulmonary resuscitation;

3. Techniques of changing from one (1) rescuer to two (2) rescuers during the performance of cardiopulmonary resuscitation;

4. Techniques of changing rescuers during the performance of two (2) rescuer cardiopulmonary resuscitation;

5. Techniques for relief of obstruction of the airway;

6. Cardiopulmonary resuscitation of infants and small children; and

7. Mouth to mouth/mouth to nose resuscitation for adults, small children, and infants.

(d) The course shall provide for individual skill testing of all adult and infant related skills in subsection (1) [(3)] of this section.

(2) [(e)] The applicant for renewal of certification shall forward to the cabinet [for Human Resources] a copy of both sides of the CPR card [their certificate] issued to him indicating successful completion of the CPR course as required in Section 6(1) of this administrative regulation.

[Section 7. Certification on the Basis of Prior Training. Upon proper application and documentation, and upon payment of the prescribed fee, persons who can document that they have successfully completed a formal course of instruction approved by the cabinet which utilized the U.S. Department of Transportation First Responder Course prior to the effective date of this regulation may be issued an EMT-first responder certificate valid for up to three (3) years from the date of course completion. Organizations which conducted or sponsored such courses shall provide documentation to the cabinet that the courses meet or exceed the U.S. Department of Transportation guidelines.]

Section 9. [8.] Authorized Procedures. Certified EMT-first responders may perform any of the procedures [as] set forth in the U.S. Department of Transportation curriculum

[en]titled "Emergency Medical Services: First Responder Training Course" and the accompanying text entitled "First Responder," Third [Second] Edition, published by The Brady Company, Prentice-Hall, Inc., referenced in Section 1 of this administrative regulation.

C. HERNANDEZ, M.D., Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 3, 1991
FILED WITH LRC: October 10, 1991 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 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 November 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: Robert P. Calhoun
(1) Type and number of entities affected: This amendment is to comply with KRS Chapter 13A. No entities will be affected.
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(a) Necessity of proposed regulation if in conflict:
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(6) Any additional information or comments:
TIERING: Was tiering applied? No. Tiering is not appropriate for these KRS Chapter 13A amendments.

CABINET FOR HUMAN RESOURCES
Office of Inspector General
(Proposed Amendment)

902 KAR 20:200. Tuberculosis testing in long term care facilities.

RELATES TO: KRS 215.520 to 215.600, 216B.010 to 216B.131, 216B.990[(1), (2)]
STATUTORY AUTHORITY: KRS 216B.042[(2)], 216B.105[, Executive Order 86-366]
NECESSITY AND FUNCTION: KRS 216B.042 [216B.040] and 216B.105 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. [Executive Order 86-366 transferred the authority to regulate health services and health facilities from the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board to the Office of the Inspector General.] KRS 215.520 to 215.590 mandates that nursing homes report cases of tuberculosis. The purpose of this regulation is to establish licensure requirements concerning uniform procedures for the identification and control of tuberculosis in nursing facilities, skilled nursing facilities, intermediate care facilities, nursing homes, and personal care homes. These procedures are necessary to minimize the transmission of tuberculosis infection among the staff and residents of such facilities.

Section 1. Definitions. (1) "Induration" means a firm area in the skin which develops as a reaction to injection tuberculosis proteins when a person has tuberculosis infection. The diameter of the firm area is measured to the nearest millimeter to gauge the degree of reaction. A reaction of ten (10) millimeters or more of induration is considered highly indicative of tuberculosis infection.
(2) "Skin test" means a tuberculin skin test utilizing the intradermal (Mantoux) technique using five (5) tuberculin units of purified protein derivative (PPD). The results of the test must be read forty-eight (48) to seventy-two (72) hours after injection and recorded in terms of millimeters of induration.
(3) "Two (2) step skin testing" means a series of two (2) tuberculin skin tests administered seven (7) to fourteen (14) days apart.

Section 2. Admission of Patients under Treatment for Pulmonary Tuberculosis Disease. No licensee shall admit a person under medical

treatment for pulmonary tuberculosis disease unless there is documentation of three (3) consecutive sputum smears negative for acid-fast bacilli within the month prior to admission and the patient is considered noninfectious by a licensed physician.

Section 3. Tuberculin Skin Testing of Residents. (1) For residents entering a facility, no skin testing is required if one of the following can be documented:

(a) A previous documented skin test has shown ten (10) or more millimeters of induration; or

(b) The resident is currently receiving or has completed six (6) months of prophylactic therapy or a course of multiple-drug chemotherapy for tuberculosis; or

(c) The resident can document that he/she has had a tuberculin skin test within three (3) months prior to admission.

(2) For all other residents, however, skin testing is required upon admission to the facility. For such residents whose initial skin test shows less than ten (10) millimeters of induration, two (2) step skin testing is required, unless they can document that they have had a tuberculosis skin test within one (1) year prior to their initial testing upon admission to the facility. The skin test status of all residents must be documented through recording of the date and millimeters of induration of the most recent skin test in the medical record. The front cover of the medical record shall be labeled in a conspicuous manner with the notation "PPD+" for all residents with a reaction of ten (10) or more millimeters of induration.

Section 4. X-raying of Residents. All residents found on admission testing to have a skin test of ten (10) or more millimeters of induration shall receive a chest x-ray, unless a chest x-ray done within two (2) months prior to admission showed no evidence of tuberculosis disease or the resident can document the previous completion of a course of prophylactic treatment with isoniazid.

Section 5. Monitoring of Residents with a Skin Test of Ten (10) or More Millimeters of Induration. Residents with a skin test of ten (10) or more millimeters of induration shall be monitored for development of pulmonary symptoms such as cough, sputum production or chest pain. If such symptoms develop and persist of three (3) weeks or longer, a chest x-ray shall be taken and three (3) sputum samples shall be submitted to the Division of Laboratory Services, Department for Health Services, Frankfort, Kentucky, for tuberculosis culture and smear.

Section 6. Monitoring of Residents with a Skin Test of Less than Ten (10) Millimeters of Induration. Annual skin testing is required. In addition, if pulmonary symptoms develop and persist for three (3) weeks or more, the tuberculin skin test shall be repeated, three (3) sputum samples shall be submitted to the Division of Laboratory Services, Department for Health Services, Frankfort, Kentucky for tuberculosis culture and smear, and a chest x-ray shall be taken.

Section 7. Tuberculin Skin Testing of Staff. The skin test status of all staff members shall be documented in the employee's personnel record. A skin test shall be initiated on all new staff members before or during the first week of employment and the results shall be documented in the employee's personnel record within the first month of employment. No skin testing is required at the time of initial employment if the employee documents a prior skin test of ten (10) or more millimeters of induration or if the employee is currently receiving or has completed six (6) months of prophylactic therapy or a course of multiple-drug chemotherapy for tuberculosis. Two (2) step skin testing is required for new employees over age forty-five (45) whose initial test shows less than ten (10) millimeters of induration, unless they can document that they have had a tuberculosis skin test within one (1) year prior to their current employment. All staff who have never had a skin test of ten (10) or more millimeters induration must be skin tested annually on or before the anniversary of their last skin test.

Section 8. X-raying and Monitoring of Staff with a Skin Test of Ten (10) or more Millimeters of Induration. All staff who are found to have a skin test of ten (10) or more millimeters induration, on initial employment testing or annual testing, must receive a chest x-ray unless a chest x-ray within the previous two (2) months showed no evidence of tuberculosis or, the individual can document the previous completion of a course of prophylactic treatment with isoniazid. They shall be advised of the symptoms of the disease and instructed to report to their employer and seek medical attention promptly, if symptoms persist.

Section 9. Responsibility for Screening and Monitoring Requirements. The administrator of each long-term care facility is responsible for ensuring that all skin-tests, chest x-rays and sputum sample submissions are done in accordance with Sections 1 through 8 of this regulation. In those facilities not employing professional staff with the technical training to carry out the screening and monitoring requirements, the administrator shall arrange for professional assistance from either the local health department or private medical practitioners. Irrespective of who carries out the screening and monitoring requirements, all skin testing dates and results, all chest x-ray reports and all sputum sample culture and smear results shall be recorded as a permanent part of the medical record and be summarized on the individual's transfer form when an interfacility transfer occurs.

Section 10. Reporting to Local Health Departments. The following shall be reported to the local health department having jurisdiction by the administrator of the long-term care facility immediately upon becoming known: chest x-rays which are suspicious for tuberculosis; sputum smears positive for acid-fast bacilli; sputum cultures positive for mycobacterium tuberculosis; residents or staff who converts from a skin test of less than ten (10) to a skin test of ten (10) or more millimeters of induration; and all residents and staff who have a skin test of ten (10) millimeters or more

induration at the time of admission or employment, respectively.

Section 11. Prophylaxis of Persons with Recent Infection but no Disease. Any resident or staff whose skin test status changes on annual testing from less than ten (10) to ten (10) or more millimeters of induration shall be considered to be recently infected with Mycobacterium tuberculosis. Such recently infected persons who have no signs or symptoms of tuberculosis disease on chest x-ray or medical history should be given preventive therapy with isoniazid for six (6) months unless medically contraindicated as determined by a licensed physician. Medications shall be administered to patients only upon the written order of a physician. If such individual is unable to take isoniazid therapy, the individual shall be advised of the clinical symptoms of the disease, and have an interval medical history and a chest x-ray taken and evaluated for tuberculosis infection every six (6) months during the two (2) years following conversion.

Section 12. Any staff or resident who can document completion of preventive treatment with isoniazid shall be exempt from further screening requirements except in accordance with Section 5 of this regulation.

CLAY CESSNA, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: September 27, 1991
FILED WITH LRC: October 10, 1991 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 21, 1991, at 9 a.m. in the Department for Employment Services, second floor, Cabinet for Human Resources Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 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: 500
(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:
TIERING: Was tiering applied? No. This is a licensure regulation and as such must apply to all regulated entities equally.

CABINET FOR HUMAN RESOURCES
Department for Health Services
Division of Local Health
(Proposed Amendment)

902 KAR 45:140. Retail food programs evaluation and standardization procedures.

RELATES TO: KRS 217.005 to 217.215, 217.808 to 217.812, 217.992, 219.011 to 219.081
STATUTORY AUTHORITY: KRS 194.050, 211.090
NECESSITY AND FUNCTION: The Cabinet for Human Resources is directed by KRS 211.090 and 211.180 to adopt rules and regulations necessary to regulate and control the safe handling of food and food products and to formulate, promote, establish, and execute policies, plans, and programs relating to the safe handling of food and food products. The function of this regulation is to establish uniform procedures for the periodic evaluation of the retail food protection programs carried out by local health departments to determine their strengths and weaknesses for the purpose of protecting the public health.

Section 1. Methods of Conducting Evaluations of Retail Food Programs. The evaluation and standardization procedures for retail food programs as set forth in the publication entitled "Retail Food Programs Evaluation and Standardization Procedures," revised October, 1991, [June, 1983,] is hereby adopted by reference. A copy of the publication is on file in the Office of the Commissioner for Health Services, 275 East Main Street, Frankfort, Kentucky 40621, and shall be open for public inspection. Copies are available from the Commissioner's Office at the above address.

C. HERNANDEZ, M.D., Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: September 24, 1991
FILED WITH LRC: October 14, 1991 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 21, 1991, at 9 a.m. in the Health Services Auditorium located on the first floor of the Health Services Building. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 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: James Corum
(1) Type and number of entities affected: 51 local health departments.
(a) Direct and indirect costs or savings to those affected:
1. First year: None
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect costs or savings:
1. First year: None
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs: N/A
(b) Reporting and paperwork requirements: N/A
(3) Assessment of anticipated effect on state and local revenues: N/A
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict: N/A
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A
(6) Any additional information or comments: None
TIERING: Was tiering applied? No. Tiering was not applied because this regulation applies uniformly to all the regulated entities; and does not make distinctions between classes.

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. Environmental food safety.
3. State the aspect or service of local government to which this administrative regulation relates. Retail food programs inspection and enforcement.
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: Requires training, standardization and program evaluations to be done periodically.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 47:050. Ban of paint, coatings, and certain consumer products containing lead.

RELATES TO: KRS 211.901 to 211.905, 211.994, 217.801, 217.990(7)

STATUTORY AUTHORITY: KRS 194.050, 211.090, 211.180, 211.901
NECESSITY AND FUNCTION: KRS 211.090 and 211.180 authorize the Cabinet for Human Resources to adopt administrative regulations for the prevention and control of health hazards. In addition, KRS 211.901 authorizes the cabinet to adopt administrative regulations for the prevention of lead poisoning. The function of this administrative regulation is to ban lead-containing paint and similar surface coatings and toys, certain furniture and other consumer products on which lead-containing paint and coatings are used.

Section 1. Definitions. (1) The definition "cabinet" is governed by KRS 217.660(2).
(2) "Consumer product" means the article, or component part thereof, produced or distributed for sale to a consumer for use in or around a permanent or temporary household or residence, a school, in recreation, or otherwise, or for the personal use, consumption or enjoyment of the consumer in or around a permanent or temporary household or residence, a school, in recreation, or otherwise, but the term does not include:
(a) Articles not customarily produced or distributed for sale to, or use or consumption by, or enjoyment of the consumer;
(b) Tobacco or tobacco products;
(c) Motor vehicle, or motor vehicle equipment;
(d) Economic poisons;
(e) Aircraft or related equipment or appliances;
(f) Boats, vessels, or appurtenances to such;
(g) Drugs, devices, or cosmetics;
(h) Foods or feed.
(3) "Paint and other similar surface coatings" means a fluid, semifluid, or other material, with or without a suspension of finely divided coloring matter, which changes to a solid film if a thin layer is applied to a metal, wood, stone, paper, leather, cloth, plastic, or other surface. This term does not include printing inks or those materials which actually become a part of the substrate, like as the pigment in a plastic article, or those materials which are actually bonded to the substrate, by electroplating or ceramic glazing.
(4) "Lead-containing paint" means paint or other similar surface coatings containing lead or lead compounds and in which the lead content (calculated as lead metal) is in excess of 0.06 percent by weight of the total nonvolatile content of the paint or the weight of the dried paint or coating film.
(5) "Toys and other articles intended for use by children" means those toys and other articles which are intended to be entrusted to or for use by children. This does not include all articles to which children might have access simply because they are present in a household.
(6) "Furniture article" means those movable articles: used to support people or things; other functional or decorative furniture articles, including, but not limited to, products such as beds, bookcases, chairs, chests, tables, dressers, desks, pianos, console, televisions, and sofas. The term "furniture article" does not include appliances, such an ranges, refrigerators, dishwashers, clothes washers and dryers, air conditioners, humidifiers, and dehumidifiers, fixtures such as bathroom fixtures, built-in cabinets, chandeliers, windows, and doors; or household

items such as window shades, venetian blinds, or wall hangings and draperies.

Section 2. [1.] Scope and Application. (1) The manufacture or distribution of lead-containing paint and similar surface coatings for general consumer use; toys and other articles intended for use by children that bear lead-containing paint or similar surface coatings; and furniture articles for consumer use that bear lead-containing paint or similar surface coatings are hereby banned within the Commonwealth of Kentucky.

(2) The ban applies to the products in the categories described in subsection (1) of this section which are "consumer products" as defined in Section 2(2) of this administrative regulation which includes those articles produced for use by the consumer in or around the home, in the school, in recreation or otherwise covered by this regulation. Paints for motor vehicles and boats are not included since they are not within the definition of "consumer product." The ban, in addition to applying to products sold directly to consumers, does apply to products which, after sale, are used or enjoyed by consumers, like [such as] paints and similar surface coatings used on residences, schools, hospitals, parks, playgrounds, public buildings, and other areas where consumers [will] have direct access to the painted or coated surface.

(3) The ban is considered necessary since it has been determined by the scientific community that there is an unreasonable risk of lead poisoning in children associated with and having access to paints and similar surface coatings containing lead in excess of 0.06 percent by weight of the total nonvolatile content or weight of the dried paint or coating film.

[Section 2. Definitions. (1) "Cabinet" means the Cabinet for Human Resources.]

[(2) "Consumer product" means any article, or component part thereof, produced or distributed for sale to a consumer for use in or around a permanent or temporary household or residence, a school, in recreation, or otherwise, or for the personal use, consumption or enjoyment of the consumer in or around a permanent or temporary household or residence, a school, in recreation, or otherwise, but such term does not include:]

[(a) Articles not customarily produced or distributed for sale to, or use or consumption by, or enjoyment of the consumer;]

[(b) Tobacco or tobacco products;]

[(c) Motor vehicle, or motor vehicle equipment;]

[(d) Economic poisons;]

[(e) Aircraft or related equipment or appliances;]

[(f) Boats, vessels, or appurtenances to such;]

[(g) Drugs, devices, or cosmetics; and]

[(h) Foods or feed.]

[(3) "Paint and other similar surface coatings" means a fluid, semifluid, or other material, with or without a suspension of finely divided coloring matter, which changes to a solid film when a thin layer is applied to a metal, wood, stone, paper, leather, cloth, plastic, or other surface. This term does not include printing inks or those materials which actually become a part of the substrate, such as the pigment in a plastic article, or those materials which are actually bonded to the substrate, such as by electroplating or ceramic glazing.]

[(4) "Lead-containing paint" means paint or other similar surface coatings containing lead or lead compounds and in which the lead content (calculated as lead metal) is in excess of 0.06 percent by weight of the total nonvolatile content of the paint or the weight of the dried paint or coating film.]

[(5) "Toys and other articles intended for use by children" means those toys and other articles which are intended to be entrusted to or for use by children. This does not include all articles to which children might have access simply because they are present in a household.]

[(6) "Furniture article" means those movable articles: used to support people or things; other functional or decorative furniture articles, including, but not limited to, products such as beds, bookcases, chairs, chests, tables, dressers, desks, pianos, console, televisions, and sofas. The term "furniture article" does not include appliances, such an ranges, refrigerators, dishwashers, clothes washers and dryers, air conditioners, humidifiers, and dehumidifiers, fixtures such as bathroom fixtures, built-in cabinets, chandeliers, windows, and doors; or household items such as window shades, venetian blinds, or wall hangings and draperies.]

Section 3. Exemptions. (1) The following categories of products are exempt from the scope of the ban established by this administrative regulation provided they comply with the requirements of subsection (2) or (3) of this section:

(a) Agricultural and industrial equipment refinish coatings;

(b) Industrial (and commercial) building nd equipment, maintenance, coatings, including traffic and safety marking coatings;

(c) Graphic art coatings (i.e., products marketed solely for application on billboards, road signs, and similar uses and for identification marking in industrial buildings);

(d) Touchup coatings for agricultural equipment, lawn and garden equipment, and appliances;

(e) Catalyzed coatings marketed solely for use on radio-controlled model powered aircraft.

(2) The products listed in subsection (1) of this section are exempted provided:

(a) That these products bear on the main panel of their label, in addition to the [any] labeling that may be otherwise required, the signal word "Warning" (unless some other signal word is required) and the following statement: "Contains Lead. Dried Film of This Paint May Be Harmful If Eaten or Chewed."

(b) That these products also bear on the main or secondary panel of the label the following additional statement or its practical equivalent: "Do not apply on toys and other children's articles, furniture, or interior surfaces of a [any] dwelling or facility which may be occupied or used by children." "Do not apply on exterior surfaces of dwelling units, such as window sills, porches, stairs, or railings, to which children may be commonly exposed." "Keep out of reach of children." If the statement required by the preceding subsection is placed on a label panel other than the main panel, the label statement required to be on the main panel shall contain the following

additional statement: "See other cautions on _____ (insert 'side' or 'back,' as appropriate) panel."

(c) The placement, conspicuousness, contrast, and type size of the label statements required by this section shall comply with the requirements of the Kentucky Hazardous Substances Labeling Act, KRS 217.650 to 217.710 and 217.993, the U.S. Consumer Product Safety Act (Public Law 92-573; 15 U.S.C. 2051, et seq.) as amended, and regulations adopted pursuant thereto.

(3) The following products are exempt from the scope of the ban established by this section and no cautionary labeling is required:

(a) Mirrors which are part of furniture articles to the extent that they bear lead-containing backing paints;

(b) Artists' paints and related materials;

(c) Metal furniture articles (but not metal children's furniture) bearing factory-applied (lead) coatings.

Section 4. Test Procedures. The test procedures prescribed in the standards established by the Association of Official Analytical Chemist, 14th Edition, shall be applicable to administrative regulations adopted by the cabinet relating to paint and similar surface coatings. A copy of this publication is available in the Office of the Commissioner, Department of Health Services, 275 East Main Street, Frankfort, Kentucky 40621, and is available for public inspection and copying, Monday - Friday, 8 a.m. - 4:30 p.m. [A copy of such publication shall be on file in the office of the Commissioner of Health Services and shall be open for public inspection.] A copy of the [such] publication may be obtained by writing to the Association of Official Analytical Chemist, Inc., 1111 N. 19th Street, Suite 210, Arlington, VA 22209.

Section 5. Compliance. Paint and other similar surface coatings which are in compliance with applicable standards adopted by the United States Consumer Product Safety Commission, shall be considered to be in compliance with this administrative regulation. In the event of a variance between this administrative regulation and the regulations adopted by the United States Consumer Product Safety Commission relating to paint and other similar surface coating materials, compliance with the federal regulations shall be deemed compliance with the provisions of this administrative regulation.

Section 6. Issuance and Service of Notice of Noncompliance [Violation]. (1) If [When] test procedures prescribed in Section 4 of this regulation reveal that paint or other similar surface coatings are not in compliance with the standards set forth therein, the cabinet shall notify the owner of the [such] violations in writing [by means of a written notice]. The [Such] notification shall:

(a) Set forth the specific violations found;

(b) Establish a specific and reasonable period of time for the correction of the [such] violations; and

(c) State that an opportunity for appeal from the [any] notice of noncompliance shall [findings will] be provided if a written request for a hearing is filed with the cabinet within fifteen (15) days of receipt of the notice of noncompliance [findings].

(2) A notice [Notices provided for under this regulation] shall be deemed to have been properly served if it [when the written notification of findings] has been:

(a) Personnally delivered to the owner of the paint or coatings manufacturing firm or person in charge; or if

(b) [when such notice has been] Sent by registered or certified mail, return receipt requested, to the last known address of the owner or person in charge.

(c) A copy of the [such] notice shall be filed in the records of the cabinet.

Section 7. Hearings. (1) If an appeal of a notice of noncompliance is filed as provided by Section 4 of this regulation, the cabinet shall:

(a) Schedule a hearing; and

(b) Inform the person appealing a notice of noncompliance of the date, time, and place of the hearing.

(2) [Upon timely receipt of a written request for an appeal of the findings of any inspection under the authority of this regulation, the cabinet shall afford an aggrieved party the opportunity for a hearing. A hearing pursuant to this regulation shall be conducted at a time and place designated by the cabinet.] The cabinet shall make written findings of fact and conclusions of law.

Section 8. Quarantine and Recall. (1) If a paint or similar surface coating; toy or other article intended for use by children or furniture for consumer use does not comply with the provisions of this administrative regulation, the manufacturer, distributor, or importer of the product may be:

(a) Requested by the cabinet to be voluntarily recalled from wholesale or retail establishments to which they were distributed; or

(b) Ordered by the cabinet to recall the product.

(2) A product that does not comply with the provisions of this administrative regulation may be quarantined by the cabinet.

(3) If the product is recalled, the cabinet shall be provided with:

(a) A copy of the recall notification;

(b) A list of all establishments contacted;

(c) The amount or number of the products returned to the manufacturer, distributor or importer; and

(d) The disposition of the flammable fabric or flammable fabric products recalled. [In the event paint or similar surface coatings, toys and other articles intended for use by children or furniture for consumer use do not meet the applicable standards set forth in this regulation as to lead content and appropriate labeling after the effective date of this regulation, the cabinet may quarantine or require the recall of such article(s) pursuant to KRS 217.700. If a product applicable to this regulation fails to meet the lead and labeling requirements as set forth, the manufacturer or distributor of such product may be requested by the cabinet to initiate a voluntary recall of the product from those wholesale and retail establishments to which the product was distributed. The responsible manufacturer or distributor will provide the cabinet with a copy of the recall with a listing of all establishments contacted, the amount of product

returned to the recalling establishment, and the disposition of the product in violation.]

C. HERNANDEZ, M.D., Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 2, 1991
FILED WITH LRC: October 11, 1991 at 3 p.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 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 November 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: Terry M. Wescott
(1) Type and number of entities affected: These amendments will have no effect on the interstate and intrastate manufacturers or distributors of lead-containing paint and similar surface coatings, toys and other articles intended for use by children and certain furniture articles that bear a coating of lead-containing paint.
(a) Direct and indirect costs or savings to those affected: No direct or indirect costs or savings will result from these amendments.
1. First year: There are no direct or indirect costs or savings, because there are not permit fees.
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 requirements will result from these amendments.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: No direct or indirect savings or costs will result from these amendments. There are no direct or indirect costs or savings to the agency, because of grammatical and date changes were the only corrections made.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: No paperwork or reporting will result from these amendments.
(3) Assessment of anticipated effect on state and local revenues: This amendment will have no effect on state or local revenue.
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods exist.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflict, overlap or duplication with any statute, regulation or policy.
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:

TIERING: Was tiering applied? No. Tiering was not applied, because this regulation applies uniformly to all the regulated entities, and does not make distinction between classes.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. This regulation is being amended to comply with rules specified in KRS 13A.222, however, this regulation conforms to the federal mandate under the Federal Hazardous Substance Act (FHSA), 15 USC 1261, and compliance standards set forth by federal regulation.
2. State compliance standards.
3. Minimum or uniform standards contained in the federal mandate.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate?
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 47:060. Safety of toys and children's products.

RELATES TO: KRS 211.180
STATUTORY AUTHORITY: KRS 194.050, 211.090, 211.180
NECESSITY AND FUNCTION: KRS 194.050, 211.090 and 211.180 authorize the Cabinet for Human Resources to adopt administrative regulations relating to all matters of public health including the detection, prevention, and control of home accidents and health hazards and the control of [such] other factors, not assigned by law to another agency, as may be necessary to insure a safe environment, and administrative regulations for the protection and improvement of health of infants, preschool and school age children. The function of this administrative regulation is to establish uniform safety standards, labeling requirements, and testing procedures for toys and certain children's products.

[Section 1. Scope and Application. The Cabinet for Human Resources hereby adopts by reference for the Commonwealth of Kentucky the requirements for toys and children's products set forth in Section 2 of this regulation that have been established as standards by the U.S. Consumer Product Safety Commission in 16 Code of Federal Regulations (CFR) Part 1500, Revised January 1, 1985. A copy of the publication is on file in the Office of the Commissioner, Department for Health Services, 275 East Main Street, Frankfort, Kentucky 40621, and shall be open for public inspection. Copies are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.]

Section 1. [2.] Safety Standards, Labeling Requirements, and Testing Procedures for Toys and Children's Products are governed by 16 Code of Federal Regulations (CFR) Parts 1501, 1505,

1508, 1509, 1510, 1511, and 1512 January 1, 1991 as specified in this section. The federal regulations specified in this section are adopted without change. [The following parts of 16 CFR 1500 are adopted by reference:]

(1) 16 CFR Part 1501, Sections [. Sec.] 1501.1 through 1501.4 - Methods for Identifying Toys and Other Articles Intended for Use by Children Under 3 Years of Age Which Present Choking, Aspiration, or Ingestion Hazards because of Small Parts.

(2) 16 CFR Part 1505, Sections [Sec.] 1505.1 through 1505.8 and 1505.50 - Requirements for Electrically Operated Toys or Other Electrically Operated Articles Intended for Use by Children.

(3) 16 CFR Part 1508, Sections [Sec.] 1508.1 through 1508.11 - Requirements for Full-size Baby Cribs.

(4) 16 CFR Part 1509, Sections [Sec.] 1509.1 through 1509.13 - Requirements for Nonfull-size Baby Cribs.

(5) 16 CFR Part 1510, Sections [Sec.] 1510.1 through 1510.4 - Requirements for Rattles.

(6) 16 CFR Part 1511, Sections [Sec.] 1511.1 through 1511.8 - Requirements for Pacifiers.

(7) 16 CFR Part 1512, Sections [Sec.] 1512.1 through 1512.20 and Sec. 1512.50 - Requirements for Bicycles.

Section 2. A copy of these federal regulations is on file in the Office of the Commissioner, Department of Health Services, 275 East Main Street, Frankfort, Kentucky 40621, and is available for public inspection and copying, Monday through Friday, 8 a.m. to 4:30 p.m. Copies of these federal regulations are also available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

Section 3. Compliance. Toys and children's products which are in compliance with [applicable] standards established in the federal regulations adopted without change in this administrative regulation [adopted by the United States Consumer Product Safety Commission], shall be deemed to be in compliance with this administrative regulation.

Section 4. Issuance and Service of Notice of Noncompliance [Violation]. (1) If [When] test procedures adopted without change by [reference in Section 2 of] this administrative regulation reveal that toys and children's products are not in compliance with the standards set forth therein, the cabinet shall notify the owner of the [such] violations in writing [by means of a written notice]. The [Such] notification shall:

(a) Set forth the specific violations found;

(b) Establish a specific and reasonable period of time for the correction of the [such] violations; and

(c) State that an opportunity for appeal from the [any] notice of noncompliance shall [findings will] be provided if a written request for a hearing is filed with the cabinet within fifteen (15) days of receipt of the notice of noncompliance [findings].

(2) A notice[s provided for under this regulation] shall be deemed to have been properly served if it [when the written notification of findings] has been:

(a) Personally delivered to the owner of the manufacturing, wholesaling, or importing firm or person in charge; or if

(b) [when such notice has been] Sent by registered or certified mail, return receipt requested, to the last known address of the owner or person in charge.

(c) A copy of the [such] notice shall be filed in the records of the cabinet.

Section 5. Hearings. (1) If an appeal of a notice of noncompliance is filed as provided by Section 4 of this regulation, the cabinet shall:

(a) Schedule a hearing; and

(b) Inform the person appealing a notice of noncompliance of the date, time, and place of the hearing.

(2) [Upon timely receipt of a written request for an appeal of the findings of any inspection under the authority of this regulation, the cabinet shall afford an aggrieved party the opportunity for a hearing. A hearing pursuant to this regulation shall be conducted at a time and place designated by the cabinet.] The cabinet shall make written findings of fact and conclusions of law.

Section 6. Quarantine and Recall. (1) If a toy or children's product does not comply with the provisions of this administrative regulation, the manufacturer, distributor, or importer of the toy or children's product may be:

(a) Requested by the cabinet to voluntarily recall the toy or children's product from wholesale or retail establishments to which they were distributed; or

(b) Ordered by the cabinet to recall the toy or children's product.

(2) A toy or children's product that does not comply with the provisions of this administrative regulation may be quarantined by the cabinet.

(3) If a toy or children's product is recalled, the cabinet shall be provided with:

(a) A copy of the recall notification;

(b) A list of all establishments contacted;

(c) The amount or number of toys or children's products returned to the manuafacturer, distributor or importer; and

(d) The disposition of the toys or children's products recalled. [In the event toys and children's products do not meet the applicable requirements set forth in this regulation as to safety standards, labeling requirements, and/or testing procedures after the effective date of this regulation, the cabinet may quarantine or require the recall of any such article or articles. If a toy or children's product applicable to this regulation fails to meet the requirements as set forth herein, the manufacturer, distributor, or importer of such toy or children's product may be requested by the cabinet to initiate a voluntary recall of the toy or children's product from those wholesale and retail establishments to which the toy and children's product was distributed. The responsible manufacturer, distributor, or importer shall provide the cabinet with a copy of the recall with a listing of all establishments contacted, the amount or number of toy or children's product returned to the recalling establishment, and the disposition of the toy or children's product in violation.]

C. HERNANDEZ, M.D., Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 2, 1991
FILED WITH LRC: October 11, 1991 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1991 at 9 a.m. in the Department for Employment Services second floor conference room, Cabinet for Human Resources Building, Frankfort, Kentucky. However this hearing will be cancelled unless interested persons notify the following office in writing by November 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: Terry M Wescott
(1) Type and number of entities affected: These amendments will have no effect on the interstate or intrastate manufacturers, distributors, or importers of toys or children's products.
(a) Direct and indirect costs or savings to those affected: No direct or indirect costs or savings will result from these amendments.
1. First year: There are no direct or indirect costs or savings, because there are not permit fees.
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 requirements will result from these amendments.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: No direct or indirect savings or costs will result from these amendments. There are no direct or indirect costs or savings to the agency, because of grammatical and date changes were the only corrections made.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: No paperwork or reporting will result from these amendments. There is no additional reporting or paperwork required. Changes are only grammatical and date corrections.
(3) Assessment of anticipated effect on state and local revenues: This amendment will have no effect on state or local revenue.
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods exist.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflict, overlap or duplication with any statute, regulation or policy.
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? No. Tiering was not applied, because this regulation applies uniformly to all the regulated entities, and does not make distinction between classes.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. This regulation is being amended to comply with rules specified in KRS 13A.222, however, this regulation conforms to the federal mandate under the Federal Hazardous Substance Act (FHSA), 15 USC 1261, and compliance standards set forth by federal regulation.
2. State compliance standards.
3. Minimum or uniform standards contained in the federal mandate.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate?
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 47:070. Standards for flammable fabrics and flammable fabric products.

RELATES TO: KRS 211.180
STATUTORY AUTHORITY: KRS 194.050, 211.090, 211.180
NECESSITY AND FUNCTION: KRS 194.050, 211.090 and 211.180 authorize the Cabinet for Human Resources to adopt administrative regulations relating to all matters of public health including the detection, prevention, and control of home accidents and health hazards and the control of [such] other factors, not assigned by law to another agency, as may be necessary to insure a safe environment. The function of this administrative regulation is to establish uniform flammability safety standards, labeling requirements, and testing procedures for clothing textiles, vinyl plastic films, children's sleepwear, carpets and rugs, and mattresses and mattress pads.

[Section 1. Scope and Application. The Cabinet for Human Resources hereby adopts by reference for the Commonwealth of Kentucky the requirements for flammable fabrics and certain products manufactured from flammable fabrics set forth in Section 2 of this regulation that have been established as standards by the U.S. Consumer Product Safety Commission in 16 CFR, revised January 1, 1985. A copy of the publication is on file in the Office of the Commissioner, Department for Health Services, 275 East Main Street, Frankfort, Kentucky 40621, and shall be open for public inspection. Copies are available from the superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.]

Section 1. [2.] Safety Standards, Labeling Requirements, and Testing Procedures for Flammable Fabrics and Flammable Fabric Products are governed by 16 Code of Federal Regulations (CFR) Parts 1610, 1611, 1615, 1616, 1630, 1631, 1632 January 1, 1991, as specified in this section. The federal regulations specified in this section are adopted without change. [The following parts of 16 CFR revised as of January 1, 1985, are hereby adopted by reference:]

(1) 16 CFR Part 1610, Sections [.Sec.] 1610.1 through 1610.5; 1610.31 through 1610.40 and 1610.61 - Standard for the Flammability of Clothing Textiles.

(2) 16 CFR Part 1611, Sections [.Sec.] 1611.1 through 1611.4 and 1611.31 through 1611.38 - Standard for the Flammability of Vinyl Plastic Film.

(3) 16 CFR Part 1615, Sections [.Sec.] 1615.1 through 1615.5; 1615.31 through 1615.36; and 1615.62 through 1615.64 - Standard for the Flammability of Children's Sleepwear: Sizes 0 through 6X (FF 3-71).

(4) 16 CFR Part 1616, Sections [.Sec.] 1616.1 through 1616.6; 1616.31 through 1616.36 and 1616.62 through 1616.65 - Standard for the Flammability of Children's Sleepwear: Sizes 7 through 14 (FF 5-74).

(5) 16 CFR Part 1630, Sections [.Sec.] 1630.1 through 1630.5; 1630.31 through 1630.32 and 1630.61 through 1630.63 - Standard for the Surface Flammability of Carpets and Rugs (FF 1-70).

(6) 16 CFR Part 1631, Sections [.Sec.] 1631.1 through 1631.5; 1631.31 through 1631.34, 1631.61, and 1631.62 - Standard for the Surface Flammability of Small Carpets and Rugs (FF 2-70).

(7) 16 CFR Part 1632, Sections [.Sec.] 1632.1 through 1632.8; 1632.31 and 1632.63 - Standards for the Flammability of Mattresses and Mattress Pads (FF 4-72, Amended).

Section 2. A copy of these federal regulations is on file in the Office of the Commissioner, Department of Health Services, 275 East Main Street, Frankfort, Kentucky 40621, and is available for public inspection and copying, Monday through Friday, 8 a.m. to 4:30 p.m. Copies of these federal regulations are also available from the Superintendent of Documents, U.S. Government Printing Office Washington, D.C. 20402.

Section 3. Compliance. Flammable fabrics and flammable fabric products which are in compliance with [applicable] standards established in the federal regulations adopted without change in this administrative regulation [adopted by the United States Consumer Product Safety Commission], shall be deemed to be in compliance with this administrative regulation.

Section 4. Issuance and Service of Notice of Noncompliance [Violation]. (1) If [When] test procedures adopted without change by [reference in Section 2 of] this administrative regulation reveal that flammable fabrics and flammable fabric products are not in compliance with the standards set forth therein, the cabinet shall notify the owner of the [such] violations in writing [by means of a written notice]. The [Such] notification shall:

(a) Set forth the specific violations found;

(b) Establish a specific and reasonable period of time for the correction of the [such] violations; and

(c) State that an opportunity for appeal from the [any] notice of noncompliance shall [findings will] be provided if a written request for a hearing is filed with the cabinet within fifteen (15) days of receipt of the notice of noncompliance [findings].

(2) A notice[s provided for under this regulation] shall be deemed to have been properly served if it [when the written notification of findings] has been:

(a) Personally delivered to the owner of the manufacturing, wholesaling, or importing firm or person in charge; or if

(b) [when such notice has been] Sent by registered or certified mail, return receipt requested, to the last known address of the owner or person in charge;

(c) A copy of the [such] notice shall be filed in the records of the cabinet.

Section 5. Hearings. (1) If an appeal of a notice of noncompliance is filed as provided by Section 4 of this regulation, the cabinet shall:

(a) Schedule a hearing; and

(b) Inform the person appealing a notice of noncompliance of the date, time, and place of the hearing.

(2) [Upon timely receipt of a written request for an appeal of the findings of any inspection under the authority of this regulation, the cabinet shall afford an aggrieved party the opportunity for a hearing. A hearing pursuant to this regulation shall be conducted at a time and place designated by the cabinet.] The cabinet shall make written findings of fact and conclusions of law.

Section 6. Quarantine and Recall. (1) If a flammable fabric or flammable fabric product does not comply with the provisions of this administrative regulation, the manufacturer, distributor, or importer of the flammable fabric or flammable fabric product may be:

(a) Requested by the cabinet to voluntarily recall the flammable fabric or flammable fabric product from wholesale or retail establishments to which they were distributed; or

(b) Ordered by the cabinet to recall the flammable fabric or flammable fabric product.

(2) A flammable fabric or flammable fabric product that does not comply with the provisions of this administrative regulation may be quarantined by the cabinet.

(3) If a flammable fabric or flammable fabric product is recalled, the cabinet shall be provided with:

(a) A copy of the recall notification;

(b) A list of all establishments contacted;

(c) The amount or number of flammable fabric or flammable products returned to the manufacturer, distributor or importer; and

(d) The disposition of the flammable fabric or flammable fabric products recalled. [In the event flammable fabrics or flammable fabric products do not meet the applicable requirements set forth in this regulation as to safety standards, labeling requirements, and/or testing procedures after the effective date of this regulation, the cabinet may quarantine or require the recall of any such article or articles. If a flammable fabric or flammable fabric products applicable to this regulation fails to meet the requirements as set forth herein, the manufacturer, distributor, or importer of such flammable fabric or flammable fabric products may be requested by the cabinet to initiate a voluntary recall of the flammable fabric or flammable fabric products from those wholesale and retail establishments to which the flammable fabric or flammable fabric products was distributed. The responsible manufacturer, distributor, or importer shall provide the cabinet with a copy of the recall with a listing of all establishments contacted, the amount or

number of flammable fabric or flammable fabric products returned to the recalling establishment, and the disposition of the flammable fabric or flammable fabric products in violation.]

C. HERNANDEZ, M.D., Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 2, 1991
FILED WITH LRC: October 11, 1991 at 3 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1991 at 9 a.m. in the Department for Employment Services second floor conference room, Cabinet for Human Resources Building, Frankfort, Kentucky. However this hearing will be cancelled unless interested persons notify the following office in writing by November 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: Terry M. Wescott
(1) Type and number of entities affected: These amendments will have no effect on the interstate or intrastate manufacturers, distributors, or importers of flammable fabric or flammable fabric products.
(a) Direct and indirect costs or savings to those affected: No direct or indirect costs or savings will result from these amendments.
1. First year: There are no direct or indirect costs or savings, because there are not permit fees.
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 requirements will result from these amendments.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: No direct or indirect savings or costs will result from these amendments. There are no direct or indirect costs or savings to the agency, because of grammatical and date changes were the only corrections made.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: No paperwork or reporting will result from these amendments. There is no additional reporting or paperwork required. Changes are only grammatical and date corrections.
(3) Assessment of anticipated effect on state and local revenues: This amendment will have no effect on state or local revenue.
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods exist.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflict, overlap or duplication with any statute, regulation or policy.
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? No. Tiering was not applied, because this regulation applies uniformly to all the regulated entities, and does not make distinction between classes.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. This regulation is being amended to comply with rules specified in KRS 13A.222, however, this regulation conforms to the federal mandate under the Federal Hazardous Substance Act (FHSA), 15 USC 1261, and compliance standards set forth by federal regulation.
2. State compliance standards.
3. Minimum or uniform standards contained in the federal mandate.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate?
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 50:010. Definitions for milk and milk products.

RELATES TO: KRS 217.025, 217C.010 to 217C.990, 21 CFR Part 113, Subpart B
STATUTORY AUTHORITY: KRS 194.050, 211.090
NECESSITY AND FUNCTION: The Cabinet for Human Resources is directed by KRS [Chapter] 217C.040 to regulate the production, transportation, processing, handling, sampling, examination, grading, labeling, standards of identity, sale and [such] other matters relating to milk and milk products as may be necessary to protect the public health. This regulation defines terms applicable to all milk and milk product regulations in 902 KAR 50:050 [adopted by the Cabinet for Human Resources under KRS Chapter 217C].

Section 1. Definitions for Milk and Milk Products Regulations. As used in all regulations of the Cabinet for Human Resources relating to milk and milk products the following definitions shall apply unless specifically indicated otherwise:
(1) "Adulterated milk and milk products" means any milk or milk product adulterated as provided by KRS 217.025.
(2) "Aseptic processing" means a milk product that has been subjected to sufficient heat processing, and packaged in a hermetically sealed container, to conform to the applicable requirements of 21 Code of Federal Regulations, Subpart B, Food for Human Consumption, Part 113 [and the provisions of 902 KAR 50:020], and maintain the commercial sterility of the product under normal nonrefrigerated conditions.
(3) "Butter" means the food product usually known as butter, and which is made exclusively from milk or cream, or both, with or without common salt, and with or without additional coloring matter, and containing not less than

eighty (80) percent by weight of milk fat, all tolerances having been allowed for; provided the labeling of butter shall not be deemed misbranded if it does not bear a statement relating to artificial coloring.

(4) "Cabinet" means the Cabinet for Human Resources.

(5) "Certified sample collector" means an employee of the department, fieldman or milk hauler who has been approved to collect milk samples for regulatory purposes.

(6) "C-I-P" or "cleaned-in-place" means the procedure by which sanitary pipeline or pieces of dairy equipment are mechanically cleaned-in-place by circulation.

(7) "Culinary steam" means steam used in contact with milk or milk products which is produced according to "Recommended Practices for Producing Culinary Steam for Processing Milk and Milk Products", National Association of Dairy Equipment Manufacturers, 1012 14th Street, N.W., Washington, D.C. 20036.

(8) "Dairy farm" means a place where one (1) or more milking cows or goats are kept, a part or all of the milk produced thereon being delivered, sold, or offered for sale to a dairy, plant, receiving station or transfer station.

(9) "Milk or dairy plant, receiving station or company" means any place, premises or establishment where milk or milk products are collected, handled, processed, stored, pasteurized, aseptically processed, packaged or prepared for distribution.

(10) "Department" means the Department for Health Services.

(11) "Fieldman" means a person employed by a milk company who is qualified and trained in sanitary methods of production and handling of milk and who performs dairy farm quality control work. (A "fieldman" shall [is] not considered an agent of the department.)

(12) "Goat milk" means the lacteal secretion, practically free from colostrum, obtained by the complete milking of healthy goats.

(13) "Grade A milk and milk products" means milk and milk products produced, processed, transported and distributed in accordance with the department's Grade A milk regulations. It includes but is not limited to the following:

(a) Acidified sour cream;
(b) Acidified sour half and half;
(c) Buttermilk;
(d) Chocolate milk;
(e) Chocolate lowfat milk;
(f) Chocolate skim milk;
(g) Concentrated milk;
(h) Cottage cheese, lowfat cottage cheese, cottage cheese dry curd;
(i) Cultured buttermilk;
(j) Cultured milk [and cultured milk products];
(k) Cream;
(l) Eggnog;
(m) Half and half;
(n) Heavy cream;
(o) Light cream;
(p) Light whipping cream;
(q) Lowfat milk;
(r) Milk;
(s) Skim milk;
(t) Sour cream;
(u) Sour half and half; [and any other Grade A milk or milk product as may be designated by the department; and]
(v) Yogurt, lowfat yogurt and nonfat yogurt;
(w) Acidified milk;
(x) Concentrated milk;
(y) Sweetened condensed milk;
(z) Sweetened condensed skim milk;
(aa) Lowfat dry milk;
(bb) Nonfat dry milk;
(cc) Nonfat dry milk fortified with vitamins A and D;
(dd) Evaporated milk;
(ee) Evaporated skimmed milk;
(ff) Acidified lowfat milk;
(gg) Cultured lowfat milk;
(hh) Acidified skim milk;
(ii) Cultured skim milk;
(jj) Dry whole milk; and
(kk) Dry cream.

(14) "Grade A dry milk products" means milk products which have been produced for use in Grade A pasteurized milk products and which have been manufactured under the provisions of the "Grade A Condensed and Dry Milk Products – and Condensed and Dry Whey, Supplement to the Grade A Pasteurized Milk Ordinance recommended by the United States Public Health Service, Food and Drug Administration."

(15) "Handler," "distributor" or "retailer" means any association, organization, person or other group that offers for sale, sells or otherwise handles milk or milk products.

(16) "Imitation milk products" mean a milk, cheese, frozen dessert or other milk product for which the nutritional equivalency is inferior to the product it simulates.

(17) "Inspector" means an employee of the department who is qualified, trained, and authorized to perform dairy farm or plant inspections, or both, to grade raw milk, to evaluate quality control programs of milk plants and carry out the enforcement procedures of the department's regulations relating to milk and milk products.

(18) "Low calorie" means any milk, milk product, cheese or frozen dessert which contains no more than forty (40) calories per serving.

(19) "Manufacturing milk and milk products" means milk and milk products produced, processed, transported and distributed in accordance with the department's manufacturing milk regulations. It includes but is not limited to the following:

(a) Butter;
(b) Cheeses, processed cheeses, cheese foods, cheese spreads and related foods;
(c) Evaporated milk;
(d) Frozen desserts;
(e) Sweetened condensed milk and any other manufactured milk or milk product as may be designated by the department.

(20) "Mechanical cleaning" or "mechanically cleaned" means cleaning, solely by circulation or flowing chemical detergent solutions and water rinses onto and over the surface to be cleaned by mechanical means.

(21) "Milk grader" means a person who is qualified for the grading of raw milk in accordance with quality standards and procedures. (For the purpose of grading and sampling milk, a "milk grader" may be considered a duly authorized agent of the department.)

(22) "Milk hauler" means any person who transports milk or raw milk products to or from a milk plant, receiving station or transfer station. For the purpose of collecting official samples of raw milk, a "milk hauler" may become a certified sample collector and a duly authorized agent of the department.

(23) "Milk producer" means any person who operates a dairy farm and provides, offers for sale or sells raw milk to a milk plant, receiving station, transfer station or handler.

(24) "Milk product substitute" means milk, cheese, frozen dessert or other milk products which possess similar physical and organoleptic properties to the product simulated and the fat and solids-not-fat content meets the standard of identity of the counterpart product but whose ingredients have been replaced all or in part with safe and suitable nonmilk ingredients.

(25) "Misbranded milk and milk products" means any milk or milk product misbranded as provided by KRS 217.035.

(26) "Official laboratory" means the biological, chemical, or physical laboratory which is under the direct supervision of the department.

(27) "Official methods" means the current edition of the "Official Methods of Analysis of the Association of Official Analytical Chemists" [a publication of the Association of Official Analytical Chemists, Box 540, Benjamin Franklin Station, Washington, D.C. 20044].

(28) "Officially designated laboratory" means a designated milk industry laboratory authorized by the department to do official work on producer samples, commingled milk tank truck samples or on milk containers for tests required by the department's regulations or a commercial laboratory officially designated by the department for the examination of producer samples, milk containers or finished products.

(29) "Open date" means the date which shall be affixed on a consumer package or container of Grade A pasteurized milk or milk products subsequent to the date of manufacturing, processing or packaging and which represents the period of time that the product will remain unspoiled and acceptable for consumption when transported, handled and stored under approved conditions.

(30) "Pasteurization or pasteurized" means that every particle of such product shall have been heated in properly operated equipment, approved by the department, to one (1) of the temperatures specified in the table of this subsection, and held continuously at or above that temperature for the specified time (or other time or [/] temperature relationship which has been demonstrated to be equivalent thereto in microbial destruction).

(a) Milk and milk products (including cheese whey).

Temperature	Time
145°F*	30 minutes
161°F*	15 seconds
191°F	1 second
194°F	0.5 second
201°F	0.1 second
204°F	0.05 second
212°F	0.01 second

*If the dairy ingredient has a fat content of ten (10) percent or more, or if it contains added sweeteners, the specified temperature shall be increased by five (5) degrees Fahrenheit.

(b) Cream for buttermaking.

Temperature	Time
165°F*	30 minutes
180°F*	15 seconds

*If plastic or frozen cream is used for buttermaking, the specified temperature shall be increased by five (5) degrees Fahrenheit.

(c) Frozen desserts and eggnog.

Temperature	Time
155°F	30 minutes
175°F	25 seconds
180°F	15 seconds

(31) "Permit" means permission given by the department to produce, buy, transport, process, store, distribute or sell any milk or milk products or to collect official samples thereof.

(32) "Person" means any individual, plant, operator, partnership, corporation, company, firm, trustee, or association.

(33) "Reconstituted or recombined milk and milk products" means milk or milk products which results from the recombining of milk constituents with potable water.

(34) "Reduced calorie" shall apply to any milk, milk product, cheese or frozen dessert for which a standard of identity exists and whose calorie content has been reduced at least one-third (1/3) lower than a similar food.

(35) "Sanitizing or bactericidal treatment" means the application of an effective sanitizing agent to a clean surface for the destruction of pathogens and other organisms as far as is practicable. The sanitizing agents used shall comply with the Federal Food, Drug and Cosmetic Act and the regulations of the department.

(36) "Standard methods" means the current edition of the "Standard Methods for the Examination of Dairy Products" [a publication of the American Public Health Association, 1015 Eighteenth Street, N.W., Washington, D.C. 20036].

(37) "Sterilization or sterilized" means the complete in-container method of heating the container and contents at a minimum of 212 degrees Fahrenheit for sufficient time and vacuum to give complete destruction to all living organisms.

(38) "3-A sanitary standards and accepted practices" means the standards and practices for dairy equipment formulated by the 3-A sanitary standards committees representing the International Association of Milk, Food and Environmental Sanitarians, the U.S. Public Health Service and the Dairy Industry Committee[, published by the International Association of Milk, Food and Environmental Sanitarians, 413 Kellogg Avenue, Ames, Iowa 50010].

(39) "Transfer station" means any place, premises or establishment where milk or milk products are transferred directly from one (1) transport tank to another.

(40) "Ultrapasteurized" means that such product shall have been thermally processed at or above 280 degrees Fahrenheit for at least two (2) seconds, either before or after packaging, so as to produce a product which has an extended shelf life under refrigerated conditions.

(41) "Unsafe food additives" means any food additive prohibited by KRS 217.045.

Section 2. The following material is integrated by reference:
(1) 21 CFR, Subpart B, Food for Human Consumption Part 113;
(2) "Recommended Practices for Producing Culinary Steam for Processing Milk and Milk Products";
(3) "Grade A Condensed Dry Milk Products and Condensed and Dry Whey, Supplement to the Grade A Pasteurized Milk Ordinance";
(4) "Official Methods of Analysis of the Association of Official Analytical Chemists";
(5) "Standard Methods for the Examination of Dairy Products";
(6) "3-A Sanitary Standards".
(7) A copy of the material is available for inspecting and copying, 8 a.m. until 4:30 p.m. at the Office of the Commissioner, Department for Health Services, 275 East Main Street, Frankfort, Kentucky 40621.

C. HERNANDEZ, M.D., Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: September 27, 1991
FILED WITH LRC: October 10, 1991 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 21, 1991, at 9 a.m. in the Health Services Auditorium located on the first floor of the Health Services Building. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 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: David Klee
(1) Type and number of entities affected: 3,431 producers, 37 plants, 14 receiving/transfer stations, 294 distributors, 427 haulers, 330 milk trucks, and 88 sample collectors 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, because there are no permit fees.
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. Changes are only grammatical and date corrections.
(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 agency, because grammatical and date changes were only corrections made.
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. Changes are only grammatical and date corrections.
(3) Assessment of anticipated effect on state and local revenues: No effect on state and local revenues is anticipated.
(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternatives were rejected, because of nonconformity with federal regulation.
(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 this regulation applies uniformly to all the regulated entities, and does not make distinction between classes.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The comparable federal and regulations are 21 CFR, Subpart B, Food for Human Consumption Part 113; "Recommended Practices for Producing Culinary Steam for Processing Milk and Milk Products"; "Grade A Condensed Dry Milk Products and Condensed and Dry Whey, Supplement to the Grade A Pasteurized Milk Ordinance"; "Official Methods of Analysis of the Association of Official Analytical Chemists"; "Standard Methods for the Examination of Dairy Products"; and "3-A Sanitary Standards".
2. State compliance standards. The criteria are set forth in KRS 217.025, 217C.010 to 217C.990, and 21 CFR Part 113, Subpart B.
3. Minimum or uniform standards contained in the federal mandate. The criteria are set forth in 21 CFR, Subpart B, Food for Human Consumption Part 113; "Recommended Practices for Producing Culinary Steam for Processing Milk and Milk Products"; "Grade A Condensed Dry Milk Products and Condensed and Dry Whey, Supplement to the Grade A Pasteurized Milk Ordinance"; "Official Methods of Analysis of the Association of Official Analytical Chemists"; "Standard Methods for the Examination of Dairy Products"; and "3-A Sanitary Standards".
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? State statutes require the cabinet to establish standards for milk and milk products. The state regulation imposes no requirements or responsibilities, in addition to, different, or stricter than federal law.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 50:030. Farm manufacturing requirements.

RELATES TO: KRS 217C.010 to 217C.990
STATUTORY AUTHORITY: KRS 194.050, 211.090(1)(c)
NECESSITY AND FUNCTION: The Cabinet for Human Resources is directed by KRS [Chapter] 217C.040 to regulate milk for manufacturing purposes. This regulation sets uniform standards for the

production, transportation, handling, sampling, examination, grading and sale of manufacturing milk and milk products and for the inspection of dairy farms and provides for the issuance, revocation and reinstatement of producer permits.

Section 1. Manufacturing Milk Producer Permits and Inspections. (1) Prior to the issuance of any permit to a manufacturing milk producer, the cabinet shall conduct an inspection of the producer's facilities. If the producer is not in substantial compliance with this regulation, he shall not be issued a permit and violations shall be given him in writing and posted in a conspicuous place at the dairy farm. A permit may be issued whenever the inspection reveals substantial compliance with this regulation.

(2) All new producers must be inspected by the cabinet and a permit issued prior to beginning shipment.

(3) Permits shall not be transferable with respect to persons or locations and shall remain valid unless suspended or revoked by the cabinet.

Section 2. Quality Requirements and Enforcement Procedures for Raw Milk. (1) Basis. The classification of raw milk for manufacturing purposes shall be based on organoleptic examination (sight and odor) and quality control test for sediment content and bacterial estimate, abnormal milk and antibiotics. Examinations and tests to detect pesticides or other adulterants may be conducted by the cabinet as deemed necessary.

(2) Sight and odor. The flavor and odor of acceptable raw milk shall be fresh and sweet. The milk shall be free from objectionable feed and other off-flavors and off-odors that would adversely affect the finished product, and it shall not show an abnormal condition (including, but not limited to curdled, ropy, bloody or mastitic condition), as indicated by sight or odor.

(3) Frequency of tests.

(a) Bacterial estimate; monthly.

(b) Sediment content; monthly.

(c) Antibiotics: four (4) times each six (6) months.

(d) Abnormal milk: four (4) times each six (6) months.

(e) Adulteration (excessive water) and pesticides; as deemed necessary by the cabinet.

(4) Methods of testing. Methods for determining quality test shall be those described in the current edition of Standard Methods for the Examination of Dairy Products, unless otherwise approved by the cabinet, and shall be performed in an official laboratory or an officially designated laboratory.

(5) Quality standards.

(a) Bacterial classification. Bacterial limit of 1,000,000/ml. by Standard Plate, Plateloop, and direct microscopic bacterial determination methods.

Bacterial Estimate Classification	Direct Microscopic Clump Count, Standard Plate or Plate Loop
No. 1 Satisfactory	Not Over 500,000/ml.
No. 2 Satisfactory	Not Over 1,000,000/ml.
Undergrade	Over 1,000,000/ml.

(b) Sediment content classification.

Sediment Content Classification	Milk in Cans (off-the-bottom method) 1 1/8 inch diameter disc)*	Milk in Farm Bulk Tanks sample 0.40 inch diameter disc)*
No. 1 Acceptable equivalent	Not to exceed 0.50 mg.	Not to exceed 0.50 mg.
No. 2 Acceptable equivalent	Not to exceed 1.50 mg.	Not to exceed 1.50 mg.
No. 3 Probational equivalent	Not to exceed 2.50 mg.	Not to exceed 2.50 mg.
No. 4 Reject	Over 2.50 mg.	Over 2.50 mg. equivalent

*Sediment content based on comparison with applicable charts of Sediment Standards prepared by the U.S. Department of Agriculture. The four (4), two (2) or one (1) ounce sample and appropriate sediment standards may be used with the approval of the cabinet.

(c) Antibiotic classification. Negative on individual producer test.

(d) Abnormal milk. Not in excess of 1,000,000 somatic cell count/ml.

(6) Enforcement procedures.

(a) Sight and odor. All bulk tank loads or individual producer milk received shall be examined on an organoleptic basis by the hauler or by milk grader. Milk shall not be received if any off odors or abnormal conditions are found which will adversely affect the finished product. Producer milk which is rejected for sight and odor by a hauler or milk grader shall be identified by coloring if in cans or tagged with a reject tag if in a bulk tank.

(b) Bacterial estimates. At least once each month at irregular intervals, a representative mixed sample of each producer's milk shall be tested by the company. Producers shall be notified of the results of all tests performed. A producer shall be given a warning notice by the cabinet or a company representative authorized in writing by the cabinet, whenever two (2) of the last four (4) counts exceed bacterial standards specified herein. An additional sample shall be taken within twenty-one (21) days of the sending of [such] notice, but not before the lapse of three (3) days. A producer shall remain under warning notice so long as two (2) of the last four (4) analyses exceed the standards. A producer's permit shall be suspended by the cabinet whenever three (3) of the last five (5) samples exceed the standard. A producer may be issued a temporary permit by the cabinet upon written request from the producer whenever the cause of high bacterial count is corrected or is believed to have been corrected as shown by farm inspection. The first sample analyzed, after a

temporary permit has been issued shall be in compliance with the standard for which the permit was suspended, otherwise the temporary permit shall be withdrawn. Upon reinstatement, the producer shall have no milk on hand which was produced during the period when his permit was suspended unless otherwise specified by the cabinet. Four (4) samples shall then be taken at the rate of not more than two (2) per week on separate days within a three (3) week period, and the cabinet shall reinstate the permit upon compliance with the appropriate standard set forth or take additional enforcement action as required by this subsection.

(c) Sediment.

1. Bulk tank producers. If the sediment disc is classified as #1, #2, or #3, the producer's milk may be accepted. If the sediment disc is classified as #4, the milk shall be rejected and the producer shall be notified by the cabinet or a company representative authorized by the cabinet in writing. Provided, that if the shipment of milk is commingled with other milk in a transport tank prior to the sediment test being run, the producer's milk shall be resampled by the hauler or milk grader and retested by the company on the next pickup. However, if it is impractical to collect a sample on the next pickup, no more milk shall be collected unless a sample for sediment analysis is collected. If the retest of this sample is classified #4, the milk from this farm shall not be accepted thereafter until a satisfactory sediment test is obtained. If the milk is classified #3, the producer shall be notified and each additional milk pickup shall be sampled and tested for a period not to exceed ten (10) days. If at the end of this ten (10) day period, the milk does not meet the #1 or #2 sediment test standard, it shall not be accepted thereafter until a satisfactory sediment test is obtained.

2. Can producers. If the sediment disc is classified as #1, #2 or #3, the producer's milk may be accepted. If the sediment disc is classified #4, the milk shall be rejected and the producer shall be notified by the cabinet or a company representative authorized in writing by the cabinet. In the case of milk classified as #3 or #4, all cans of that producer shall be tested and the producer shall be notified. Milk classified as #4 shall be rejected and an approved color added to the milk. This procedure for retesting successive shipments and accepting #3 milk and rejecting #4 milk may continue for a period not to exceed ten (10) days. If at the end of this time all the producer's milk does not meet the #1 or #2 sediment standards, it shall not be accepted thereafter until a satisfactory sediment is obtained.

(d) Antibiotics. At least four (4) times each six (6) months, each producer's milk shall be tested individually or in a commingled sample (not exceeding fifteen (15) producers). Provided, that where a commingled sample is positive each producer represented in the sample shall be tested immediately and if the producer sample is positive, the milk shall be withheld from the market until a negative sample is obtained by the cabinet or milk grader.

(e) Abnormal milk. Each company shall have an approved abnormal milk screening program. Each producer shall be tested at least four (4) times each six (6) months and those showing a somatic cell count in excess of 1,000,000 per ml. shall be notified in writing by the cabinet or company. Whenever practicable, the fieldmen shall visit those producers having somatic cell counts in excess of 1,000,000 per ml. to assist the producer in the correction of the problem. Whenever two (2) of the last four (4) somatic cell counts exceed 1,000,000 per ml, the producer shall be given a warning notice by the cabinet or a company representative authorized in writing by the cabinet. The producer shall remain under "warning notice" so long as two (2) of the last four (4) analyses are unsatisfactory. After issuance of a notice, an additional sample shall be collected within twenty-one (21) days after issuance of notice to suspend permit, but in no case before the lapse of three (3) days. A producer's permit shall be suspended by the cabinet when three (3) of the last five (5) somatic cell counts exceed the standard. A producer may be issued a temporary permit by the cabinet upon written request from the producer whenever the cause of the high somatic cell count is corrected or is believed to have been corrected. The first sample analyzed, after a temporary permit has been issued shall be in compliance with the standard for which the permit was suspended, otherwise the temporary permit shall be withdrawn. Samples shall then be taken at the rate of not more than two (2) per week on separate days within a three (3) week period, and the cabinet shall reinstate the permit upon compliance with the appropriate standard set forth or take additional enforcement action as required by this subsection.

(f) New producers. An examination for bacterial quality and sediment shall be made on the first shipment of milk from producers shipping milk to a plant for the first time or after a period of nonshipment for ten (10) days. Thereafter, the milk shall meet the requirements for frequency of test and producer compliance outlined in this section.

(g) Transfer producer.

1. Prior to the collection and[/or] acceptance of milk from a transfer producer, the new company shall check the official status of the producer with the cabinet. The cabinet shall notify the company to whom the producer is currently shipping, of the inquiry. The existing status of a transfer producer with regard to his farm sanitation and milk quality record shall be in effect with the new company. Producers whose permit has been suspended by the cabinet are not eligible to transfer, until [such time as] their permit has been reinstated, unless otherwise approved by the cabinet. The new buyer shall examine and classify each transfer producer's milk within ten (10) days after receipt of the producer's first shipment, and shall subsequently examine shipments in accordance with the provisions of this section.

2. The status of any Grade A producer whose permit has been suspended shall be cleared by the manufacturing milk company with the cabinet before the milk can be accepted. If this milk is received for a period in excess of ten (10) days, the [such] producer would be subject to all provisions of this regulation.

3. Grade A surplus milk shall be tested or screened by the manufacturing milk company upon arrival to assure themselves and the cabinet that the milk is in compliance with the manufacturing milk standards.

Section 3. Farm Requirements for Milk for Manufacturing. (1) Health of herd.

(a) General health. All animals in the herd shall be maintained in a healthy condition.

(b) Tuberculin test. The herd shall be located in an area within the state which meets the requirements of a modified accredited area in which not more than one-half (1/2) of one (1) percent of the cattle have been found to be infected with tuberculosis as determined by the provisions of the "Uniform Methods and Rules" for establishing and maintaining tuberculosis-free herds of cattle, and modified accredited areas which are approved by the Animal Disease Eradication Division, Agricultural Research Service, U. S. Department of Agriculture. If the herd is not located in [such] an area of this nature, it shall be tested annually under the jurisdiction of the [aforesaid] program. All additions to the herd shall be from an area or from herds meeting these same requirements.

(c) Brucellosis test. The herd shall be located in an area within the state in which the percentage of cattle affected with brucellosis does not exceed one (1) percent and the percentage of herds in which brucellosis is present does not exceed five (5) percent in accordance with provisions of the "Uniform Methods and Rules" for establishing and maintaining certified brucellosis-free areas which are approved by the Animal Disease Eradication Division, Agricultural Research Service, U. S. Department of Agriculture. If the area in which the herd is located does not meet these requirements, the herd shall be blood-tested annually or milk-ring-tested semiannually. All additions to the herd shall be from herds meeting these same requirements.

(2) Milking procedures. Milking shall be done in an approved milking barn, stable, or parlor under relatively dust free conditions.

(a) The udders, flanks and teats of all milking cows shall be free of dirt and dust at time of milking as far as is practicable.

(b) Cows which secrete abnormal milk shall be milked last or with separate equipment. This milk shall be excluded from the supply, and is prohibited from sale under this regulation.

(c) Milking shall be carried out in an approved area.

(3) Milking barn or milking area. An approved milking area of adequate size and arrangement shall be provided to permit normal sanitary milking operations.

(a) Adequate light shall be properly distributed for both day and night milking.

(b) The milking area shall be well ventilated to minimize odors and prevent excessive condensation.

(c) Floors and gutters shall be kept clean, in good repair, graded to drain and be constructed of concrete or other impervious material.

(d) No swine, fowl or other animals shall be permitted in the milking area.

(e) Bedding shall be permitted in the milking area provided it is kept clean and relatively dust free. Manure shall be removed daily.

(f) If feed or other material is stored overhead, the milking area shall be sealed.

(g) Walls and ceilings shall be kept clean and in good repair. It is recommended that the milking area be completely enclosed. However, if clean, orderly, dust free milking operations can be conducted, the requirements of the walls may be waived.

(h) Feed shall be stored in [such] a manner as will not increase the dust content of the air or attract flies in the milking area.

(i) The milking area floor shall be kept clean, the manure removed daily, and stored to prevent access of cows to accumulation thereof.

(j) Outside surfaces of pipeline systems located in the milking area shall be kept clean.

(k) Milk stools, surcingles and antikickers shall be kept clean.

(4) Cowyard and cattle housing area. The cowyard and cattle housing area shall be constructed to be well drained and relatively free of organic waste.

(a) The cowyard shall be graded to drain as well as local conditions will permit.

(b) Cowyards which are muddy due to recent rains shall not be considered in violation of this section.

(c) The cattle housing area shall be free of excessive manure, soiled bedding, and waste material to prevent the soiling of cows.

(d) All manure removed from the milking area shall be stored so as to prevent access of cows to accumulation thereof and to minimize fly breeding.

(5) Milkhouse or milkroom. There shall be provided a conveniently located milkhouse or milkroom in which the cooling, handling and storing of milk, the washing, sanitizing and storing of equipment and utensils shall be done. Provided, that present milking areas with milkhouse, milkroom facilities combined in a nonseparated operation given approval prior to the effective date of this regulation will be acceptable for as long as the combined facility is operated in a sanitary manner.

(a) The floor shall be constructed of concrete and well drained.

(b) The walls and ceilings shall be constructed of relatively smooth, easily cleanable material. A light colored material is recommended.

(c) A drain through the floor or wall shall be provided. The drain shall not be located under a can cooler or bulk tank. The drain may discharge to the surface of the ground provided that waste from the drain does not pool or cause an insect breeding problem.

(d) The milkhouse space shall be large enough to allow ample room as follows: walkways and working areas shall be a minimum of thirty (30) inches, and the bulk tank shall be kept a minimum of eighteen (18) inches from the walls on all sides except that tank with a self-contained unit may be closer to the wall. There shall be a minimum of six (6) inches between the lowest point of the bulk tank and the floor.

(e) Artificial light shall be provided with a minimum of 100 watts or more capacity. The light fixture shall not be located over the bulk tank. Flood lights are recommended near the ends but not over bulk tanks.

(f) Ventilation shall be sufficient to prevent odors and condensation.

(g) The milkhouse shall be kept clean and free from unnecessary articles and used for no other purposes except as may be permitted by the cabinet. Only insecticides and rodenticides approved for use in the milkhouse shall be stored in the milkhouse. These [Such] insecticides and rodenticides shall be stored in [such] a manner as not to contaminate milk,

milking equipment, sinks or cleaning supplies.

(h) All outer openings shall be screened or protected against the entrance of insects. Outer doors shall open outward and be self-closing, except doors between the milkroom and milking area may open either way or both ways and be self-closing. Provided, that during the winter months when a screen door may be taken down, the milkhouse door may open inward if it is self-closing. On bulk tank installations, an approved hose port shall be properly constructed through the outer wall for milk pickup operations.

(i) Running water under pressure shall be provided. Water heating facilities conveniently available to supply ample hot water to the milkhouse shall be provided for all bulk tank installations. An ample supply of water shall be available to the milkroom for all can shippers.

(j) A two (2) compartment wash and rinse vat shall be provided, except when milking equipment is cleaned-in-place, a single compartment wash vat will be acceptable.

(k) A concrete slab at least four (4) feet by four (4) feet shall be located outside the milkhouse under the hose port.

(l) The milkhouse shall be supplied with approved brushes, cleaners, and sanitizers to properly clean and sanitize equipment and utensils.

(m) The can cooler may be stored in a suitable place away from the milkhouse in order to be easily accessible to the can hauler, provided approval is given by the cabinet.

(6) Utensils and equipment. Utensils, milk cans, milking machines (including pipeline systems), and other equipment used in the handling of milk shall be maintained in good condition, shall be free from rust, open seams, milkstone, or any unsanitary condition, and shall be washed, rinsed and drained after each milking, stored in suitable facilities and sanitized immediately before use. All new farm bulk tanks shall meet "3-A Sanitary Standards" for construction and shall be installed in accordance with regulations of the cabinet. Single service articles shall be properly stored and shall not be reused.

(a) Utensils – construction. All multiuse containers, equipment and other utensils used in the handling, storage or transportation of milk or milk products shall be made of smooth, nonabsorbent, noncorrodible, nontoxic material, properly constructed and easily cleaned and be kept in good repair. Joints and seams shall be welded or soldered flush. Woven-wire cloth shall not be used for straining milk. When milk is strained, single-service strainer pads shall be used and shall not be reused. Single-service articles shall be properly stored, handled, dispensed and used in a manner that prevents contamination of milk or milk contact surfaces.

1. All multiuse containers, utensils, pails and pipes shall be constructed of smooth, heavy-gauge material, with a nonreadily corrodible surface which is nonabsorbent and nontoxic (the use of cadmium is expressly prohibited), and shall be constructed [of such construction] as to be easily cleaned. All joints and seams shall be flush, with a solid, welded or soldered, burnished surface.

2. All containers, utensils, and other equipment shall be in good repair, and free of breaks and corroded places.

3. Strainers, if used, shall be so constructed as to utilize single-service strainer pads only, and [such] strainer pads are not reused. Woven-wire cloth strainers shall not be used.

4. All milking machines, including pails, heads, milk claws, milk tubing, and other milk contact parts shall be so constructed as to be easily cleaned.

5. New or replacement milk cans shall have an umbrella type cover.

6. All cleaned-in-place milk pipelines installed after the effective date of this regulation shall be so installed as to be rigid and self-draining. All connections shall provide a smooth, flush interior surface.

7. Pipelines installed prior to the effective date of this regulation may be accepted if joined with tygon or other material approved by the cabinet, providing joints are hand cleaned if not sufficiently cleaned by C-I-P [CIP] methods. Each joint of this type shall have a tight, rigid hanger next to the joint.

(b) Utensils – cleaning. All multiuse containers, equipment and other utensils used in handling, storage or transportation of milk and milk products shall be thoroughly cleaned after each usage. All multiuse containers, equipment and other utensils used shall be stored in the milkhouse unless otherwise approved by the cabinet.

(c) Utensils – bacterial treatment. All multiuse containers, equipment, and other utensils used in handling, storage or transportation of milk or milk products shall, before each usage, be subjected effectively to an approved bactericidal process. Steam, hot-water, or hot-air treatment shall not be accepted unless the equipment or containers are completely immersed or exposed for the required time, or longer, at the required temperature, or higher, throughout the period of exposure. Pouring hot or so-called boiling water from vessel to vessel shall not be acceptable. All milk containers, utensils, and other equipment, with the exception of milking machine pulsators and air hoses, shall be immersed for at least one (1) minute, in, or exposure for at least one (1) minute to a flow of, an approved chemical bactericide containing at least fifty (50) ppm chlorine or other approved sanitizer of proper strength after use. All milk contact surfaces shall be wetted by the bactericidal solutions, and piping so treated shall be filled. Bactericidal sprays may be used for large equipment. Chemical solutions, once used, shall not be reused for bactericidal treatment on any subsequent day, but may be reused for other purposes.

(d) Utensils – storage. All containers and other utensils used in the handling, storage or transportation of milk or milk products, unless stored in bactericidal solutions, shall be stored so as to drain dry, and so as not to become contaminated before being used. All equipment and utensils shall be accessible for inspection. All milking equipment containers and other utensils used shall be stored in the milkhouse unless otherwise approved by the cabinet.

1. All milk utensils and equipment shall be left in the bactericidal solution or stored in the milkhouse on racks, in [such] a manner as to protect them from the contamination, inverting [such] articles as can be inverted. Pipeline milkers which are cleaned-in-place may be stored in place. [Such] Storage racks should be

constructed of metal protected against rusting, with the lowest shelf not less than twenty-four (24) inches above the floor.

2. Strainer pads, parchment papers and gaskets shall be kept, until used, in the original package with covers closed, and stored in a suitable container or cabinet to protect them from contamination.

3. All equipment and utensils shall be accessible for inspection.

(e) Utensils - handling. After bactericidal treatment, containers and other milk and milk product utensils shall be handled in [such] a manner as to prevent contamination of any surface with which milk or milk products come into contact. Sanitized product-contact surfaces, including farm cooling holding tank openings and outlets shall be protected against contact with unsanitized equipment and utensils, hands, clothing, splash, condensation and other sources of contamination. Any sanitized product-contact surfaces, which has been otherwise exposed to contamination shall be again cleaned and sanitized before being used.

(7) Surroundings shall be relatively neat and clean to prevent insect breeding and[/or] rodent harborage.

Section 4. Cooling. (1) All milk shall be cooled within two (2) hours after milking to fifty (50) degrees Fahrenheit or lower and maintained at fifty (50) degrees Fahrenheit or lower until transferred to the transport truck unless delivered to the plant within two (2) hours after milking. Milk in bulk tanks shall be cooled to forty (40) degrees Fahrenheit or lower within two (2) hours after milking and maintained at fifty (50) degrees Fahrenheit or lower until transferred to the transport truck. Whenever the first milking does not reach the bulk tank agitators, cooling shall be considered in violation.

(2) Cooling facilities shall be available to cool and store a full supply of milk between pickup at fifty (50) degrees Fahrenheit or below. Can milk shall be collected at least every fourth day.

(3) Bulk tanks shall be designed and sized for everyday or every other day pickup and be capable of cooling the milk to forty (40) degrees Fahrenheit after each milking and maintaining the milk to fifty (50) degrees Fahrenheit or below. In no case shall bulk tank milk be picked up after three (3) days. Paper towels should be available for wiping bulk tank measuring stick during milk pickup.

(4) Milk shall not be transferred from one (1) producer to another or received by one (1) producer from another.

Section 5. Water supply. (1) Each producer shall have an adequate, properly located and properly protected water supply.

(2) The supply shall be adequate for the needs of the producer to properly clean his equipment, milkhouse and milking area.

(3) The supply shall, on physical inspection, be protected against surface water and in the case of cisterns have a filter or roof wash barrel of approved type.

(4) In no case shall the supply be within 100 feet of any cesspool, privy or lateral field, unless otherwise approved by the cabinet.

(5) If the cabinet is in doubt to the physical protection of the supply, a water sample may be collected and analyzed by the cabinet. Samples not meeting state requirements shall be retested within thirty (30) days after notification is given to the producer in writing by the cabinet. Whenever two (2) consecutive samples are found to be in excess of the coliform standard a notice of intent to suspend permit shall be issued by the cabinet and a follow-up sample collected within thirty (30) days. If the [In the event such] sample is in excess of the standard, the producer shall be suspended until a negative sample is obtained.

(6) After July 1, 1986, all new producers shall have a negative water sample analysis prior to the issuance of a permit.

Section 6. Milkhouse, Milking Area and Toilet Waste. (1) Waste from the milkhouse, milking area and toilet shall be properly disposed of in a manner approved by the cabinet.

(2) Milkhouse and milking area waste discharging to the ground surface shall not pool or cause fly breeding problems.

(3) Waste from flush type toilets shall be properly disposed of underground.

(4) Pit privies shall be properly constructed to prevent fly breeding.

Section 7. Personnel Health and Cleanliness. No person affected with any disease in a communicable form, or while a carrier of a communicable [such] disease, shall work at any dairy farm in any capacity which brings him into contact with the production, handling, storage and transportation of milk for manufacturing purposes, containers, equipment and utensils; and no milk producer shall employ in any [such] capacity, [any such person, or] any person suspected of having any disease in a communicable form, or of being a carrier of a communicable [such] disease. Any milk producer upon whose dairy farm any communicable disease occurs or who suspects that any employee has contacted any disease in a communicable form, or has become a carrier of a [such] a disease in a communicable form, shall notify the regulatory agency immediately. All persons engaged in the milking operation shall wear clean outer garments. The milkers' hands shall be kept clean.

Section 8. Procedure when Infection is Suspected. When reasonable cause exists to suspect the possibility of transmission of infection from any person concerned with the handling of milk for manufacturing purposes, the cabinet shall require any or all of the following measures:

(1) The immediate exclusion of that person from milk handling;

(2) The immediate exclusion of the milk supply concerned;

(3) Adequate medical and bacteriological examination of the person and body discharges.

Section 9. Prohibited Acts Relating to Manufacturing Milk Producers. The following acts and the causing thereof within the Commonwealth of Kentucky are hereby prohibited:

(1) No person shall produce, sell or offer for sale any manufacturing milk or milk products within this state without a permit as provided in this regulation.

(2) No person shall, within this state produce, provide, sell, offer or expose for sale or have in possession with intent to sell any

manufacturing milk or milk product which is adulterated, misbranded or otherwise in violation of this regulation.

(3) No person shall prohibit entry of inspection, or prohibit the taking of a sample or prohibit the access to records or evidence, to duly authorized agent of the cabinet.

(4) No person shall remove, destroy, alter, forge or falsely represent, without proper authority any tag, stamp, mark or label used by the cabinet.

(5) No person shall remove or dispose of a detained or quarantined article without proper authority from the cabinet.

Section 10. Manufacturing Milk Producer Permit Suspension and Reinstatement. (1) Individual producer's permit may be suspended, whenever the cabinet has reason to believe that a public health hazard exists; or whenever the producer has violated any of the requirements of this regulation; or whenever the producer has interfered with the cabinet in the performance of its duties. Provided, that the cabinet shall, in all cases except where the milk involved creates, or appears to create an imminent hazard to the public health; or in any case of a willful refusal to permit authorized inspection, serve upon the producer a written notice of intent to suspend the permit, which notice shall specify with particularity the violation(s) in question and afford the permit holder reasonable opportunity to correct [such] violation(s). A suspension of a permit shall remain in effect until the violation(s) have been corrected to the satisfaction of the cabinet.

(2) Upon written application of any person whose permit has been suspended, or upon application within forty-eight (48) hours of any person who has been served with a notice of intention to suspend and in the latter case before suspension, the cabinet shall within a reasonable time proceed to a hearing to ascertain the facts of the [such] violation or interference and upon evidence presented at the [such] hearing shall affirm, modify or rescind the suspension or intention to suspend. Any permit suspended under the provisions of this section may be reinstated by submission of proper evidence satisfactory to the cabinet that the violations have been corrected.

Section 11. Survey Procedures. Each manufacturing milk company's producers, producers' associations or other producer groups shall be surveyed by the cabinet at least once every two (2) years. In the event the [such] survey results has an unsatisfactory rating, the [such] company, association or group shall be notified and shall be given a reasonable period of time, not to exceed six (6) months, to attain a satisfactory rating. If upon resurvey, the producer's rating is still not of an acceptable level, each producer shipping milk to the [such] company shall be inspected by the cabinet to determine individual compliance. Each producer found in violation may have their permit suspended in accordance with this regulation. No producer shall be allowed to transfer to another company during the reinspection period unless authorized by the cabinet.

Section 12. The following material is integrated by reference:

(1) "Sediment Standards"; and

(2) "Uniform Methods and Rules".

(3) A copy of the material is available for inspection and copying, 8 a.m. until 4:30 p.m., at the Office of the Commissioner for Health Services, 275 East Main Street, Frankfort, Kentucky 40621.

C. HERNANDEZ, M.D., Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: September 27, 1991
FILED WITH LRC: October 10, 1991 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 21, 1991, at 9 a.m. in the Health Services Auditorium located on the first floor of the Health Services Building. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 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: David Klee

(1) Type and number of entities affected: 535 producers 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, because there are no permit fees.

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. Changes are only grammatical and date corrections.

(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 agency, because grammatical and date changes were only corrections made.

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. Changes are only grammatical and date corrections.

(3) Assessment of anticipated effect on state and local revenues: No effect on state and local revenues is anticipated.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternatives were rejected, because of nonconformity with federal regulation.

(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 this regulation applies

uniformly to all the regulated entities, and does not make distinction between classes.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The comparable federal regulation is in the "Sediment Standards" and "Uniform Methods and Rules".
2. State compliance standards. The criteria are set forth in KRS 217C.010 to 217C.990, 194.050, and 211.090.
3. Minimum or uniform standards contained in the federal mandate. The criteria are set forth in the "Sediment Standards" and "Uniform Methods and Rules".
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? State statutes require the cabinet to establish standards for milk and milk products. The state regulation imposes no requirements or responsibilities, in addition to, different, or stricter than federal law.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 50:050. Manufacturing plant requirements.

RELATES TO: KRS 217C.010, 217C.040, 217C.070 [to 217C.990]
STATUTORY AUTHORITY: KRS 194.050, 211.090
NECESSITY AND FUNCTION: The Cabinet for Human Resources is directed by KRS [Chapter] 217C.040 to regulate milk for manufacturing purposes. This regulation sets uniform sanitary and operational standards for manufacturing milk plants, receiving stations, transfer stations and handlers and provides for the issuance and revocation of permits relating thereto.

Section 1. Permits and Inspections. (1) No person shall operate a manufacturing milk plant, receiving station, transfer station or be a handler of manufacturing milk in this state who does not possess a valid permit as herein provided. Prior to the issuance of a permit, each plant, receiving station or transfer station shall be inspected by the cabinet. Inspections shall be made at least annually thereafter.
(2) Only a person who is in satisfactory compliance with the requirements of this regulation shall be entitled to a permit. Permits shall not be transferable with respect to persons or locations [and shall expire December 31, following the date of issuance].
(3) Manufactured milk and milk products from points beyond the limits of routine inspection of the Commonwealth of Kentucky, or its police jurisdiction, may be sold in the Commonwealth of Kentucky, or its police jurisdiction, provided they are produced and processed under regulations which are substantially equivalent to this regulation, and provided further, that the governmental unit concerned accepts Kentucky's manufacturing milk and milk products on a reciprocal basis.
(4) Properly prepared plans for all transfer stations, receiving stations and milk plants regulated under this regulation which are hereafter constructed, reconstructed or extensively altered, shall be submitted to the cabinet for approval before work is begun.

Section 2. Requirements for Manufactured Milk Product Plants in Kentucky. (1) The regulations promulgated by the U.S. Department of Agriculture as set forth in the January 1, [1986] 1991, edition of the Code of Federal Regulations, Title 7, Part 58, Subpart B, [with amendments effective July 1, 1986, as published in Vol. 50, No. 166, August 27, 1985, Federal Register,] are hereby adopted by reference. [The Code of Federal Regulations is published by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C., 20408.]
(2) Copies of this publication are available for inspection and copying, 8 a.m. until 4:30 p.m., at [shall be on file in] the Office of the Commissioner for Health Services, 275 East Main Street, Frankfort, Kentucky, 40621[, and is open for public inspection].
(3) Copies are also available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C., 20402.

Section 3. Prohibited Acts Relating to Manufacturing Milk Plants, Receiving Stations, Transfer Stations and Handlers. The following acts and the causing thereof within the Commonwealth of Kentucky are hereby prohibited:
(1) No person shall process, handle, sell or offer for sale any milk or milk products for manufacturing purposes [within this state] without a permit as provided in this regulation.
(2) No person shall [within this state] process, handle, provide, sell, offer or expose for sale, or have in possession with intent to sell any milk or milk product for manufacturing purposes which is adulterated, misbranded or otherwise in violation of this regulation.
(3) No person shall prohibit entry or inspection, or prohibit the taking of a sample or prohibit access to records or evidence, to duly authorized agents of the cabinet.
(4) No person shall remove, destroy, alter, forge or falsely represent, without proper authority any tag, stamp, mark or label used by the cabinet.
(5) No person shall remove or dispose of a detained or quarantined article without proper authority from the cabinet.

Section 4. Manufacturing Milk Plant, Receiving Station, Transfer Station and Handler Permit Suspension and Reinstatement. (1) Permits issued under this regulation may be suspended, whenever the cabinet has reason to believe that a public health hazard exists; or whenever the permit holder has violated any of the requirements of this regulation; or whenever the permit holder has interfered with the cabinet in the performance of its duties. Provided, that the cabinet shall, in all cases except where the milk or milk products involved creates, or appears to create, an imminent hazard to the public health; or in any case of a willful refusal to permit authorized inspection, serve upon the permit holder a written notice of intent to suspend the permit, which notice shall

specify with particularity the violation(s) in question and afford the permit holder reasonable opportunity to correct [such] violation(s). A suspension of a permit shall remain in effect until the violation(s) has been corrected to the satisfaction of the cabinet.

(2) Following the issuance of a permit, each milk plant, receiving station, or transfer station shall be inspected at least annually. Should the violation of any requirement set forth in this regulation be found to exist, a second inspection may be required after the time deemed necessary to remedy the violation, but not before three (3) days; the reinspection will be used to determine compliance with the requirements of this regulation. Whenever a violation continues to exist on the reinspection, the cabinet may issue an official notice, and specify a time for the violation to be corrected. Failure to comply with the requirements of the official notice may be cause for permit suspension in accordance with this regulation.

(3) Upon written application of any person whose permit has been suspended, or upon application within forty-eight (48) hours of any person who has been served with a notice of intention to suspend and in the latter case, before suspension, the cabinet shall within a reasonable time proceed to a hearing to ascertain the facts of the [such] violation or interference and upon evidence presented at the [such] hearing shall affirm, modify, or rescind the suspension or intention to suspend. Any permit suspended under the provisions of this section may be reinstated by submission of proper evidence satisfactory to the cabinet that the violations have been corrected.

Section 5. Trade Secrets. No person who in an official capacity obtains any information under the provisions of this regulation which is entitled to protection as a trade secret (including information as to quantity, quality, source of disposition of milk or milk products, or results of inspections or tests thereof) shall use the [such] information to his own advantage or to reveal it to any unauthorized person.

Section 6. The following material is integrated by reference:

(1) Title 7 CFR, Part 58, Subpart B.

(2) Copies of this publication are available for inspection and copying, 8 a.m. until 4:30 p.m., at the Office of the Commissioner for Health Services, 275 East Main Street, Frankfort, Kentucky 40621.

C. HERNANDEZ, M.D., Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: September 27, 1991
FILED WITH LRC: October 10, 1991 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 21, 1991, at 9 a.m. in the Health Services Auditorium located on the first floor of the Health Services Building. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 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: David Klee

(1) Type and number of entities affected: 15 manufacturing plants 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, because there are no permit fees.

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. Changes are only grammatical and date corrections.

(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 agency, because grammatical and date changes were only corrections made.

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. Changes are only grammatical and date corrections.

(3) Assessment of anticipated effect on state and local revenues: No effect on state and local revenues is anticipated.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternatives were rejected, because of nonconformity with federal regulation.

(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 this regulation applies uniformly to all the regulated entities, and does not make distinction between classes.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The comparable federal regulation is 7 CFR, Part 58, Subpart B.

2. State compliance standards. The criteria are set forth in KRS 217C.040.

3. Minimum or uniform standards contained in the federal mandate. The criteria are set forth in the CFR, Part 58, Subpart B.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? State statutes require the cabinet to establish standards for milk and milk products. The state regulation imposes no requirements or responsibilities, in addition to, different, or stricter than federal law.

5. Justification for the imposition of the

stricter standard, or additional or different responsibilities or requirements. Not applicable.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 50:070. Standards of identity for milk and milk products.

RELATES TO: KRS 217C.010, 217C.040, 21 CFR Parts 131, 133, 135, 166 [to 217C.990]
STATUTORY AUTHORITY: KRS 194.050, 211.090, 217C.040, 21 CFR Parts 131, 133, 135, 166
NECESSITY AND FUNCTION: The Cabinet for Human Resources is directed by KRS [Chapter] 217C.040 to set standards of identity and labeling requirements for milk and milk products. This regulation adopts without change [, by reference,] the requirements established by [applicable rules and regulations of] the U.S. Food and Drug Administration relating to definitions, product standards of identity and labeling requirements for milk and cream; sour cream and related products; cheeses, processed cheeses, cheese foods, cheese spreads, and related foods; and frozen desserts for the Commonwealth [state] of Kentucky.

Section 1. Milk and Milk Products Standards of Identity and Labeling Requirements. The federal standards of identity and labeling requirements for milk and cream, cheese and related cheese products, frozen desserts, and margarine, are adopted without change [as set forth in the April 1, 1986 edition of the Federal Register, Title 21, Food and Drugs, Chapter 1, Subchapter B, Foods for Human Consumption: (i) Part 131, milk and cream, pages 148-178; (ii) Part 133, cheese and related cheese products, pages 179-235; (iii) Part 135, frozen desserts, pages 235-243; and (iv) Part 166 - margarine, pages 406-408 are hereby adopted by reference for the Commonwealth of Kentucky. These publications are published by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408].

Section 2. The federal requirements that are adopted without change:
(1) Are established in 21 CFR Parts 131, 133, 135, and 166 (April 1, 1991); and
(2) Govern the subject matter of this administrative regulation.

Section 3.(1) Copies of these federal regulations are available for inspection and copying, 8 a.m. until 4:30 p.m., at [publications shall be on file in] the Office of the Commissioner for Health Services, 275 East Main Street, Frankfort, Kentucky 40621[, and are open for public inspection].
(2) Copies of these federal regulations also are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

C. HERNANDEZ, M.D., Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: September 27, 1991
FILED WITH LRC: October 10, 1991 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 21, 1991, at 9 a.m. in the Health Services Auditorium located on the first floor of the Health Services Building. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 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: David Klee
(1) Type and number of entities affected: 37 plants, 14 receiving/transfer stations, 294 distributors, 427 haulers, 330 milk trucks, and 88 sample collectors 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, because there are no permit fees.
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. Changes are only grammatical and date corrections.
(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 agency, because grammatical and date changes were only corrections made.
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. Changes are only grammatical and date corrections.
(3) Assessment of anticipated effect on state and local revenues: No effect on state and local revenues is anticipated.
(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternatives were rejected, because of nonconformity with federal regulation.
(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 this regulation applies uniformly to all the regulated entities, and does not make distinction between classes.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The comparable federal regulations is 21 CFR, Parts 131, 133, 135, and 166.
2. State compliance standards. The criteria are set forth in KRS 217C.010 and 217C.040.
3. Minimum or uniform standards contained in

the federal mandate. The criteria are set forth in 21 CFR, Parts 131, 133, 135, and 166.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? State statutes require the cabinet to establish standards for milk and milk products. The state regulation imposes no requirements or responsibilities, in addition to, different, or stricter than federal law.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 50:090. Milk adulteration.

RELATES TO: KRS 217.005 to 217.215, 217.992, 217C.010 to 217C.990

STATUTORY AUTHORITY: KRS 194.050, 211.090

NECESSITY AND FUNCTION: The Cabinet for Human Resources is directed by KRS [Chapter] 217C.040 to regulate the production, transportation, processing, handling, sampling, examination, grading, sale, and [such] other matters relating to Grade A and manufacturing milk and milk products as may be necessary to protect the public health. This regulation establishes enforcement procedures to prevent the sale of milk and milk products adulterated with antibiotics and other inhibitory substances, chemicals, and excessive water.

Section 1. Antibiotics and other Inhibitory Substances Enforcement Procedure. (1) Sampling procedure.

(a) Antibiotic tests shall be performed a minimum of four (4) times during any consecutive six (6) months on each milk producer or on raw commingled loads and all Grade A processed milk (except cultured products). When commingled milk is tested, all producers shall be represented in the sample.

(b) Any loads showing any level of antibiotics shall require individual producer's milk on the load to be tested.

(c) Utilization of milk on a load showing levels of antibiotics shall be as follows:

1. Loads showing levels of antibiotics below the acceptable standard of sixteen (16) mm zone size by the Bacillus stearothermophilus disk assay method, or any procedure approved in the 15th edition of "Standard Methods for the Examination of Dairy Products", may be accepted by the plant; however, each individual producer's milk on the load shall be tested, and any producer sample found to be positive shall be reported to the Milk Control Branch and confirmed later in writing (laboratory report). No additional milk shall be collected from that producer until enforcement procedures listed in this regulation are complied with.

2. Loads testing positive (sixteen (16) mm zone size or greater) shall not be utilized by the company and shall be reported to the Milk Control Branch. Also, all producers' milk represented on the load shall be tested, and any producer sample found to be positive shall be reported to the Milk Control Branch and confirmed later in writing (laboratory report). No additional milk shall be collected from that producer until enforcement procedures listed in this regulation are complied with.

3. Should a load be commingled into a plant storage tank with other loads and later found to be positive, the storage tank shall be tested and found to be negative prior to processing.

4. Intentional blending of loads found to be positive for antibiotics shall be prohibited.

5. Raw milk inadvertently processed and later found to be positive for antibiotics or other inhibitory substances shall be reported to the Milk Control Branch prior to shipment for sale. Each case will be handled individually and may require testing to determine if antibiotics are present which would prohibit sale.

(d) It is recommended that all loads of raw milk be screened for antibiotics and other inhibitory substances prior to receipt by the plant.

(2) Enforcement procedures.

(a) All loads found to be positive for antibiotics or other inhibitory substances prior to receipt by the plant shall not be received. All producer samples included in the load shall be tested, and the results of the load and producer samples reported to the Milk Control Branch by telephone as soon as possible and confirmed later in writing (laboratory report).

(b) No milk shall be collected from producers with a positive antibiotic test until the following conditions are met:

1. Producers with first antibiotic or other inhibitory substances violation during the past twenty-four (24) months shall require a negative sample to be obtained from the producer supply by a certified sample collector prior to the milk being collected by the hauler. The negative results shall be reported to the Milk Control Branch as soon as possible.

2. Producers with the second antibiotic or other inhibitory substances violation during the past twenty-four (24) months shall:

a. Be notified by the Milk Control Branch of the suspension by telephone and confirmed by letter. The letter confirming the suspension shall include an application for reinstatement of the permit.

b. Prior to an official sample being collected for reinstatement purposes, the producer shall request permit reinstatement in writing and indicate he believes the problem to have been corrected.

c. Require a representative of the Milk Control Branch to visit the producer dairy after the request for reinstatement is received and prior to the first official sample being taken. During this farm visit the producer shall demonstrate a method of marking cows treated which will assure milk from treated cows is not offered for sale. Upon acceptance of the exclusion procedure for treated cows, an official sample shall be collected and found to be negative for antibiotics prior to shipment. The first shipment shall not exceed limits listed in this regulation.

d. After receipt of the written request for reinstatement and a farm visit by the Milk Control Branch, a sample of the producer's milk shall be collected by a certified sample collector and found to be free of antibiotics prior to the first shipment.

e. Milk collected on the first shipment shall not exceed four (4) milkings for Grade A purposes or six (6) milkings for manufacturing

purposes.

3. Producers with more than two (2) antibiotic or other inhibitory substances violations during the past twenty-four (24) months shall:

a. Have their permits suspended in accordance with the provisions of paragraphs 2a and b of this subsection; and

b. May be required to attend a hearing with the Milk Control Branch and/or other representatives of the Department for Health Services to show cause why their permit should not be revoked.

(3) Company or producer association policy. Companies or producer associations having policies requiring producer penalties for offering milk for sale containing antibiotics or other inhibitory substances may have precedence over the enforcement policy outlined in this regulation provided that:

(a) Policy is filed in writing with the Milk Control Branch.

(b) Policy is approved by the Milk Control Branch as being as or more stringent than the enforcement procedures listed in this regulation.

(c) Evidence is forwarded in writing that company policy was carried out on each positive producer sample found.

(d) The procedures outlined in this regulation apply to both Grade A milk and milk for manufacturing whose permits are suspended because of a positive antibiotic test shall not be allowed to ship milk to a manufacturing or Grade A plant until the procedures outlined in this regulation have been complied with.

Section 2. Sale of Adulterated Milk (Excessive Water). (1) Milk producers whose supplies are found to contain over ten (10) percent excessive water shall be issued a notice requiring the supply to be withheld from sale immediately. Milk from this supply shall not be sold until a sample is collected by a certified sample collector, analyzed in a certified laboratory, and is negative for excessive water.

(2) Milk producers whose supplies are found to contain over two (2) percent to ten (10) percent excessive water shall be issued a notice of adulteration and resampled after the lapse of three (3) days. Should the resample continue to show over two (2) percent excessive water, the producer shall be issued a notice requiring the supply to be withheld from sale immediately. Milk shall not be sold from this supply until a sample is collected by a certified sample collector, analyzed in a certified laboratory, and is negative for excessive water.

(3) Milk producers whose supplies are found to contain between five-tenths (.5) percent to two (2) percent excessive water shall be notified; and should the following sample show five-tenths (.5) percent to two (2) percent excessive water, a supervised sample shall be collected by an inspector or other authorized person. The supervised sample shall be used as a future reference point for the accurate freezing point for the supply.

(4) Repeated violation of any of these procedures listed in this regulation may require permit suspension, a written request for reinstatement, and the resample to be collected by the inspector. Also, the sample shall be negative for excessive water prior to reinstatement of the permit.

Section 3. Procedures for Testing Milk Samples for Chemical Contaminants. (1) Samples will be collected and analyzed a minimum of annually from all bulk tank truck loads of raw milk representing Kentucky dairy producers and imported supplies from other states. Semiannual samples will be collected from loads having a previous history of chemical contaminants. Finished milk and milk products manufactured and sold within Kentucky will also be screened.

(2) Whenever a Kentucky inspected bulk tank load of raw milk is found to contain any level of a chemical contaminant, the individual milk producers represented on the load will be immediately notified by telephone, confirmed by letter, and individually sampled on a screening basis after notification. If out-of-state bulk tank loads are found to be contaminated, the shipping state regulatory agency will be immediately notified by telephone and confirmed in writing.

(3) Whenever laboratory results of an individual producer sample shows a violation of an established tolerance level for a particular chemical contaminant, the supply will be withheld from the market channels. Notice shall be by telephone and confirmed in writing. An additional follow-up confirming sample shall be collected within ten (10) working days after notification of exclusion.

(4) Continued sampling of an excluded milk producer's supply will be maintained until an acceptable level of the contaminant is attained. The frequency of additional sampling may be at seven (7), fifteen (15), thirty (30), or sixty (60) day intervals, depending on laboratory workload capabilities and levels found in the confirming sample and as experienced from previous test indicators. Higher levels will be sampled at lesser frequencies.

(5) Whenever levels based on an official sample fall below acceptable tolerance levels, the producer will be notified by telephone and confirmed in writing that the supply is again acceptable for sale.

(6) Producer assistance in testing individual cows, feeds, and water supplies may be obtained on an unofficial basis from the Kentucky Diagnostic Laboratories and[/or] commercial laboratories.

(7) The following procedure will be followed whenever any level of PCB's are found in a producer's supply:

(a) Whenever levels of PCB's are found in a producer's milk supply, a farm inspection shall be made to determine the type of silo(s) being used.

(b) All producers (showing levels of PCB's in their milk supply) having concrete silos coated with "cumar" or other sealers containing PCB's will be condemned for use with the dairy herd.

(c) The following options may be used by a producer with a condemned silo:

1. Abandon the silo (do not store feed).

2. Recoat the silo. If a silo is recoated, the producer shall notify the Milk Control Branch for approval prior to the silo being filled.

(d) Once a producer is notified that a silo(s) has been condemned, continued use of the silo may require immediate suspension of the milk supply whenever any level of PCB's are found by the regulatory agency.

(8) The producer's supply will be placed on a continuous surveillance program until a negative sample is obtained.

Section 4. The following material is integrated by reference:

(1) "Standard Methods for Examination of Dairy Products";

(2) A copy of the publication is available for inspection and copying, 8 a.m. until 4:30 p.m., at the Office of the Commissioner for Health Services, 275 East Main Street, Frankfort, Kentucky 40621.

C. HERNANDEZ, M.D., Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: September 27, 1991
FILED WITH LRC: October 10, 1991 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 21, 1991, at 9 a.m. in the Health Services Auditorium located on the first floor of the Health Services Building. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 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: David Klee

(1) Type and number of entities affected: 3,431 producers, 37 plants, 14 receiving/transfer stations, 294 distributors, 427 haulers, 330 milk trucks, and 88 sample collectors 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, because there are no permit fees.

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. Changes are only grammatical and date corrections.

(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 agency, because grammatical and date changes were only corrections made.

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. Changes are only grammatical and date corrections.

(3) Assessment of anticipated effect on state and local revenues: No effect on state and local revenues is anticipated.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternatives were rejected, because of nonconformity with federal regulation.

(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 this regulation applies uniformly to all the regulated entities, and does not make distinction between classes.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The comparable federal regulation is in the 15th edition of "Standard Methods for the Examination of Dairy Products".

2. State compliance standards. The criteria are set forth in KRS 217.005 to 217.215, 217.992, and KRS 217C.010 to 217C.990.

3. Minimum or uniform standards contained in the federal mandate. The criteria are set forth in the 15th edition of "Standard Methods for the Examination of Dairy Products".

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? State statutes require the cabinet to establish standards for milk and milk products. The state regulation imposes no requirements or responsibilities, in addition to, different, or stricter than federal law.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 50:100. Grade A milk sanitation ratings.

RELATES TO: KRS 217C.010 to 217C.990
STATUTORY AUTHORITY: KRS 194.050, 211.090

NECESSITY AND FUNCTION: The Cabinet for Human Resources is directed by KRS [Chapter] 217C.040 to regulate the production, transportation, processing, handling, sampling, examination, grading, sale, and [such] other matters relating to Grade A and manufacturing milk and milk products as may be necessary to protect the public health. This regulation establishes sanitation rating procedures for Grade A milk producers, processors, and handlers and enforcement procedures in accordance with federal requirements to determine approval for interstate shipment under the agreements of the National Conference on Interstate Milk Shipments.

Section 1. Methods of making Sanitation Ratings of Milk Supplies. The sanitation rating methods of Grade A milk producers, processors, and handlers as set forth in the publication entitled "Methods of Making Sanitation Ratings of Milk Supplies," 1989 revision [1978 edition] of the United States Public Health Service/Food and Drug Administration, is hereby adopted without change [by reference].

(2) A copy of the publication is available for inspection and copying, 8 a.m. until 4:30 p.m., at [on file in] the Office of the Commissioner for Health Services, 275 East Main Street, Frankfort, Kentucky 40621[, and shall be open for public inspection].

(3) Copies are also available from the

Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

Section 2. The following material is integrated by reference:

(1) "Methods of Making Sanitation Ratings of Milk Supplies".

(2) A copy of the material is available for inspection and copying, 8 a.m. until 4:30 p.m., at the Office of the Commissioner for Health Services, 275 East Main Street, Frankfort, Kentucky 40621.

C. HERNANDEZ, M.D., Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: September 27, 1991
FILED WITH LRC: October 10, 1991 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 21, 1991, at 9 a.m. in the Health Services Auditorium located on the first floor of the Health Services Building. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 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: David Klee
(1) Type and number of entities affected: 2,878 producers, 22 plants, 14 receiving/transfer stations, 294 distributors, 427 haulers, 330 milk trucks, and 88 sample collectors 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, because there are no permit fees.
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. Changes are only grammatical and date corrections.
(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 agency, because grammatical and date changes were only corrections made.
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. Changes are only grammatical and date corrections.
(3) Assessment of anticipated effect on state and local revenues: No effect on state and local revenues is anticipated.
(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternatives were rejected, because of nonconformity with federal regulation.
(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 this regulation applies uniformly to all the regulated entities, and does not make distinction between classes.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The comparable federal regulations is "Methods of Making Sanitation Ratings of Milk Supplies."
2. State compliance standards. The criteria are set forth in KRS 217C.010 to 217C.990.
3. Minimum or uniform standards contained in the federal mandate. The criteria are set forth in the "Methods of Making Sanitation Ratings of Milk Supplies."
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? State statutes require the cabinet to establish standards for milk and milk products. The state regulation imposes no requirements or responsibilities, in addition to, different, or stricter than federal law.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 50:110. Grade A milk and milk products standards.

RELATES TO: KRS 217C.010 to 217C.990
STATUTORY AUTHORITY: KRS 194.050, 211.090
NECESSITY AND FUNCTION: The Cabinet for Human Resources is directed by KRS [Chapter] 217C.040 to regulate the production, transportation, processing, handling, sampling, examination, grading, sale and such other matters relating to Grade A milk and milk products as may be necessary to protect the public health. This regulation establishes uniform permit requirements and sanitary standards for Grade A milk producers, processors, handlers and distributors, Grade A dry and condensed milk, Grade A dry and condensed whey and the fabrication of single-service containers and closures for milk and milk products.

Section 1. (1) Grade A Milk and Milk Products. The permit requirements, sanitary and quality requirements for the production, processing, handling and distribution of Grade A milk and milk products as set forth in the publication entitled, "Grade A Pasteurized Milk Ordinance," 1989 [1978] recommendations[, Part II,] of the United States Public Health Service/Food and Drug Administration [1985 Edition] is hereby adopted without change. The first sample analyzed, after a temporary permit has been issued to a producer whose permit has been suspended, shall be in compliance with the standard(s) for which the permit was suspended.

[by reference.]

(2) A copy of the publication is available for inspection and copying, 8 a.m. until 4:30 p.m. at [on file in] the Office of the Commissioner, Department for Health Services, 275 East Main Street, Frankfort, Kentucky 40621[, and shall be open for public inspection.]

(3) Copies are also available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(4) In addition, the following requirement shall be applicable to the "Reinstatement of Permits" provision set forth in Part II Section 3 Permits [on page 39 of said publication: The first sample analyzed, after a temporary permit has been issued to a producer whose permit has been suspended, shall be in compliance with the standard(s) for which the permit was suspended.]

Section 2. (1) Grade A Condensed, Dry Milk Products, Condensed and Dry Whey. The permit requirements, sanitary and quality requirements for the production, processing, handling, and distribution of Grade A condensed dry milk products, condensed and dry whey as set forth in the publication entitled "Grade A Condensed and Dry Milk Products and Condensed and Dry Whey," 1978 recommendations[, Part II,] of the United States Public Health Service/Food and Drug Administration 1985 Edition is hereby adopted without change [by reference].

(2) A copy of the publication is available for inspection and copying, 8 a.m. until 4:30 p.m., at [on file in] the Office of the Commissioner, Department for Health Services, 275 East Main Street, Frankfort, Kentucky 40621[, and shall be open for public inspection].

(3) Copies are also available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

Section 3. (1) Fabrication of Single-service Containers and Closures for Milk and Milk Products. The sanitary and quality requirements for the fabrication of single-service containers and closures for milk and milk products as set forth in the [publication entitled] "Fabrication of Single-service Containers and Closures for Milk and Milk Products," 1985 Edition, of the U.S. Public Health Service, Food and Drug Administration is hereby adopted without change [by reference].

(2) A copy of the publication is available for inspecting and copying, 8 a.m. until 4:30 p.m. at [on file in] the Office of the Commissioner, Department for Health Services, 275 East Main Street, Frankfort, Kentucky 40621, and shall be open for public inspection.

(3) Copies are also available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

Section 4. The following material is integrated by reference:

(1) "Grade A Pasteurized Milk Ordinance";

(2) "Grade A Condensed and Dry Milk Products and Condensed and Dry Whey";

(3) "Fabrication of Single-service Containers and Closures for Milk and Milk Products";

(4) A copy of the material is available for inspecting and copying, 8 a.m. until 4:30 p.m. at the Office of the Commissioner, Department for Health Services, 275 East Main Street, Frankfort, Kentucky 40621.

C. HERNANDEZ, M.D., Commissioner
HARRY J. COWHERD, M.D., Secretary

APPROVED BY AGENCY: September 27, 1991
FILED WITH LRC: October 10, 1991 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 21, 1991, at 9 a.m. in the Health Services Auditorium located on the first floor of the Health Services Building. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 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: David Klee

(1) Type and number of entities affected: 2,878 producers, 12 plants, 3 receiving/transfer stations, 11 transfer stations, 294 distributors, 427 haulers, and 88 milk samplers 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, because there are no permit fees.

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. Changes are only grammatical and date corrections.

(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 agency, because grammatical and date changes were only corrections made.

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. Changes are only grammatical and date corrections.

(3) Assessment of anticipated effect on state and local revenues: No effect on state and local revenues is anticipated.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternatives were rejected, because of nonconformity with federal regulation.

(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 this regulation applies uniformly to all the regulated entities, and does not make distinction between classes.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The comparable federal regulations are the 1989 edition of the "Grade A Pasteurized Milk Ordinance", the 1985 edition of the "Fabrication of Single-service Containers and Closures for Milk and Milk Products", and the 1978 recommendation of "Grade A Condensed and Dry Milk Products and Condensed and Dry Whey".
2. State compliance standards. The criteria are set forth in KRS Chapter 217C.
3. Minimum or uniform standards contained in the federal mandate. The criteria are set forth in the 1989 edition of the "Grade A Pasteurized Milk Ordinance", the 1985 edition of the "Fabrication of Single-service Containers and Closures for Milk and Milk Products", and the 1978 recommendation of "Grade A Condensed and Dry Milk Products and Condensed and Dry Whey".
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? State statutes require the cabinet to establish standards for milk and milk products. The state regulation imposes no requirements or responsibilities, in addition to, different, or stricter than federal law.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

CABINET FOR HUMAN RESOURCES
Department for Health Services
Division of Community Safety
(Proposed Amendment)

902 KAR 55:040. Exempt over-the-counter preparations.

RELATES TO: KRS Chapter 218A
STATUTORY AUTHORITY: KRS 194.050, 211.090, 218A.020, 218A.250
NECESSITY AND FUNCTION: KRS 218A.020(4) and 218A.090(4)(i) authorizes the Cabinet for Human Resources to exclude [certain] preparations that may be lawfully sold over the counter (without prescription) from the provisions relating to controlled substances of KRS Chapter 218A. The purpose of this regulation is to exclude certain over-the-counter preparations from the provisions of the Kentucky Controlled Substances Act.

Section 1. Exempt Over-the-counter Barbiturate Combination Preparations. Any compound, mixture or preparation containing any nonnarcotic substance which is excluded from the provisions of the federal controlled substance law as set forth in the April 1, 1991 edition of the Code of Federal Regulations (CFR), Title 21, Food and Drugs, Chapter II – Drug Enforcement Administration, Department of Justice, Section 1308.22, Excluded Substances, incorporated by reference, is excluded from the provisions of KRS Chapter 218A, the Controlled Substances Act. The Code of Federal Regulations is published by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408. A copy of 21 CFR 1308.22 is on file in the Office of Drug Control, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky, 40621, and is available for public inspection and copying Monday through Friday 8 a.m. – 4:30 p.m. A copy of the CFR is also available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. [(1) Properly labeled over-the-counter preparations containing not more than one-eighth (1/8) grain of barbituric acid or derivatives of barbituric acid, or salts of barbituric acid or salts of derivatives of barbituric acid, in combination with Theophylline two (2) grains and/or Ephedrine three-eighths (3/8) grain or their salts are exempt from the provisions of KRS Chapter 218A, the "Kentucky Controlled Substances Act of 1972."]
[(2) Properly labeled over-the-counter suppository preparations containing not more than one-fourth (1/4) grain of barbituric acid or derivatives of barbituric acid, or salts of barbituric acid or salts of derivatives of barbituric acid, in combination with Theophylline two (2) grains and/or Ephedrine three-eighths (3/8) grain or their salts are exempt from the provisions of KRS Chapter 218A, the "Kentucky Controlled Substances Act of 1972."]

C. HERNANDEZ, M.D., Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: September 10, 1991
FILED WITH LRC: October 4, 1991 at 4 p.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 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 November 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 merely updates the list of substances exempt under KRS Chapter 218A.
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 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 because the amendment updates a list.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: There is no 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 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 pharmacists or other dispensers 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 811(g)(1) and 21 CFR 1308.22.
2. State compliance standards. The criteria for exemption is set forth in KRS 218A.020(4) and 218A.090(4)(i).
3. Minimum or uniform standards contained in the federal mandate. The criteria for substances are set forth in 84 Stat. 1241; 21 USC 811(g)(1).
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 Health Services
Division of Community Safety
(Proposed Amendment)

902 KAR 55:045. Exempt prescription preparations.

RELATES TO: KRS Chapter 218A
STATUTORY AUTHORITY: KRS 194.050, 211.090, 218A.020, 218A.250
NECESSITY AND FUNCTION: KRS 218A.020(3) provides that if any controlled substance is designated, rescheduled, or deleted as a controlled substance under federal law and notice [thereof] is given to the Cabinet for Human Resources, the Cabinet for Human Resources may similarly control the substance under KRS Chapter 218A by regulation. The purpose of this regulation is to delete and exempt certain stimulant or depressant compounds from the provisions of KRS Chapter 218A that have been deleted and exempted pursuant to federal regulation.

Section 1. Exempt Prescription Stimulant or Depressant Combination Preparations. Any compound, mixture or preparation containing any depressant or stimulant substance exempted from the provisions of the federal controlled substance law as set forth in the April 1, 1991 [1984], edition of the Code of Federal Regulations, (CFR), Title 21, Food and Drugs, Chapter II - Drug Enforcement Administration, Department of Justice, Section 1308.32, Excepted Prescription Products, incorporated [Drugs, pages 125 to 162, filed herein] by reference, [are hereby] exempted from the provisions of KRS Chapter 218A, the Controlled Substances Act for administrative purposes only. The Code of Federal Regulations is published by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408. A copy of 21 CFR 1308.32 is [this publication shall be] on file in the Office of Drug Control, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621, and is available for public inspection and copying Monday through Friday 8 a.m. to 4:30 p.m. A copy of the CFR [this publication] is also available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

C. HERNANDEZ, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: September 10, 1991
FILED WITH LRC: October 4, 1991 at 4 p.m.
PUBLIC HEARING: A public hearing on this regulation will be held on November 21, 1991, at 9 a.m. in the Department for Employment Services Conference Room, 2nd Floor, CHR Building, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office by November 16, 1991: Ryan Halloran, Office of 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 merely updates the list of substances exempt under KRS Chapter 218A.
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 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 because the amendment updates a list.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: There is no 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 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 pharmacists or other dispensers 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; and 21 CFR 1308.32.
2. State compliance standards. The criteria for exemption are set forth in KRS 218A.020(3).
3. Minimum or uniform standards contained in the federal mandate. The criteria for substances to be exempt are set forth in 84 Stat. 1241 and 21 CFR 1308.32.
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 Health Services
(Proposed Amendment)

902 KAR 100:005. General applicability.

RELATES TO: KRS 211.842 to 211.852, 211.990(4)
STATUTORY AUTHORITY: KRS 194.050, 211.090, 211.844
NECESSITY AND FUNCTION: The Cabinet for Human Resources is authorized [empowered] by KRS 211.844 to provide by regulation for the registration and licensing of the possession or use of [any] sources of ionizing or electronic product radiation and to regulate the handling and disposal of radioactive waste. [The purpose of] This administrative regulation specifies [is to specify] the general applicability of the Cabinet for Human Resources' radiation administrative regulations.

Section 1. General Applicability of State Radiation Regulations. The Cabinet for Human Resources' radiation administrative regulations shall apply [relating to radiation are applicable] to the possession and use of [all] sources of ionizing and electronic product radiation in Kentucky and to the handling and disposal of radioactive waste in Kentucky except if [where] exclusive jurisdiction has been retained by the United States Nuclear Regulatory Commission as authorized by [pursuant to] applicable federal laws and regulations. [Nothing in] The cabinet's radiation administrative regulations shall not be interpreted as limiting the exposure of patients to radiation by licensed state practitioners of the healing arts who are authorized by virtue of their license to use sources of radiation, or by qualified individuals acting under their direction. The classification and certification of operators of sources of radiation as provided by KRS 211.870, 211.890, and 211.993 are not included within the scope of these administrative regulations.

C. HERNANDEZ, M.D., Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: September 27, 1991
FILED WITH LRC: October 11, 1991 at 3 p.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 21, 1991, at 9 a.m. in the Department for Employment Services, 2nd Floor Conference Room, Cabinet for Human Resources building. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 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: John A. Volpe
(1) Type and number of entities affected: 380 radioactive material licensees and 3000 x-ray registrants are affected by this regulation.
(a) Direct and indirect costs or savings to those affected: There are no direct or indirect costs or savings to radioactive material licensees or x-ray registrants.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: There is no 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 and local revenues is anticipated.
(4) Assessment of alternative methods; reasons why alternatives were rejected: This regulation must be identical to that of the U.S. Nuclear Regulatory Commission and other states. No alternative is available.
(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: There is no conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict.

(6) Any additional information or comments:

TIERING: Was tiering applied? Yes. Tiering was applied because different types of licensees are regulated based on their use of radioactive material.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Section 274 of the Atomic Energy Act of 1954, as amended and 10 CFR.

2. State compliance standards. This administrative regulation specifies the general applicability of the Cabinet for Human Resources' radiation administrative regulations.

3. Minimum or uniform standards contained in the federal mandate. Federal and state requirements are identical.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The requirements/responsibilities are identical to those of the U.S. Nuclear Regulatory Commission.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Federal and state standards are identical.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 100:010. Definitions.

RELATES TO: KRS 211.842 to 211.852, 211.990(4)

STATUTORY AUTHORITY: KRS 194.050, 211.090, 211.844

NECESSITY AND FUNCTION: The Cabinet for Human Resources is authorized [empowered] by KRS 211.844 to provide by administrative regulation for the registration and licensing of the possession or use of [any] sources of ionizing or electronic product radiation and the handling and disposal of radioactive waste. The purpose of this administrative regulation is to provide for definitions as applicable to other Cabinet for Human Resources radiation administrative regulations.

Section 1. Definitions. As used in these administrative regulations, these terms have the definitions set forth below:

(1) "A_1" and "A_2."

(a) "A_1" means the maximum activity of special form radioactive material permitted in a Type A package;

(b) "A_2" means the maximum activity of radioactive material, other than special form radioactive material, permitted in a Type A package;

(c) These values are either listed in 902 KAR 100:070, Section 21, or may be derived in accordance with the procedure prescribed in 902 KAR 100:070, Section 20.

(2) "Accelerator" means a [any] machine capable of accelerating electrons, protons, deuterons, or other charged particles in a vacuum and of discharging the resultant particulate or other radiation into a medium at energies usually in excess of one (1) MeV. It includes, but is not limited to, the cyclotron, synchrotron, synchrocyclotron, betatron, linear accelerator, and Van de Graaff electrostatic generator.

(3) "Accessible surface" means the external surface of the enclosure or housing provided by the manufacturer.

(4) "Act" means KRS 211.842 to 211.852.

(5) "Address of use" means the building or buildings that are identified on the license and where radioactive material may be received, used or stored.

(6) "Agreement state" means a [any] state with which the United States Nuclear Regulatory Commission or the United States Atomic Energy Commission has entered into an effective agreement under subsection 274 b. of the Atomic Energy Act of 1954, as amended (73 Stat. 689).

(7) "Airborne radioactive material" means [any] radioactive material dispersed in the air in the form of dusts, fumes, mists, vapors, or gases.

(8) "Airborne radioactivity area" means:

(a) A [Any] room, enclosure, or operating area in which airborne radioactive material exists in concentrations in excess of the amounts specified in Table 1, Column 1, of 902 KAR 100:025; or

(b) A [Any] room, enclosure, or operating area in which airborne radioactive material exists in concentrations which, averaged over the number of hours in a [any] week during which individuals are in the area, exceed twenty-five (25) percent of the amounts specified in Table I, Column 1, of 902 KAR 100:025.

(9) "Aluminum equivalent" means the thickness of type 1100 (ninety-nine (99.0) percent minimum aluminum, 0.12 percent copper) aluminum affording the same attenuation, under specified conditions, as the material in question.

(10) "Analytical x-ray systems" means a [any] system which utilizes x-rays for the examination of the structure of materials. This includes, but is not limited to, [all types of] x-ray diffraction and spectrographic equipment.

(11) "Area of use" means a portion of a physical structure that has been set aside for the purpose of receiving, using or storing radioactive material.

(12) "As low as reasonably achievable (ALARA)" means as low as is reasonably achievable taking into account the state of technology, and the economics of improvement in relation to benefits to the public health and safety and in relation to the utilization of atomic energy in the public interest.

(13) "Attenuation" means the reduction of exposure rate upon passages of radiation through matter.

(14) "Attenuation block" means a block or stack, having dimensions twenty (20) cm by twenty (20) cm by three and eight-tenths (3.8) cm, of type 1100 aluminum alloy or other materials having equivalent attenuation.

(15) "Automatic exposure control" means a device which automatically controls one (1) or more technique factors in order to obtain at a preselected location(s) a required quantity of radiation.

(16) [(15)] "Authorized user" means a practitioner of the healing arts, [who is] identified as an authorized user on a cabinet, U.S. Nuclear Regulatory Commission or another agreement state license that authorizes the medical use of radiaoctive material.

(17) "Beam axis" means a line from the source through the centers of the x-ray fields.

(18) [(16)] "Beam limiting device" (collimator) means a device which provides a means to restrict the dimensions of the x-ray field.

(19) "Beam monitoring system" means a system designed to detect and measure the radiation present in the useful beam.

(20) [(17)] "Brachytherapy" means a method of radiation therapy in which an encapsulated source or group of sources is utilized to deliver beta or gamma radiation at a distance of up to a few centimeters, by surface, intracavitary, or interstitial application.

(21) [(18)] "Broker" (waste broker) means a [any] person who takes possession of low-level waste solely for the purposes of consolidation and shipment.

(22) [(19)] "By-product material" means:

(a) [Any] Radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material; and

(b) The tailings or wastes produced by the extraction or concentration of uranium or thorium from [any] ore processed primarily for its source material content.

(23) [(20)] "Cabinet" means Cabinet for Human Resources, or its duly authorized representatives.

(24) [(21)] "Cabinet x-ray systems" means an x-ray system with the x-ray tube installed or used in a permanent enclosure in which the enclosure is intended to contain at least that portion of the material being irradiated. The enclosure may be the architectural structure or may be independent of the architectural structure, but in either case, the structure of the enclosure shall [must] provide attenuation of the radiation to meet the requirements of 902 KAR 100:105, relating to the possession, use, and operation of x-ray systems, and shall [must] exclude personnel from its interior during the generation of x-radiation. This definition does not include x-ray systems used by licensed practitioners of the healing arts.

(25) [(22)] "Calendar quarter" means not less than twelve (12) consecutive weeks nor more than fourteen (14) consecutive weeks. The first calendar quarter of each year shall begin in January and subsequent calendar quarters shall be so arranged so that no day is included in more than one (1) calendar quarter and no day in a [any] one (1) year period is omitted from inclusion within a calendar quarter. No licensee or registrant shall change the method observed by him of determining calendar quarters for purposes of these regulations except at the beginning of a calendar year.

(26) [(23)] "Calibration" means the determination of:

(a) The response or reading of an instrument relative to a series of known radiation values over the range of the instrument; or

(b) The strength of a source of radiation relative to a standard.

(27) [(24)] "Carrier" means a person engaged in the transportation of passengers or property by land or water as a common, contract, or private carrier, or by civil aircraft.

(28) "Cephalometric device" means a device intended for the radiographic visualization and measurement of the dimensions of the human head.

(29) [(25)] "Certified components" means components of x-ray systems which are subject to regulations promulgated under 21 CFR Subchapter J [P.L. 90-602].

(30) [(26)] "Certified system" means an [any] x-ray system which has one (1) or more certified component(s).

(31) [(27)] "CFR" means Code of Federal Regulations.

(32) "Changeable filters" means any filter, exclusive of inherent filtration, which can be removed from the useful beam through an electronic, mechanical or physical process.

(33) "Computed tomography" means the production of a tomogram by the acquisition and computer processing of x-ray transmission data.

(34) "Contact therapy system" means an x-ray system used for therapy with the x-ray tube port placed in contact with or within five (5) centimeters of the surface being treated.

(35) [(28)] "Control panel" means that part of the x-ray control upon which are mounted the switches, knobs, push buttons, and other hardware necessary for manually setting the technique factors.

(36) [(29)] "Cooling curve" means the graphical relationship between heat units stored and cooling time.

(37) [(30)] "Curie" means a quantity of radioactivity. One (1) curie (Ci) is that quantity of radioactive material which decays at the rate of 3.7×10^{10} disintegrations per second (dps). Commonly used submultiples of the curie are the millicurie and the microcurie. One (1) millicurie (mCi) = 0.001 curie = 3.7×10^{7} dps. One (1) microcurie (uCi) = 0.000001 curie = 3.7×10^{4} dps.

(38) [(31)] "Dead man switch" means a switch so constructed that a circuit closing contact can be maintained only by continuous pressure on the switch by the operator.

(39) [(32)] "Dedicated check source" means a radiaoctive source that is used to assure the constant operation of a radiation detection or measurement device over several months or years. The source may also be used for other purposes.

(40) [(33)] "Depleted uranium" means the source material uranium in which the isotope uranium-235 is less than 0.711 weight percent of the total uranium present. Depleted uranium does not include special nuclear material.

(41) [(34)] "Diagnostic source assembly" means the tube housing assembly with a beam-limiting device attached.

(42) [(35)] "Diagnostic-type protective tube housing" means an x-ray tube housing so constructed that the leakage radiation measured at a distance of one (1) meter from the source cannot exceed 100 milliroentgens in one (1) hour if [when] the tube is operated at its maximum continuous rated current for the maximum tube potential.

(43) "Diagnostic x-ray system" means an x-ray system designed for irradiation of a part of the human body for the purpose of diagnosis or visualization.

(44) [(36)] "Direct scatter radiation" means that scattered radiation which has been deviated in direction only by materials irradiated by the useful beam. (See also "scattered radiation").

(45) [(37)] "Disposal" means the disposition of waste as authorized by 902 KAR 100:021.

(46) [(38)] "Dose" means absorbed dose or dose equivalent as appropriate:

(a) "Absorbed dose" is the energy imparted to

matter by ionizing radiation per unit mass of irradiated material at the place of interest. The special unit of absorbed dose is the rad (see "Rad").

(b) "Dose equivalent" is a quantity that expresses on a common scale for all radiation a measure of the postulated effect on a given organ. It is defined as the absorbed dose in rads times certain modifying factors. The unit of dose equivalent is the rem (see "Rem").

(47) [(39)] "Dose commitment" means the total radiation dose to a part of the body that [will] results from retention in the body of radioactive material. For purposes of estimating the dose commitment, it is assumed that from the time of intake the period of exposure to retained material shall [will] not exceed fifty (50) years.

(48) [(40)] "Entrance exposure rate" means the roentgens per unit time at the point [where] the center of the useful beam enters the patient.

(49) [(41)] "Exclusive use" (also referred to in other regulations as "sole use" or "full load") means the sole use of a conveyance by a single consignor in [and for] which [all] initial, intermediate, and final loading and unloading are carried out in accordance with the direction of the consignor or consignee.

(50) [(42)] "Exposure" means the quotient of dQ by dm where dQ is the absolute value of the total charge of the ions of one (1) sign produced in air when all the electrons (negatrons and positrons) liberated by photons in a volume element of air having mass dm are completely stopped in air. (The special unit of exposure is the roentgen (R).) Exposure also means one (1) or more irradiations of a person for a healing arts purpose.

(51) [(43)] "Exposure rate" means the exposure per unit of time, i.e., [such as] roentgen per minute and milliroentgen per hour.

(52) "Facility" means the location at which one (1) or more devices or sources are installed or located within one (1) building, vehicle or under one (1) roof and are the same administrative control.

(53) "Field emission equipment" means equipment which uses an x-ray tube in which electron emission from the cathode is due solely to the action of an electric field.

(54) [(44)] "Field station" means a facility where radioactive sources may be stored or used and from which equipment is dispatched to temporary job sites.

(55) [(45)] "Filter" is the material in the useful beam which usually absorbs preferentially the less penetrating radiations.

(a) "Inherent filtration" means the filter permanently in the useful beam. It includes the window of the x-ray tube and the [any] permanent tube enclosure.

(b) "Added filter" means the filter added to the inherent filtration.

(c) "Total filter" means the sum of the inherent and added filters.

(56) [(46)] "Fissile material" means [any] special nuclear material consisting of or containing one (1) or more fissile radionuclides. Fissile radionuclides are plutonium-238, plutonium-239, plutonium-241, uranium-233, and uranium-235. Neither natural or depleted uranium is fissile material. (Cabinet jurisdiction extends only to special nuclear material if quantities are not sufficient to form a critical mass as defined in this administrative regulation.)

(a) Fissile Class I: a package which may be transported in unlimited numbers and in an unspecified [any] arrangement, and which requires no nuclear criticality safety controls during transportation. A transport index is not assigned for purposes of nuclear criticality safety but may be required because of external radiation levels.

(b) Fissile Class II: a package which may be transported together with other packages in an unspecified [any] arrangement but, for criticality control, in numbers which do not exceed an aggregate transport index of fifty (50). These shipments require no other nuclear criticality safety control during transportation. Individual packages may have a transport index not less than 0.1 and not more than ten (10).

(57) [(47)] "Fluoroscopic imaging assembly" means a component which comprises a reception system in which x-ray photons produce a fluoroscopic image. It includes equipment housings, electrical interlocks if present [any], the primary protective barrier, and structural material providing linkage between the image receptor and the diagnostic source assembly.

(58) "Focal spot" means the area projected on the anode of the x-ray tube by the electrons accelerated from the cathode and from which the useful beam originates.

(59) [(48)] "Former U.S. Atomic Energy Commission (AEC) or U.S. Nuclear Regulatory Commission (NRC) licensed facilities" means nuclear reactors, nuclear fuel reprocessing plants, uranium enrichment plants, or critical mass experimental facilities where AEC or NRC licenses have been terminated.

(60) "General purpose radiographic x-ray system" means a radiographic x-ray system which, by design, is not limited to radiographic examination of specific anatomical regions.

(61) [(49)] "Generator" (waste generator) means a [any] person who produces or possesses low-level radioactive waste in the course of or incident to manufacturing, power generation, processing, medical diagnosis and treatment, research, education or other activity.

(62) "Gonad shield" means a protective barrier for the testes or ovaries.

(63) [(50)] "Half-value layer (HVL)" means the thickness of specified material which attenuates the beam of radiation to an extent [such] that the exposure rate is reduced to one-half (1/2) of its original value. In this definition the contribution of [all] scattered radiation, other than that [any] which might be present initially in the beam concerned, is deemed to be excluded.

(64) "Healing arts screening" means the testing of human beings using x-ray machines for the detection or evaluation of health indications when these tests are not specifically and individually ordered by a licensed practitioner of the healing arts legally authorized to prescribe these x-ray tests for the purpose of diagnosis or treatment.

(65) "Heat unit" means a unit of energy equal to the product of the peak kilovoltage, milliamperes, and seconds, i.e., kVp x mA x seconds.

(66) [(51)] "High radiation area" means an [any] area, accessible to individuals, in which there exists radiation at [such] levels that a major portion of the body could receive in [any]

one (1) hour period a dose in excess of 100 millirems.

(67) [(52)] "Human use" means the internal or external administration of radiation or radioactive materials to human beings.

(68) [(53)] "Image intensifier" means a device which converts instantaneously by means of photoemissive surfaces and electronic circuitry an x-ray pattern into a light pattern of greater intensity than would have been produced by the original x-ray pattern.

(69) [(54)] "Image receptor" means a [any] device [such] as a fluorescent screen or radiographic film which transforms incident radiation either into a visual image or into another form which can be made into a visual image by further transformations.

(70) "Image receptor support" means for mammographic systems, that part of the system designed to support the image receptor in a horizontal plane during a mammographic examination.

(71) [(55)] "Individual" means a [any] human being.

(72) [(56)] "Industrial radiography" means the examination of the macroscopic structure of materials by nondestructive methods utilizing sources of radiation.

(73) [(57)] "Injection tool" means a device used for controlled subsurface injection of radioactive tracer material.

(74) [(58)] "Inspection" means an examination or observation including but not limited to, tests, surveys, and monitoring to determine compliance with rules, administrative regulations, orders, and requirements of the cabinet.

(75) [(59)] "Interlock" means a device arranged or connected so [such] that the occurrence of an event or condition is required before a second event or condition can occur or continue to occur.

(76) "Irradiation" means the exposure of matter to ionizing radiation.

(77) [(60)] "Kilovolt peak (kVp)" means the crest value in kilovolts of the potential difference of a pulsating potential generator. If [When] only one-half (1/2) of the wave is used, the value refers to the useful half of the wave.

(78) [(61)] "Lead equivalent" means the thickness of lead affording the same attenuation, under specified conditions, as the material in question.

(79) "Leakage radiation" means radiation emanating from the diagnostic or therapeutic source assembly except for the useful beam.

(80) [(62)] "Leakage technique factors" means the technique factors associated with the tube housing assembly which are used in measuring leakage radiation. They are defined as follows:

(a) For capacitor energy storage equipment, the maximum rated number of exposures in an hour for operation at the maximum rated peak tube potential with the quantity of charge per exposure being ten (10) milliampere seconds (mAs) or the minimum obtainable from the unit, whichever is larger.

(b) For field emission equipment rated for pulsed operation, the maximum rated number of x-ray pulses in an hour for operation at the maximum rated peak tube potential.

(c) For all other equipment, the maximum rated continuous tube current for the maximum rated peak tube potential.

(81) [(63)] "License" means a license issued by the cabinet in accordance with these administrative regulations.

(82) [(64)] "Licensed material" means radioactive material received, possessed, used, or transferred under a general or specific license issued by the cabinet pursuant to these administrative regulations.

(83) [(65)] "Licensee" means a [any] person who is licensed by the cabinet in accordance with these administrative regulations and the Act.

(84) [(66)] "Logging assistant" means an [any] individual who, under the personal supervision of a logging supervisor, handles sealed sources or tracers that are not in logging tools or shipping containers or who uses survey instruments in well-logging activities.

(85) [(67)] "Logging supervisor" means the individual who provides personal supervision of the utilization of sources of radiation at the well site.

(86) [(68)] "Logging tool" means a device used subsurface to perform well-logging.

(87) [(69)] "Low specific activity material" means [any of the following]:

(a) Uranium or thorium ores and physical or chemical concentrates of those ores;

(b) Unirradiated natural or depleted uranium or unirradiated natural thorium;

(c) Tritium oxide in aqueous solutions provided the concentration does not exceed five (5.0) millicuries per milliliter; or

(d) Material in which the radioactivity is essentially uniformly distributed and in which the estimated average concentration per gram of contents does not exceed:

1. 0.0001 millicurie of radionuclides for which the A_2 quantity in 902 KAR 100:070 is not more than 0.05 curie;

2. 0.005 millicurie of radionuclides for which the A_2 quantity in 902 KAR 100:070 is more than 0.05 curie, but not more than one (1) curie; or

3. 0.3 millicurie of radionuclides for which the A_2 quantity in 902 KAR 100:070 is more than one (1) curie.

(e) Objects of nonradioactive material externally contaminated with radioactive material, if [provided that] the radioactive material is not readily dispersible and the surface contamination, [when] averaged over an area of one (1) square meter, does not exceed 0.0001 millicurie (220,000 disintegrations per minute) per square centimeter of radionuclides for which the A_2 quantity in 902 KAR 100:070 is not more than 0.05 curie, or 0.001 millicurie (2,200,000 disintegrations per minute) per square centimeter for other radionuclides.

(88) [(70)] "Low-level radioactive waste" means radioactive waste not classified as high-level radioactive waste, transuranic waste, spent nuclear fuel or by-product material as defined in Section 11e(2) of the Atomic Energy Act of 1954 (42 U.S.C. 2014).

(89) "mA" means milliampere.

(90) [(71)] "Management" means the chief executive officer or that individual's designee.

(91) "mAs" means milliampere second.

(92) [(72)] "Medical institution" means an organization in which several medical disciplines are practiced.

(93) [(73)] "Medical use" means the intentional internal or external administration of radioactive material, or the radiation

therefrom, to humans in the practice of the healing arts.

(94) [(74)] "Microscopic analytical x-ray equipment" means a [any] device which utilizes x-rays for examining the microscopic structure of materials. This includes [all types of] x-ray diffraction and spectographic equipment.

(95) [(75)] "Misadministration" means the administration of:

(a) A radiopharmaceutical or radiation from a sealed source other than that one intended;

(b) A radiopharmaceutical or radiation to the wrong patient;

(c) A radiopharmaceutical or radiation by a route of administration other than the intended by the prescribing physician;

(d) A diagnostic dosage of a radiopharmaceutical differing from the prescribed dosage by more than fifty (50) percent;

(e) A therapeutic dosage of a radiopharmaceutical differing from the prescribed dosage by more than ten (10) percent; or

(f) A therapeutic radiation dose from a sealed source so [such] that errors in the source calibration, time of exposure, or treatment geometry resulted in a calculated total treatment dose differing from the final prescribed total treatment dose by more than ten (10) percent.

(96) [(76)] "Mineral logging" means [any] logging performed for the purpose of mineral exploration other than oil or gas.

(97) [(77)] "Mobile nuclear medicine service" means the transportation and medical use of radioactive material.

(98) "Normal form radioactive material" means radioactive material which has not been demonstrated to quality as "special form radioactive material."

(99) [(78)] "Occupational dose" means exposure of an individual to radiation:

(a) In a restrictive area; or

(b) In the course of employment in which the individual's duties involve exposure to radiation; except [provided,] that occupational dose shall not be deemed to include [any] exposure of an individual to radiation for the purpose of medical diagnosis or medical therapy of that [such] individual.

(100) [(79)] "Output" means the exposure rate, dose rate, or a quantity related in a known manner to these rates from a teletherapy unit for a specified set of exposure conditions.

[(80) "Normal form radioactive material" means radioactive material which has not been demonstrated to qualify as "special form radioactive material."]

(101) [(81)] "Operating procedures" means detailed written instructions including but not limited to the normal operation of equipment and movable shielding, closing of interlock circuits, manipulation of controls, radiation monitoring procedures for personnel and areas, testing of interlocks, and recordkeeping requirements.

(102) [(82)] "Package" means the packaging together with its radioactive contents as presented for transport.

(103) [(83)] "Packaging" means the assembly of components necessary to ensure compliance with the packaging requirements of 902 KAR 100:070. It may consist of one (1) or more receptacles, absorbent materials, spacing structures, thermal insulation, radiation shielding, and devices for cooling or absorbing mechanical shocks. The vehicle, tie-down system, and auxiliary equipment may be designated as part of the packaging.

(104) "Patient" means an individual subjected to healing arts examination, diagnosis, or treatment.

(105) [(84)] "Peak tube potential" means the maximum value of the potential difference across the x-ray tube during an exposure.

(106) [(85)] "Permanent radiographic installation" means an installation or structure designed or intended for radiography and in which radiography is regularly performed.

(107) [(86)] "Person" means an [any] individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this state or [any] other state, or political subdivision or agency thereof, and a [any] legal successor, representative, agent or agency of the foregoing.

(108) [(87)] "Personal supervision" means guidance and instruction by the supervisor who is physically present at the job site and watching the performance of the operation in [such] proximity so that contact can be maintained and immediate assistance given as required.

(109) [(88)] "Personnel monitoring equipment" means a device designed to be worn or carried by an individual for the purpose of estimating the dose received by the individual (e.g., film badges, pocket dosimeters, and thermoluminescent dosimeters (TLD)).

(110) "Phantom" means a volume of material behaving in a manner similar to tissue with respect to the attenuation and scattering of radiation.

(111) "Phototimer" means a method for controlling radiation exposures to image receptors by the amount of radiation which reaches a radiation monitoring device(s). The radiation monitoring device(s) is part of an electronic circuit which controls the duration of time the tube is activated (see "automatic exposure control").

(112) [(89)] "Physician" means an individual licensed to practice medicine or osteopathy in this state.

(113) "Position indicating device" means a device on dental x-ray equipment used to indicate the beam position and to establish a definite source-surface (skin) distance. It may or may not incorporate or serve as a beam-limiting device.

(114) "Preregistrant" means a person who is preregistered with the cabinet for the intent of obtaining a radiation producing machine registerable under these administrative regulations.

(115) "Preregistration" means preregistration with the cabinet as specified in these administrative regulations.

(116) "Primary dose monitoring system" means a system which monitors the useful beam during irradiation and which terminates irradiation when a preselected number of dose monitor units have been acquired.

(117) [(90)] "Protective apron" means an apron made of radiation absorbing materials of at least 0.25 mm lead equivalency. This requirement may be assumed to have been met if the HVL of the apron is not less than 0.25 mm lead at

normal operating voltages.

(118) [(91)] "Protective barrier" means a barrier of radiation absorbing material(s) used to reduce radiation exposure.

(a) "Primary protective barrier" means a barrier sufficient to attenuate the useful beam to the required degree.

(b) "Secondary protective barrier" means a barrier sufficient to attenuate the stray radiation to the required degree.

(119) [(92)] "Protective glove" means a glove made of radiation absorbing materials of at least 0.25 mm lead equivalency. This requirement may be assumed to have been met if the HVL of the glove is not less than 0.25 mm lead at normal operating voltages.

(120) [(93)] "Qualified expert" means an individual who has demonstrated to the satisfaction of the cabinet that he possesses the knowledge and training to measure ionizing radiation, to evaluate safety techniques, and to advise regarding radiation protection needs.

(121) [(94)] "Rad" means the special unit of absorbed dose. One (1) rad equals 0.01 joule per kilogram of material; for example, if tissue is the material of interest, then one (1) rad equals 100 ergs per gram of tissue.

(122) [(95)] "Radiation" means ionizing radiation which includes [any or all of] the following: gamma rays, [and] x-rays, alpha particles, [and] beta particles, high speed electrons, neutrons, high-speed protons, and other atomic particles. This definition does not include nonionizing radiations, i.e., [such as] sound, microwave, radio wave, or visible, infrared, or ultraviolet light.

(a) "Leakage radiation" means [all] radiation coming from within the tube or source housing except the useful beam.

(b) "Scattered radiation" means radiation that, during passage through matter, has been deviated in direction. It may also have been modified by a decrease in energy.

(c) "Useful radiation" means radiation which passes through the window, aperture, cone, or other beam limiting device of the tube or source housing. Sometimes called "primary beam."

(d) "Stray radiation" means the sum of leakage and scattered radiation.

(123) [(96)] "Radiation area" means an [any] area, accessible to individuals, in which there exists radiation at [such] levels that a major portion of the body could receive in any one (1) hour a dose in excess of five (5) millirems, or in any five (5) consecutive days a dose in excess of 100 millirems.

(124) [(97)] "Radiation machine" means a [any] device capable of producing radiation except devices which produce radiation only from radioactive material.

(125) [(98)] "Radiation safety officer" means one who has the knowledge and responsibility to apply appropriate radiation protection administrative regulations.

(126) "Radiation therapy simulation system" means a fluoroscopic or radiographic x-ray system intended for localizing the volume to be exposed during radiation therapy and confirming the position and size of the therapeutic irradiation field.

(127) [(99)] "Radioactive marker" means radioactive material placed subsurface or on a structure intended for subsurface use for the purpose of depth determination or direction orientation.

(128) [(100)] "Radioactive material" means a [any] solid, liquid, or gas, which emits radiation spontaneously.

(129) [(101)] "Radioactivity" means the disintegration of unstable atomic nuclei by the emission of radiation.

(130) "Radiograph" means an image receptor on which the image is created directly or indirectly by an x-ray pattern and results in a permanent record.

(131) [(102)] "Radiographer" means an [any] individual who performs or who, in attendance at the site where sources of radiation are being used, personally supervises industrial radiographic operations and who is responsible to the licensee or registrant for assuring compliance with the requirements of these administrative regulations and [all] license conditions.

(132) [(103)] "Radiographer's assistant" means an [any] individual who, under the personal supervision of a radiographer, uses sources of radiation, related handling tools, or survey instruments in industrial radiography.

(133) [(104)] "Radiographic exposure device" means an [any] instrument containing a sealed source fastened or contained therein, in which the sealed source or shielding thereof may be moved, or otherwise changed, from a shielded to unshielded position for purposes of making a radiographic exposure.

(134) "Radiographic imaging system" means a system whereby a permanent or semipermanent image is recorded on an image receptor by the action of ionizing radiation.

(135) "Rating" means the operating limits as specified by the component manufacturer.

(136) "Recording" means producing a permanent form of an image resulting from x-ray photons.

(137) [(105)] "Registrant" means a [any] person who is registered with the cabinet and is legally obligated to register with the cabinet pursuant to these administrative regulations.

(138) [(106)] "Registration" means registration with the cabinet in accordance with these administrative regulations.

(139) [(107)] "Regulations of the U.S. Department of Transportation" means the regulations in 49 CFR Parts 100-189.

(140) [(108)] "Rem" means a special unit of dose equivalent. One (1) millirem (mrem) = 0.001 rem. For the purposes of these administrative regulations, [any of] the following are [is] considered to be equal to one (1) rem:

(a) An exposure of one (1) roentgen due to x or gamma radiation;

(b) An absorbed dose of one (1) rad due to x, gamma, or beta radiation;

(c) An absorbed dose of 0.05 rad due to particles heavier than protons and with sufficient energy to reach the lens of the eye; or

(d) An absorbed dose of one-tenth (0.1) rad due to neutrons or high energy protons. If it is more convenient to measure the neutron flux, or equivalent, than to determine the neutron dose in rads, one (1) rem of neutron radiation may, for purposes of these administrative regulations, be assumed to be equivalent to fourteen (14) million neutrons per square centimeter incident upon the body; or, if there exists sufficient information to estimate with reasonable accuracy the approximate distribution in energy of the neutrons, the incident number of neutrons per square centimeter equivalent to

one (1) rem may be estimated from the following table:

Neutron Flux Dose Equivalence

Neutron energy (MeV)	Number of neutrons per square centimeter for a dose equivalent of 1 rem (neutrons/square cm)	Average flux to deliver 100 mrem in 40 hrs. (neutrons/square cm per second)
Thermal	970×10^6	670
0.0001	720×10^6	500
0.005	820×10^6	570
0.02	400×10^6	280
0.1	120×10^6	80
0.5	43×10^6	30
1.0	26×10^6	18
2.5	29×10^6	20
5.0	26×10^6	18
7.5	24×10^6	17
10.0	24×10^6	17
10 to 30	14×10^6	10

(141) [(109)] "Research and development" means:
(a) Theoretical analysis, exploration, or experimentation; or
(b) The extension of investigative findings and theories of a scientific or technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes. Research and development does not include the internal or external administration of radiation or radioactive material to human beings.
(142) [(110)] "Restricted area" means an [any] area access to which is controlled by the licensee or registrant for purposes of protection of individuals from exposure to radiation and radioactive materials. A restricted area shall not include [any] areas used as residential quarters, although a separate room or rooms in a residential building may be set apart as a restricted area.
(143) [(111)] "Roentgen" means the special unit of exposure. One (1) roentgen (R) equals 2.58×10^{-4} coulombs per kilogram of air (see "Exposure").
(144) [(112)] "Sealed source" means radioactive material that is permanently bonded or fixed in a capsule or matrix designed to prevent leakage or escape of the radioactive material.
(145) "Secondary dose monitoring system" means a system which terminates irradiation in the event of failure of the primary system.
(146) [(113)] "Secretary" means the Secretary of the Cabinet for Human Resources.
(147) [(114)] "Shielded position" means the location within the radiographic exposure device or storage container which, by manufacturer's design, is the proper location for storage of the sealed source.
(148) "Shutter" means a device attached to the tube housing assembly which can totally intercept the useful beam and which has a lead equivalency not less than that of the tube housing assembly.
(149) "Source" means the focal spot of the x-ray tube.
(150) [(115)] "Source changer" means a device designed and used for replacement of sealed sources in radiographic exposure devices, including those source changers also used for transporting and storage of sealed sources.
(151) [(116)] "Source holder" means a housing or assembly into which a radioactive source is placed for the purpose of facilitating the handling and use of the source.
(152) [(117)] "Source image receptor distance (SID)" means the distance from the source to the center of the input surface of the image receptor.
(153) [(118)] "Source material" means:
(a) Uranium or thorium, or a [any] combination thereof, in any physical or chemical form; or
(b) Ores which contain by weight one-twentieth (1/20) of one (1) percent (0.05 percent) or more of:
1. Uranium;
2. Thorium; or
3. [Any] Combination thereof.
(c) Source material does not include special nuclear material.
(154) [(119)] "Source of radiation" means a [any] radioactive material or [any] device or equipment emitting or capable of producing radiation.
(155) [(120)] "Special form" means radioactive material which satisfies the following conditions:
(a) It is either a single solid piece or is contained in a sealed capsule that can be opened only by destroying the capsule;
(b) The piece or capsule has at least one (1) dimension not less than five (5) millimeters (0.197 inch); and
(c) It satisfies the test requirements specified by the U.S. Nuclear Regulatory Commission (NRC). A special form encapsulation designed in accordance with the NRC requirements in effect on June 30, 1983 and constructed prior to July 1, 1985 may continue to be used. A special form encapsulation either designed or constructed after June 30, 1985 shall [must] meet requirements of this definition applicable when it is [at the time of its] designed or constructed [construction].
(156) [(121)] "Special nuclear material" means:
(a) Plutonium, uranium 233, uranium enriched in the isotope U-233 or in the isotope U-235, and [any] other material which the Governor declares by order to be special nuclear material after the United States Nuclear Regulatory Commission, or [any] successor thereto, has determined the material to be special nuclear material [such], but does not include source material; or
(b) [Any] Material artificially enriched by one (1) [any] of the foregoing, but does not include source material.
(157) [(122)] "Special nuclear material in quantities not sufficient to form a critical mass" means uranium enriched in the isotope U-235 in quantities not exceeding 350 grams of contained U-235; U-233 in quantities not exceeding 200 grams; plutonium in quantities not exceeding 200 grams; or a [any] combination of them in accordance with the following formula: for each kind of special nuclear material, determine the ratio between the quantity of that special nuclear material and the quantity specified above for the same kind of special nuclear material. The sum of these [such] ratios for the different [all of the] kinds of special nuclear material in combination shall not exceed one (1). For example, the following quantities in combination would not exceed the limitation and are within the formula:

$$\frac{\text{175 (grams contained U-235)}}{350} +$$

$$\frac{\text{50 (grams U-233)}}{200} + \frac{\text{50 (grams Pu)}}{200} = 1$$

(158) "Special purpose x-ray system" means a radiographic x-ray system which, by design, is limited to radiographic examination of a specific anatomical region.

(159) [(123)] "Specific activity" means the radioactivity of the radionuclide per unit mass of that nuclide. The specific activity of a material in which the radionuclide is essentially uniformly distributed is the radioactivity per unit mass of the material.

(160) "Spot check" means a procedure which is performed to assure that a previous calibration continues to be valid.

(161) [(124)] "Spot film" means a radiograph which is made during a fluoroscopic examination to permanently record conditions which exist during that fluoroscopic procedure.

(162) "Spot-film device" means a device intended to transport or position a radiographic image receptor between the x-ray source and fluroscopic image receptor. It includes a device intended to hold a cassette over the input end of an image intensifier for the purpose of making a radiograph.

(163) "SSD" means the distance between the source and the skin of the patient.

(164) [(125)] "Storage" (waste storage) means the holding of waste for treatment or disposal for a period of twenty-four (24) hours or more.

(165) [(126)] "Storage container" means a device in which sealed sources are transported or stored.

(166) "Stray radiation" means the sum of leakage and scattered radiation.

(167) [(127)] "Subsurface tracer study" means the release of a substance tagged with radioactive material for the purpose of tracing the movement or position of the tagged substance in the well-bore or adjacent formation.

(168) [(128)] "Survey" means an evaluation of the production, use, release, disposal, or presence of sources of radiation under a specific set of conditions to determine actual or potential radiation hazards. If [When] appropriate, the [such] evaluation shall include, but is not limited to, tests, physical examinations, and measurements of levels of radiation or concentrations of radioactive material present.

(169) [(129)] "Technique factors" means the conditions of operation. They are specified as follows:

(a) For capacitor energy storage equipment, peak tube potential in kV and quantity of charge in mAs.

(b) For field emission equipment rated for pulsed operation, peak tube potential in kV and number of x-ray pulses.

(c) For CT x-ray systems designed for pulsed operation, peak tube potential in kV, scan time in seconds, and either tube current in mA, x-ray pulse width in seconds, and the number of x-ray pulses per scan, or the product of tube current, x-ray pulse width, and the number of x-ray pulses in mAs;

(d) For CT x-ray systems not designed for pulsed operation, peak tube potential in kV, and either tube current in mA and scan time in seconds, or the product of tube current and exposure time in mAs and the scan time if the scan time and exposure time are equivalent; and

(e) For [all] other equipment, peak tube potential in kV and [either] tube current in mA and exposure time in seconds or the product of tube current and exposure time in mAs.

(170) [(130)] "Teletherapy" means therapeutic irradiation in which the source of radiation is at a distance from the body.

(171) [(131)] "Temporary job site" means a location to which radioactive material has been dispatched to perform a job, operation, or study.

(172) "Termination of irradiation" means the stopping of irradiation in a fashion which does not permit continuance of irradiation without the resetting of operating conditions at the control panel.

(173) [(132)] "Tests" means the process of verifying compliance with an applicable regulation.

(174) [(133)] "Therapeutic-type protective tube housing" means:

(a) For x-ray therapy equipment not capable of operating at 500 kVp or above, the following definition applies: an x-ray tube housing so constructed that the leakage radiation at a distance of one (1) meter from the target does not exceed one (1) roentgen in one (1) hour if [when] the tube is operated at its maximum rated tube potential;

(b) For x-ray therapy equipment capable of operating at 500 kVp or above, the following definition applies: an x-ray tube housing so constructed that the leakage radiation at a distance of one (1) meter from the target does not exceed one-tenth (0.1) percent of the useful beam exposure rate at one (1) meter from the target, for [any of] its operating conditions;

(c) [In either case,] Small areas of reduced protection are acceptable providing the average reading over a [any] 100 square centimeter area at one (1) meter distance from the target does not exceed the values given above.

(175) [(134)] "These administrative regulations" means radiation administrative regulations adopted by the Cabinet for Human Resources, Kentucky's Administrative Regulations on radiation, 902 KAR Chapter 100.

(176) "Tomogram" means the depiction of the x-ray attenuation properties of a section through the body.

(177) "Traceable to a national standard" means that a quantity or a measurement has been compared to a national standard directly or indirectly through one (1) or more intermediate steps and that comparisons have been documented.

(178) [(135)] "Transport index" means the dimensionless number (rounded up to the first decimal place) placed on the label of a package to designate the degree of control to be exercised by the carrier during transportation. The transport index is the number expressing the maximum radiation level in millirem per hour at one (1) meter from the external surface of the package.

(179) [(136)] "Treatment" (waste treatment) means a [any] method, technique or process, including storage for radioactive decay, designed to change the physical, chemical or biological characteristics or composition of a [any] waste in order to render the waste for transport, storage or disposal, amendable to recovery, convertible to another usable material or reduced in volume.

(180) [(137)] "Tube" means an x-ray tube,

unless otherwise specified.

(181) [(138)] "Tube housing assembly" means the tube housing with tube installed. It includes high-voltage or filament transformers and other appropriate elements if [when] they are contained within the tube housing.

(182) [(139)] "Tube rating chart" means the set of curves which specify the rated limits of operation of the tube in terms of the technique factors.

(183) [(140)] "Type A quantity" means a quantity of radioactive material, the aggregate radioactivity of which does not exceed A_1 for special form radioactive material or A_2 for normal form radioactive material, where A_1 and A_2 are given in 902 KAR 100:070, Section 21, or may be determined by procedures described in 902 KAR 100:070, Section 20.

(184) [(141)] "Type B package" means a Type B packaging together with its radioactive contents. A Type B package design is designated as B(U) or B(M). B(U) refers to the need for unilateral approval of international shipments; B(M) refers to the need for multilateral approval. There is no distinction made in how packages with these designations may be used in domestic transportation. To determine their distinction for international transportation, refer to U.S. Department of Transportation regulations in 49 CFR Part 173. A Type B package approved prior to September 6, 1983 was designated only as Type B. Limitations on its use are specified in 902 KAR 100:070, Section 7.

(185) [(142)] "Type B packaging" means a packaging designed to retain the integrity of containment and shielding required by U.S. Nuclear Regulatory Commission regulations if [when] subjected to the normal conditions of transport and hypothetical accident test conditions set forth in 10 CFR Part 71.

(186) [(143)] "Type B quantity" means a quantity of radioactive material greater than a Type A quantity.

(187) [(144)] "U.S. Department of Energy" means the Department of Energy established by [Public Law 95-91, August 4, 1977, 91 Stat. 565,] 42 USC 7101 et seq., to the extent that the department exercises functions formerly vested in the U.S. Atomic Energy Commission, its chairman, members, officers and components and transferred to the U.S. Energy Research and Development Administration and to the Administrator thereof [pursuant to sections 104(b), (c) and (d) of the Energy Reorganization Act of 1974 (Public Law 93-438, October 11, 1974, 88 Stat. 1233 at 1237, effective January 19, 1975)] and retransferred to the Secretary of Energy pursuant to [section 301(a) of the Department of Energy Organization Act (Public Law 95-91, August 4, 1977, 91 Stat. 565 at 577-578,] 42 USC 7151, effective October 1, 1977.

(188) [(145)] "Unrefined and unprocessed ore" means ore in its natural form prior to [any] processing, i.e., [such as] grinding, roasting, beneficiating, or refining.

(189) [(146)] "Unrestricted area" means an [any] area access to which is not controlled by the licensee or registrant for purposes of protection of individuals from exposure to radiation and radioactive material, and [any] areas used for residential quarters.

(190) [(147)] "Useful beam" means the radiation which passes through the tube housing port and the aperture of the beam limiting device if [when] the exposure switch or timer is activated.

(191) [(148)] "User" means an [any] individual who personally utilizes or manipulates a source of radiation.

(192) [(149)] "Variable-aperture beam limiting device" means a beam limiting device which has capacity for stepless adjustment of the x-ray field size at a given SID.

(193) "Vendor" means for the purposes of these administrative regulations a person who sells for profit radiation producing machines or accelerators registerable with the cabinet as specified by these administrative regulations.

(194) "Vendor registration" means registration of a vendor with the cabinet described by these administrative regulations.

(195) "Vendor registrant" means a vendor who is registered with the cabinet.

(196) "Visible area" means that portion of the input surface of the image receptor over which incident x-ray photons are producing a visible image.

(197) [(150)] "Visiting authorized user" means an authorized user who is not identified on the license of the licensee being visited.

(198) [(151)] "Waste" (see "low-level radioactive waste").

(199) "Wedge filter" means an added filter effecting continuous progressive attenuation on the useful beam or a part thereof.

(200) [(152)] "Well-bore" means a drilled hole in which wire line service operations and subsurface tracer studies are performed.

(201) [(153)] "Well-logging" means the lowering and raising of measuring devices or tools which may contain sources of radiation in well-bores or cavities for the purpose of obtaining information about the well [and/]or adjacent formations.

(202) [(154)] "Wire line" means a cable containing one (1) or more electrical conductors which is used to lower and raise logging tools in the well-bore.

(203) [(155)] "Wire line service operation" means an [any] evaluation or mechanical service which is performed in the well-bore using devices on a wire line.

(204) [(156)] "Worker" means an individual engaged in activities licensed or registered by the cabinet and controlled by a licensee or registrant, but does not include the licensee or registrant.

(205) "X-ray control" means a device which controls input power to the x-ray high-voltage generator or the x-ray tube. It includes timers, phototimers, automatic brightness stabilizers, and similar devices which control the technique factors of an x-ray exposure.

(206) [(157)] "X-ray equipment" means an x-ray system, subsystem, or component thereof. X-ray equipment may be used as:

(a) "Mobile" means x-ray equipment mounted on a permanent base with wheels or casters for moving while completely assembled.

(b) "Portable" means x-ray equipment designed to be hand-carried.

(c) "Stationary" means x-ray equipment which is installed in a fixed location.

(d) "Transportable" means x-ray equipment installed in a vehicle or trailer.

(207) "X-ray field" means that area of the intersection of the useful beam and one (1) of the set of planes parallel to and including the plane of the image receptor, whose perimeter is the locus of points at which the exposure rate

is one-fourth (1/4) of the maximum in the intersection.

(208) "X-ray high-voltage generator" means a device which transforms electrical energy from the potential supplied by the x-ray control to the tube operating potential. The device may also include means for transforming alternating current to direct current, filament transformers for the x-ray tube(s), high-voltage switches, electrical protective devices, and other appropriate elements.

(209) [(158)] "X-ray system" means an assemblage of components for the controlled production of x-rays. It includes minimally an x-ray high-voltage generator, an x-ray control, a tube housing assembly, a beam-limiting device, and the necessary supporting structures. Additional components which function with the system are considered integral parts of the system.

(210) "X-ray system" means an assemblage of components for the controlled production of x-rays, including, but not limited to, an x-ray high-voltage generator, an x-ray control, a tube housing assembly , a beam-limiting device and the necessary supporting structures. Additional components which function with the system shall be considered integral parts of the system.

(211) "X-ray subsystem" means a combination of two (2) or more components of an x-ray system.

(212) "X-ray tube" means an electron tube which is designed to be used primarily for the production of x-rays.

C. HERNANDEZ, M.D., Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 3, 1991
FILED WITH LRC: October 10, 1991 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1991 at 9 a.m. in the Department for Employment Services second floor conference room, Cabinet for Human Resources Building, Frankfort, Kentucky. However this hearing will be cancelled unless interested persons notify the following office in writing by November 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: John A. Volpe

(1) Type and number of entities affected: 3000 radiation producing machine registrants.

(a) Direct and indirect costs or savings to those affected: There are no costs associated with these amendments.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: No additional reporting or paperwork requirements will result from these amendments.

(2) Effects on the promulgating administrative body: There are no effects on the promulgating body associated with the amendments.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: There are no effects on state and local revenue associated with this amendment.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives to this amendment exist.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation or government policy which conflicts, overlaps or duplicates this amendment.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. The terms defined in this administrative regulation are used in regulations which are tiered.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Suggested state regulation's (SSR) promulgated by the Conference of Radiation Control Program Directors and the U.S. Food and Drug Administration.

2. State compliance standards. This amendment defines terms used in other regulations which relate to radiation producing machines.

3. Minimum or uniform standards contained in the federal mandate. This amendment will bring about uniformity with the SSR.

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 administrative regulation affects a part of local government.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation relates to health services or, in a few instances, airport boards or authorities, that utilize radiation producing machines.

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 administrative regulation will not directly affect local government services.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 100:012. Fee schedule.

RELATES TO: KRS 211.840 to 211.852, 211.990(4)
STATUTORY AUTHORITY: KRS 194.050, 211.090, 211.848, 1990 Acts, c. 514, HB 799, Part I.G. #56.d [1988 Acts, Chapter 437, HB 516 Part IIA #42.d]
NECESSITY AND FUNCTION: The Cabinet for Human Resources is empowered by KRS 211.848 to provide by regulation for a reasonable schedule of fees and charges to be paid by applicants for registration of radiation producing machines and radioactive material licenses and for the renewal thereof and for inspections and environmental surveillance activities conducted by the cabinet. The purpose of this regulation is to establish a fee schedule for registration, licensing and inspection services.

Section 1. Applicability. This regulation relating to fees shall apply [applies] to [all] applicants, registrants and licensees of radiation producing machines and radioactive materials.

Section 2. Radiation Producing Machine Schedule of Annual Fees and Charges. The following schedule of annual fees applies to radiation producing machine registrants. [All] Applications for registration or annual renewals [thereof,] shall be accompanied by the appropriate fee set forth below:
(1) Each diagnostic x-ray tube; therapeutic x-ray tube capable of operating up to 150 kVp; or industrial x-ray tube - $40.
(2) Each therapeutic x-ray tube capable of operating at 150 kVp or above (including particle accelerators) - $40.
(3) [Any] Other x-ray tubes not specified above - $40.

Section 3. Radioactive Material License Schedule of Annual Fees and Charges. The following schedule applies to radioactive material licenses. Initial and renewal applications shall be accompanied by the appropriate fee set forth in this section.
(1) Specific radioactive material licenses initial and annual fee.
(a) Human use.
1. Nuclear medicine - $360.
2. Teletherapy - $300.
3. Mobile scanning - $360.
4. Other - $360.
(b) Industrial radiography - $360.
(c) Wireline service - $360.
(d) Broad scope - $475.
(e) Nuclear laundry - $715.
(f) Irradiator.
1. Self-contained - $180.
2. Unshielded during irradiation - $715.
(g) Manufacturing/processing/distribution.
1. Industrial gauging devices - $600.
2. In vitro/In vivo kits - $475.
3. Radiopharmaceuticals - $715.
4. Other - $715.
(h) Industrial gauging devices - $180.
(i) In vitro and clinical laboratory - $180.
(j) Veterinary use - $300.
(k) Services (e.g., leak testing) - $120.
(l) Other (nonspecified) - $180.
(m) Application for distribution of a new sealed source and device or the application for the use of a custom device in addition to fees specified in paragraphs (a) through (l) of this subsection - $475.
(2) General radioactive material licenses initial and annual fee.
(a) In vitro or medical use specified in 902 KAR 100:050, Sections 4 and 5 - $60.
(b) Measuring, gauging or controlling devices (except emergency exit signs) - $60.
(3) An application to amend an existing specific license - $60.

Section 4. General Requirements. (1) [All] General radioactive material licenses [and registration certificates] shall expire on July 31 following the date of issuance.
(2) Radiation producing machine registration certificates shall expire on the last day of the month, one (1) year after the date of issuance.
(3) [(2) All] General radioactive material license [and registration renewal] fees shall be paid on or before July 31 of each year. [Registration renewals postmarked after September 30 are subject to $100 late payment penalty which is in addition to the registration fee.]
(4) [(3) All] Specific radioactive material licenses shall be renewed annually based on the expiration date stated in the license.
(5) Radiation producing machine registration fees shall be paid within forty-five (45) days of the bill date. Payments postmarked more than forty-five (45) days of the bill date are subject to $100 late payment penalty in addition to the registration fee.
(6) [(4)] Payment of fees and other charges shall be submitted to Radiation Control, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621-0001, in the form of a check or money order payable to the Kentucky State Treasurer. The cabinet may designate the form of payment.
(7) [(5)] Registration and licensing application fees are nonrefundable.
(8) [(6)] Failure to submit any applicable fee set forth in this regulation shall be deemed a violation and subject to the provisions of 902 KAR 100:170.

C. HERNANDEZ, M.D., Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 3, 1991
FILED WITH LRC: October 11, 1991 at 3 p.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 21, 1991, at 9 a.m. in the Department for Employment Services, 2nd Floor Conference Room, Cabinet for Human Resources Building. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 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: John A. Volpe
(1) Type and number of entities affected: 3,000 radiation producing machine registrants.
(a) Direct and indirect costs or savings to those affected:
1. First year: Savings to all new registrants

will total approximately $2,000 each year.
2. Continuing costs or savings: Savings occur only in first year of registration.
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: There is no additional reporting or paperwork required by this regulation.
(2) Effects on the promulgating administrative body: It will be necessary for the promulgating body to make a one-time computer program change.
(a) Direct and indirect costs or savings:
1. First year: First year costs will be approximately $70 for computer programming changes.
2. Continuing costs or savings: Small annual savings to the promulgating agency will occur each year. Savings resulting from slightly reduced labor costs, will total less than $1,000.
3. Additional factors increasing or decreasing costs: No additional reporting or paperwork requirements.
(b) Reporting and paperwork requirements: There are no additional reporting or paperwork requirements.
(3) Assessment of anticipated effect on state and local revenues: A decrease in state revenues of approximately $2,000 will occur.
(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternatives would have been more costly to establish and maintain.
(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? Yes. This regulation is tiered because different fees are charged based upon the type of radiation activity registered or licensed.

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 administrative regulation affects local government entities with radiation producing machines such as local health departments and county hospitals.
3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation relates to health services or, in a few instances, airport boards or authorities, that utilize radiation producing machines.
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 administrative regulation will solve each local government entity which acquires a radiation producing machine during any given year between $10 and $40 for the first year of registration only.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 100:015. General requirements.

RELATES TO: KRS 211.842 to 211.852, 211.990(4)
STATUTORY AUTHORITY: KRS 194.050, 211.090, 211.844
NECESSITY AND FUNCTION: The Cabinet for Human Resources is authorized [empowered] by KRS 211.844 to provide by administrative regulation for the registration and licensing of the possession or use of [any] sources of ionizing or electronic product radiation and the handling and disposal of radioactive waste. [The purpose of] This administrative regulation [is to] provides for general requirements, prohibitions, and exemptions that shall [will] be applicable to [all] persons who possess or use sources of ionizing or electronic product radiation in Kentucky.

Section 1. Applicability. This administrative regulation shall apply [is applicable] to [all] persons who receive, possess, use, transfer, own, or acquire [any] radioactive sources or ionizing or electronic product radiation in Kentucky.

Section 2. Exposure to be Maintained as Low as is Reasonably Achievable. All persons shall make every reasonable effort to maintain radiation exposures and releases of radioactive materials in effluents to unrestricted areas as low as is reasonably achievable. The term "as low as reasonably achievable" means as low as is reasonably achievable taking into account the state of technology, [and] the economics of improvements in relation to benefits to the public health and safety, [and] other societal and socioeconomic considerations, and in relation to the utilization of sources of radiation in the public interest.

Section 3. Prohibited Uses. The following uses of radiation are prohibited in Kentucky:
(1) Hand-held fluoroscopic screens shall not be used.
(2) Shoe-fitting fluoroscopic devices shall not be used.
(3) Sources of radiation detrimental to public health, safety, or property shall not be used.
(4) No person shall use sources of radiation in a manner to intentionally expose an [any] individual except as specifically allowed by these administrative regulations or by license authorization.

Section 4. Records. Each licensee and registrant shall maintain records showing the receipt, transfer, and disposal of all sources of radiation. Additional record requirements are specified elsewhere in these administrative regulations.

Section 5. Inspections. (1) Each licensee and registrant shall afford to the cabinet, at all

reasonable times, opportunity to inspect sources of radiation and the premises and facilities where[in] such sources of radiation are used or stored.

(2) Each licensee and registrant shall make available for inspection, to the cabinet, records maintained as required by [pursuant to] these administrative regulations.

Section 6. Tests. Each licensee and registrant shall perform or permit the cabinet to perform such tests as the cabinet deems appropriate or necessary including, but not limited to, tests of:

(1) Sources of radiation;

(2) Facilities where[in] sources of radiation are used or stored;

(3) Radiation detection and monitoring instruments; and

(4) Other equipment and devices used in connection with utilization or storage of licensed or registered sources of radiation.

Section 7. Exemptions. (1) General provision. The cabinet may, upon application or its own initiative, grant such exemptions or exceptions from the requirements of these administrative regulations as it determines are authorized by law or administrative regulation and that will not result in undue hazard to public health, safety, or property.

(2) United States Department of Energy and U. S. Nuclear Regulatory Commission contractors. A [Any] U. S. Department of Energy or [and] U. S. Nuclear Regulatory Commission contractor or subcontractor of the following categories operating within Kentucky is exempt from these administrative regulations to the extent that the [such] contractor or subcontractor under his contract receives, possesses, uses, transfers, or acquires sources of radiation:

(a) Prime contractors performing work for the U.S. Department of at United States government-owned or controlled sites, including the transportation of sources of radiation to or from the [such] sites and the performance of contract services during temporary interruptions of [such] transportation;

(b) Prime contractors of the U.S. Department of Energy performing research in, or development, manufacture, storage, testing, or transportation of, atomic weapons or components atomic weapons [thereof];

(c) Prime contractors of the U.S. Department of Energy using or operating nuclear reactors or other nuclear devices in a United States government-owned vehicle or vessel; and

(d) A [Any other] prime contractor or subcontractor of the U.S. Department of Energy or of the U.S. Nuclear Regulatory Commission if [when] the state and the U.S. Nuclear Regulatory Commission jointly determine:

1. That under the terms of the contract or subcontract, there is adequate assurance that the authorized work [thereunder] can be accomplished without undue risk to the public health and safety; and

2. That the exemption of the prime contractor or subcontractor is authorized by law.

Section 8. Additional Requirements. The cabinet may, by rule, administrative regulation, or order, impose upon a [any] licensee or registrant, [such] requirements in addition to those established in these administrative regulations as it deems appropriate or necessary to minimize danger to public health, safety, or property.

Section 9. Impounding. Sources of radiation may be subject to impoundment by the cabinet as necessary to minimize danger to public health, safety, or property. The [Any such] impoundment by the cabinet shall not relieve the owner of the responsibility for the [such] sources.

Section 10. Communications. [All] Communications, [and] reports and applications filed concerning these administrative regulations, [and applications filed thereunder,] shall be addressed to: Manager, Radiation Control, Kentucky Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

C. HERNANDEZ, M.D., Commissioner
HARRY J. COWHERD, M.D., Secretary

APPROVED BY AGENCY: September 27, 1991

FILED WITH LRC: October 11, 1991 at 3 p.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 21, 1991, at 9 a.m. in the Department for Employment Services, 2nd Floor Conference Room, Cabinet for Human Resources Building. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 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: John A. Volpe

(1) Type and number of entities affected: 380 radioactive material licensees and 3000 x-ray registrants are affected by this regulation.

(a) Direct and indirect costs or savings to those affected: There are no direct or indirect costs or savings to radioactive material licensees or x-ray registrants.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: There is no 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 and local revenues is anticipated.

(4) Assessment of alternative methods; reasons why alternatives were rejected: This regulation must be identical to that of the U.S. Nuclear Regulatory Commission and other states. No alternative is available.

(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: There is no conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict.

(6) Any additional information or comments:

TIERING: Was tiering applied? Yes. Tiering was applied because different types of licensees are regulated based on their handling of radioactive material.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Section 274 of the Atomic Energy Act of 1954, as amended and 10 CFR.

2. State compliance standards. This administrative regulation provides for general requirements, prohibitions and exemptions that shall apply to persons who possess or use sources of ionizing or electronic product radiation in Kentucky.

3. Minimum or uniform standards contained in the federal mandate. Federal and state requirements are identical.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The requirements/responsibilities are identical to those of the U.S. Nuclear Regulatory Commission.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Federal and state standards are identical.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 100:022. Licensing requirements for land disposal of radioactive waste.

RELATES TO: KRS 211.842 to 211.852, 211.990(4)

STATUTORY AUTHORITY: KRS 194.050, 211.090, 211.844, 211.846, 211.852

NECESSITY AND FUNCTION: The Cabinet for Human Resources is authorized [empowered] by KRS 211.844 to provide by administrative regulation for the registration and licensing of the possession or use of [any] sources of ionizing or electronic product radiation and the handling and disposal of radioactive waste. [The purpose of] This administrative regulation [is to] establishes procedures, criteria, [and] terms, and conditions upon which the cabinet issues licenses for the land disposal of radioactive wastes received from other persons.

Section 1. Applicability. [The requirements of] This administrative regulation shall apply to persons prescribing land disposal which involves disposal in the uppermost portion of the earth, approximately thirty (30) meters, of radioactive waste received from other persons except:

(1) Disposal of by-product material as defined in 902 KAR 100:010 in quantities greater than 10,000 kilograms and containing more than five (5) millicuries of radium-226; or

(2) Disposal of licensed material as provided for in 902 KAR 100:021.

Section 2. Definitions. As used in this administrative regulation, the following definitions apply:

(1) "Active maintenance" means a [any] significant activity needed during the period of institutional control to maintain a reasonable assurance that the performance objectives in Section 18 and Section 19 of this administrative regulation are met. The [Such] active maintenance includes ongoing activities, such as the pumping and treatment of water from a disposal unit or one (1) time measures, such as replacement of a disposal unit cover. Active maintenance does not include custodial activities, such as repair of fencing, repair or replacement of monitoring equipment, revegetation, minor additions to soil cover, minor repair of disposal unit covers, and general disposal site upkeep such as mowing grass.

(2) "Buffer zone" means a portion of the disposal site that is controlled by the licensee and that lies under the disposal units and between the disposal units and the boundary of the site.

(3) "Chelating agent" means a mine polycarboxylic acids, hydroxy-carboxylic acids, gluconic acid and polycarboxylic acids.

(4) "Commencement of construction" means [any] clearing of land, excavation, or other substantial action that would adversely affect the environment of a land disposal facility. The term does not mean disposal site exploration, necessary roads for disposal site exploration, borings to determine foundation conditions, or other preconstruction monitoring or testing to establish background information related to the suitability of the disposal site or the protection of environmental values.

(5) "Custodial agency" means an agency of the government designated to act on behalf of the government owner of the disposal site.

(6) "Disposal" means the isolation of radioactive wastes from the biosphere inhabited by man and his food chains by emplacement in a land disposal facility.

(7) "Disposal site" means that portion of a land disposal facility which is used for disposal of waste. It consists of disposal units and a buffer zone.

(8) "Disposal unit" means a discrete portion of the disposal site into which waste is placed for disposal. For near-surface disposal the unit is usually a trench.

(9) "Engineered barrier" means a manmade structure or device that is intended to improve the land disposal facility's ability to meet the performance objectives in this part.

(10) "Explosive material" means any chemical compound, mixture, or device which produces a substantial instantaneous release of gas and heat spontaneously or by contact with sparks or flame.

(11) "Hazardous waste" means those wastes designated as hazardous by U.S. Environmental Protection Agency regulations in 40 CFR Part 261.

(12) "Hydrogeologic unit" means a [any] soil or rock unit or zone which by virtue of its porosity or permeability, or lack thereof, has a distinct influence on the storage or movement of ground water.

(13) "Inadvertent intruder" means a person who

might occupy the disposal site after closure and engage in normal activities, such as agriculture, dwelling construction, or other pursuits in which an individual might be unknowingly exposed to radiation for the waste.

(14) "Intruder barrier" means a sufficient depth of cover over the waste that inhibits contact with waste and helps to ensure that radiation exposures to an inadvertent intruder shall [will] meet the performance objectives set forth in this administrative regulation, or engineered structures that provide equivalent protection to the inadvertent intruder.

(15) "Land disposal facility" means the land, buildings, and equipment which is intended to be used for the disposal of radioactive wastes into the subsurface of the land.

(16) "Monitoring" means observing and making measurements to provide data to evaluate the performance and characteristics of the disposal site.

(17) "Near-surface disposal facility" means a land disposal facility in which radioactive waste is disposed of within approximately the upper thirty (30) meters of the earth's surface.

(18) "Pyrophoric liquid" means a [any] liquid that ignites spontaneously in dry or moist air at or below 130 degrees Fahrenheit (fifty-four and five-tenths (54.5) degrees Centigrade). A pyrophoric solid is a [any] solid material, other than one classed as an explosive, which under normal conditions is liable to cause fires through friction, retained heat from manufacturing or processing, or which can be ignited readily and if [when] ignited burns so vigorously and persistently as to create a serious transportation, handling, or disposal hazard. Included are spontaneously combustible and water-reactive materials.

(19) "Site closure and stabilization" means those actions that are taken upon completion of operations that prepare the disposal site for custodial care and that assure that the disposal site will remain stable and will not need ongoing active maintenance.

(20) "Stability" means structural stability.

(21) "Surveillance" means monitoring and observation of the disposal site for purposes of visual detection of need for maintenance, custodial care, evidence of intrusion, and compliance with other license and regulatory requirements.

(22) "Waste" means those low-level radioactive wastes that are acceptable for disposal in a land disposal facility. For the purposes of this definition, low-level waste has the same meaning as in the Low-level Radioactive Waste Policy Act, PL 96-573 that is, radioactive waste not classified as high-level radioactive waste, transuranic waste, spent nuclear fuel, or by-product material as defined in Section 11e.(2) of the Atomic Energy Act (uranium or thorium tailings and waste).

Section 3. License Required. (1) No person may receive, possess, and dispose of waste received from other persons at a land disposal facility unless authorized by a license issued by the cabinet as provided by [pursuant to] this administrative regulation, and 902 KAR 100:021.

(2) Each person shall file an application with the cabinet as provided by [pursuant to] 902 KAR 100:040, Section 4, and obtain a license as provided in this administrative regulation before commencing construction of a land disposal facility. Failure to comply with this requirement may be grounds for denial of a license.

Section 4. Content of Application. In addition to the requirements of set forth in 902 KAR 100:040, Section 5, an application to receive from others, possess and dispose of wastes shall consist of general information, specific technical information, institutional information, and financial information as set forth in Sections 5 through 9 of this administrative regulation.

Section 5. General Information. The general information shall include each of the following:

(1) Identity of the applicant including:

(a) The full name, address, telephone number and description of the business or occupation of the applicant;

(b) If the applicant is a partnership, the name and address of each partner and the principal location where the partnership does business;

(c) If the applicant is a corporation or an unincorporated association, the state where it is incorporated or organized and the principal location where it does business and the names and addresses of its directors and principal officers; and

(d) If the applicant is acting as an agent or representative of another person in filing the application, all information required under subsection (1) of this section must be supplied with respect to the other person.

(2) Qualifications of the applicant.

(a) The organizational structure of the applicant, both off-site and on-site, including a description of lines of authority and assignments of responsibilities, whether in the form of administrative directives, contract provisions, or otherwise;

(b) The technical qualifications, including training and experience, of the applicant and members of the applicant's staff to engage in the proposed activities. Minimum training and experience requirements for personnel filling key positions described in paragraph (a) of this subsection shall [must] be provided;

(c) A description of the applicant's personnel training program; and

(d) The plan to maintain an adequate complement of trained personnel to carry out waste receipt, handling, and disposal operations in a safe manner.

(3) A description of:

(a) The location of the proposed disposal site;

(b) The general character of the proposed activities;

(c) The types and quantities of radioactive waste to be received, possessed, and disposed of;

(d) Plans for use of the land disposal facility for purposes other than disposal of radioactive wastes; and

(e) The proposed facilities and equipment.

(4) Proposed schedules for construction, receipt of waste, and first emplacement of waste at the proposed land disposal facility.

Section 6. Specific Technical Information. The specific technical information shall include the following information needed for demonstration that the performance objectives and the applicable technical requirements of this administrative regulation shall [will] be met:

(1) A description of the natural and demographic disposal site characteristics as determined by disposal site selection and characterization activities. The description shall include geologic, geotechnical, hydrologic, meteorologic, climatologic, and biotic features of the disposal site and vicinity;

(2) A description of the design features of the land disposal facility and the disposal units. For near-surface disposal, the description shall include those design features related to infiltration of water; integrity of covers for disposal units; structural stability of backfill, wastes, and covers; contact of wastes with standing water; disposal site drainage; disposal site closure and stabilization; elimination to the extent practicable of long-term disposal site maintenance; inadvertent intrusion; occupational exposures; disposal site monitoring; and adequacy of the size of the buffer zone for monitoring and potential mitigative measures;

(3) A description of the principal design criteria and their relationship to the performance objectives;

(4) A description of the design basis natural events or phenomena and their relationship to the principal design criteria;

(5) A description of codes and standards which the applicant has applied to the design and which will apply to construction of the land disposal facilities;

(6) A description of the construction and operation of the land disposal facility. The description shall include as a minimum the methods of construction of disposal units; waste emplacement; the procedures for and areas of waste segregation; types of intruder barriers; on-site traffic and drainage systems; survey control program; methods and areas of waste storage; and methods to control surface water and ground water access to the wastes. The description shall also include a description of the methods to be employed in the handling and disposal of wastes containing chelating agents or other nonradiological substances that might affect meeting the performance objectives of this administrative regulation;

(7) A description of the disposal site closure plan, including those design features which are intended to facilitate disposal site closure and to eliminate the need for ongoing active maintenance;

(8) An identification of the known natural resources at the disposal site, whose exploitation could result in inadvertent intrusion into the low-level wastes after removal of active institutional control;

(9) A description of the kind, amount, classification and specifications of the radioactive material proposed to be received, possessed, and disposed of at the land disposal facility;

(10) A description of the quality control program for the determination of natural disposal site characteristics and for quality control during the design, construction, operation and closure of the land disposal facility and the receipt, handling, and emplacement of waste. Audits and managerial controls shall [must] be included;

(11) A description of the radiation safety program for control and monitoring of radioactive effluents to ensure compliance with the performance objective in Section 18 of this administrative regulation and occupational radiation exposure to ensure compliance with the requirements of 902 KAR 100:020 and to control contamination of personnel, vehicles, equipment, buildings, and the disposal site. Both routine operations and accidents shall be addressed. The program description shall [must] include procedures, instrumentation, facilities, and equipment;

(12) A description of the environmental monitoring program to provide data to evaluate potential health and environmental impacts and the plan for taking corrective measures if migration of radionuclides is indicated; and

(13) A description of the administrative procedures that the applicant shall [will] apply to control activities at the land disposal facility.

Section 7. Technical Analyses. The specific technical information shall also include the following analyses needed to demonstrate that the performance objectives of these administrative regulations shall [will] be met:

(1) Pathways analyzed in demonstrating protection of the general population from releases of radioactivity shall include air, soil, ground water, surface water, plant uptake, and exhumation by burrowing animals. The analyses shall clearly identify and differentiate between the roles performed by the natural disposal site characteristics and design features in isolating and segregating the wastes. The analyses shall clearly demonstrate that there is reasonable assurance that the exposures to humans from the release of radioactivity shall [will] not exceed the limits set forth in Section 18 of this administrative regulation;

(2) Analyses of the protection of individuals from inadvertent intrusion shall include demonstration that there is reasonable assurance the waste classification and segregation requirements shall [will] be met and that adequate barriers to inadvertent intrusion will be provided;

(3) Analyses of the protection of individuals during operations shall include assessments of expected exposures due to routine operations and likely accidents during handling, storage, and disposal of waste. The analyses shall provide reasonable assurance that exposures shall [will] be controlled to meet the requirements of 902 KAR 100:020; and

(4) Analyses of the long-term stability of the disposal site and the need for ongoing active maintenance after closure shall be based upon analyses of active natural processes such as erosion, mass wasting, slope failure, settlement of wastes and backfill, infiltration through covers over disposal areas and adjacent soils, and surface drainage of the disposal site. The analyses shall provide reasonable assurance that there shall [will] not be a need for ongoing active maintenance of the disposal site following closure.

Section 8. Institutional Information. The institutional information submitted by the applicant shall include:

(1) A certification by the Commonwealth of Kentucky, or federal agency which owns the disposal site, that the Commonwealth of Kentucky or federal agency is prepared to accept transfer

of the license if [when] the provisions of Section 15 of this administrative regulation are met, and shall [will] assume responsibility for custodial care after site closure and postclosure observation and maintenance; and

(2) If [Where] the proposed disposal site is on land not owned by the Commonwealth of Kentucky or federal government, the applicant shall submit evidence that arrangements have been made for assumption of ownership in fee by the Commonwealth of Kentucky or federal agency before the cabinet issues a license.

Section 9. Financial Information. The financial information shall be sufficient to demonstrate that the financial qualifications of the applicant are adequate to carry out the activities for which the license is sought and meet other financial assurance requirements of this administrative regulation.

Section 10. Standards for Issuance of a License. A license for the receipt, possession, and disposal of waste containing or contaminated with radioactive material shall be issued by the cabinet upon finding that:

(1) The issuance of the license shall [will] not constitute an unreasonable risk to the health and safety of the public;

(2) The applicant is qualified by reason of training and experience to carry out the disposal operations requested in a manner that protects health and minimizes danger to life and property;

(3) The applicant's proposed disposal site, disposal design, land disposal facility operations, including equipment, facilities, and procedures, disposal site closure, and postclosure institutional care are adequate to protect the public health and safety in that they provide reasonable assurance that the general population shall [will] be protected from releases of radioactivity as specified in the performance objective in Section 18 of this administrative regulation;

(4) The applicant's proposed disposal site, disposal site design, land disposal facility operations, including equipment, facilities, and procedures, disposal site closure, and postclosure institutional control are adequate to protect the public health and safety in that they shall [will] provide reasonable assurance that individual inadvertent intruders are protected in accordance with the performance objective in Section 19 of this administrative regulation;

(5) The applicant's proposed disposal facility operations, including equipment, facilities, and procedures, are adequate to protect the public health and safety in that they shall [will] provide reasonable assurance that the standards for radiation protection set out in 902 KAR 100:020 shall [will] be met;

(6) The applicant's proposed disposal site, disposal site design, land disposal facility operations, disposal site closure, and postclosure institutional care are adequate to protect the public health and safety in that they shall [will] provide reasonable assurance that long-term stability of the disposed waste and the disposal site shall [will] be achieved and shall [will] eliminate to the extent practicable the need for ongoing active maintenance of the disposal site following closure;

(7) The applicant's demonstration provides reasonable assurance that the applicable technical requirements of this administrative regulation shall [will] be met;

(8) The applicant's proposal for institutional control provides reasonable assurance that the [such] care shall [will] be provided for the length of time found necessary to ensure the findings in Section 10(3) through (6) of this administrative regulation and that the institutional control meets the requirements of Section 27 of this administrative regulation; and

(9) The information on financial assurances meets the requirements of this administrative regulation.

Section 11. Conditions of Licenses. (1) A license issued under this administrative regulation, or a [any] right thereunder, may be transferred, assigned or in any manner disposed of, either voluntarily or involuntarily, [directly or indirectly,] through transfer of control of the license to a [any] person, only if the cabinet finds, after securing full information, that the transfer is in accordance with the provisions of the Act and gives its consent in writing in the form of a license amendment.

(2) The licensee shall submit written statements under oath upon request of the cabinet, [at any time] before termination of the license, to enable the cabinet to determine whether or not the license shall [should] be modified, suspended, or revoked.

(3) The license shall [will] be terminated only on the full implementation of the final closure plan as approved by the cabinet, including postclosure observation and maintenance.

(4) The licensee shall be subject to the provisions of the Act [now or hereafter in effect], and to all rules, administrative regulations, and orders of the cabinet. The terms and conditions of the license are subject to amendment, revision, or modification, by reason of amendments to, or by reason of rules, administrative regulations, and orders issued in accordance with the terms of the Act.

(5) Each person licensed by the cabinet as authorized by [pursuant to] this administrative regulation shall confine possession and use of materials to the locations and purposes authorized in the license.

(6) The licensee shall not dispose of waste until the cabinet has inspected the land disposal facility and has found it to be in conformance with the description, design, and construction described in the application for a license.

(7) The cabinet may incorporate in a [any] license at [the time of] issuance, or thereafter, by appropriate rule, administrative regulation or order, additional requirements and conditions with respect to the licensee's receipt, possession, and disposal of waste as it deems appropriate or necessary in order to:

(a) Protect health or to minimize danger to life or property; and

(b) Require reports and the keeping of records, and to provide for inspections of activities under the license that may be necessary or appropriate to effectuate the purposes of the Act and administrative regulations thereunder.

(8) The authority to dispose of wastes expires

on the date stated in the license. An [Any] expiration date on a license applies only to the aboveground activities and to the authority to dispose of waste. Failure to renew the license shall not relieve the licensee of responsibility for carrying out site closure, postclosure observation and transfer of the license to the site owner.

Section 12. Application for Renewal or Closure. (1) An application for renewal or an application for closure shall [must] be filed at least ninety (90) days prior to license expiration.

(2) Applications for renewal of a license shall [must] be filed in accordance with Sections 4 through 9 of this administrative regulation. Applications for closure shall [must] be filed in accordance with Section 13 of this administrative regulation. Information contained in previous applications, statements or reports filed with the cabinet under the license may be incorporated by reference if the references are clear and specific.

(3) In a [any] case in which a licensee has filed an application in proper form for renewal of a license, the license shall [does] not expire until the cabinet has taken action on the application for renewal.

(4) In determining whether a license shall [will] be renewed, the cabinet shall [will] apply the criteria set forth in Section 10 of this administrative regulation.

Section 13. Contents of Application for Closure. (1) Prior to final closure of the disposal site, or as otherwise directed by the cabinet, the applicant shall submit an application to amend the license for closure. This closure application shall include a final revision and specific details of the disposal site closure plan included as part of the license application submitted under Section 6(7) of this administrative regulation that includes each of the following:

(a) [Any] Additional geologic, hydrologic, or other data pertinent to the long-term containment of emplaced wastes obtained during the operational period;

(b) The results of tests, experiments, or [any] other analyses relating to backfill of excavated areas, closure and sealing, waste migration and interaction with emplacement media, or [any] other tests, experiments or analysis pertinent to the long-term containment of emplaced waste within the disposal site;

(c) [Any] Proposed revision of plans for:

1. Decontamination [and/]or dismantlement of surface facilities;

2. Backfilling of excavated areas; or

3. Stabilization of the disposal site for postclosure care.

(d) [Any] Significant new information regarding the environmental impact of closure activities and long-term performance of the disposal site.

(2) Upon review and consideration of an application to amend the license for closure submitted in accordance with subsection (1) of this section, the cabinet shall issue an amendment authorizing closure if there is reasonable assurance that the long-term performance objectives of this administrative regulation shall [will] be met.

Section 14. Postclosure Observation and Maintenance. The licensee shall observe, monitor, and carry out necessary maintenance and repairs at the disposal site until the site closure is complete and the license is transferred by the cabinet in accordance with Section 15 of this administrative regulation. Responsibility for the disposal site shall [must] be maintained by the licensee for five (5) years. A shorter or longer time period for postclosure observation and maintenance may be established and approved as part of the site closure plan, based on site-specific conditions.

Section 15. Transfer of License. Following closure and the period of postclosure observation and maintenance, the licensee may apply for an amendment to transfer the license to the disposal site owner. The license shall be transferred if [when] the cabinet finds:

(1) [That] The closure of the disposal site has been made in conformance with the licensee's disposal site closure plan, as amended and approved as part of the license;

(2) [That] Reasonable assurance has been provided by the licensee that the performance objectives of this administrative regulation are met;

(3) [That any] Funds and necessary records for care shall [will] be transferred to the disposal site owner;

(4) [That] The postclosure monitoring program is operational for implementation by the disposal site owner; and

(5) [That] The Commonwealth of Kentucky or federal agency which shall [will] assume responsibility for institutional control of the disposal site is prepared to assume responsibility and ensure that the institutional requirements found necessary under Section 10(8) of this administrative regulation shall [will] be met.

Section 16. Termination of License. (1) Following a [any] period of institutional control needed to meet the requirements found necessary under Section 10 of this administrative regulation, the licensee may apply for an amendment to terminate the license.

(2) This application shall [will] be reviewed in accordance with the provisions of 902 KAR 100:040, Section 4.

(3) A license is terminated only if [when] the cabinet finds:

(a) [That] The institutional control requirements found necessary under Section 10(8) of this administrative regulation have been met; [and]

(b) [That any] Additional requirements resulting from new information developed during the institutional control period have been met; and

(c) [that] Permanent monuments or markers warning against intrusion have been installed.

Section 17. General Requirement. Land disposal facilities shall be sited, designed, operated, closed, and controlled after closure so that reasonable assurance exists that exposures to individuals are within the limits established in the performance objectives in Section 18 through Section 21 of this administrative regulation.

Section 18. Protection of the General Population from Releases of Radioactivity.

Concentrations of radioactive material which may be released to the general environment in groundwater, surface water, air, soil, plants, or animals shall [must] not result in an annual dose exceeding an equivalent of twenty-five (25) millirems to the whole body, seventy-five (75) millirems to the thyroid, and twenty-five (25) millirems to any other organ of a [any] member of the public. Reasonable effort shall be made to maintain releases of radioactivity in effluents to the general environment as low as it is reasonably achievable.

Section 19. Protection of Inadvertent Intrusion. Design, operation, and closure of the land disposal facility shall ensure protection of an [any] individual inadvertently intruding into the disposal site and occupying the site or contacting the waste [at] any time after active institutional controls over the disposal site are removed.

Section 20. Protection of Individuals During Operations. Operations at the land disposal facility shall be conducted in compliance with the standards for radiation protection set out in 902 KAR 100:020, except for releases of radioactivity in effluents from the and disposal facility, which shall be governed by Section 18 of this administrative regulation. Every reasonable effort shall be made to maintain radiation exposures as low as is reasonably achievable.

Section 21. Stability of the Disposal Site After Closure. The disposal facility shall be sited, designed, used, operated, and closed to achieve long-term stability of the disposal site and to eliminate to the extent practicable the need for ongoing active maintenance of the disposal site following closure so that only surveillance, monitoring, or minor custodial care are required.

Section 22. Disposal Site Suitability Requirements for Land Disposal. Disposal site suitability for near-surface disposal. The following are the minimum characteristics a disposal site shall have to be acceptable for use as a near-surface disposal facility:

(1) The primary emphasis in disposal site suitability is isolation of wastes, and the disposal site features that ensure that the long-term performance objectives are met.

(2) The disposal site shall be capable of being characterized, modeled, analyzed and monitored.

(3) Within the region where the facility is to be located, a disposal site shall [should] be selected so that projected population growth and future developments are not likely to affect the ability of the disposal facility to meet the performance objectives of this administrative regulation.

(4) Areas shall be avoided having known natural resources which, if exploited, would result in failure to meet the performance objectives of this administrative regulation.

(5) The disposal site shall be generally well drained and free of areas of flooding or frequent ponding. Waste disposal shall not take place in a 100-year flood plain, coastal high-hazard area or wetland, as defined in U.S. Executive Order 11988, "Flood plain Management Guidelines."

(6) Upstream drainage areas shall be minimized to decrease the amount of run-off which could erode or inundate waste disposal units.

(7) The disposal site shall provide sufficient depth to the water table that ground water intrusion, perennial or otherwise, into the waste shall [will] not occur. The cabinet may [will] consider an exception to this requirement to allow disposal below the water table if it can be conclusively shown that disposal site characteristics may [will] result in molecular diffusion being the predominant means of radionuclide movement and the rate of movement may [will] result in the performance objectives being met. In no case shall [will] waste disposal be permitted in the zone of fluctuation of the water table.

(8) The hydrogeologic unit used for disposal shall not discharge ground water to the surface within the disposal site.

(9) Areas shall be avoided if [where] tectonic processes, such as faulting, folding, seismic activity, or vulcanism may occur with a [such] frequency and extent to significantly affect the ability of the disposal site to meet the performance objectives of this administrative regulation or may preclude defensible modeling and prediction of long-term impacts.

(10) Areas shall be avoided if [where] surface geologic processes such as mass wasting, erosion, slumping, landsliding, or weathering occur with a [such] frequency and extent to significantly affect the ability of the disposal site to meet the performance objectives of this administrative regulation, or may preclude defensible modeling and prediction of long-term impacts.

(11) The disposal site shall [must] not be located if [where] nearby facilities or activities could adversely impact the ability of the site to meet the performance objectives of this administrative regulation or significantly mask the environmental monitoring program.

Section 23. Disposal Site Design for Land Disposal. Disposal site design for near-surface disposal.

(1) Site design features shall be directed toward long-term isolation and avoidance of the need for continuing active maintenance after site closure.

(2) The disposal site design and operation shall be compatible with the disposal site closure and stabilization plan and lead to disposal site closure that provides reasonable assurance that the performance objectives shall [will] be met.

(3) The disposal site shall be designed to complement and improve, if where appropriate, the ability of the disposal site's natural characteristics to assure that the performance objectives shall [will] be met.

(4) Covers shall be designed to minimize to the extent practicable water infiltration, to direct percolating or surface water away from the disposed waste, and to resist degradation by surface geologic processes and biotic activity.

(5) Surface features shall direct surface water drainage away from disposal units at velocities and gradients which shall [will] not result in erosion that shall [will] require ongoing active maintenance in the future.

(6) The disposal site shall be designed to minimize to the extent practicable the contact of water with waste during storage, the contact

of standing water with waste during disposal, and the contact of percolating or standing water with wastes after disposal.

Section 24. Land Disposal Facility Operation and Disposal Site Closure. Near-surface disposal facility operation and disposal site closure.

(1) Wastes designated as Class A in [pursuant to] 902 KAR 100:021 shall be segregated from other wastes by placing in disposal units which are sufficiently separated from disposal units for the other waste classes so that an [any] interaction between Class A wastes and other wastes shall [will] not result in the failure to meet the performance objectives of this administrative regulation. This segregation is not necessary for Class A wastes if they meet the stability requirements in 902 KAR 100:021, Section 8(2).

(2) Wastes designated as Class C in [pursuant to] 902 KAR 100:021 shall be disposed of so that the top of the waste is a minimum of five (5) meters below the top surface of the cover or shall [must] be disposed of with intruder barriers that are designed to protect against an inadvertent intrusion for at least 500 years.

(3) Except as provided in subsection (1) of this section only waste classified as Class A, B, or C shall be acceptable for near-surface disposal. All waste shall be disposed of in accordance with requirements of subsections (4) through (11) of this section.

(4) Wastes shall be emplaced in a manner that maintains the package integrity during emplacement, minimizes the void spaces between packages, and permits the void spaces to be filled.

(5) Void spaces between waste packages shall be filled with earth or other material to reduce future subsidence within the fill.

(6) Waste shall be placed and covered in a manner that limits the radiation dose rate at the surface of the cover to levels that at a minimum shall [will] permit the licensee to comply with all provisions of 902 KAR 100:020, Section 7, when [at the time] the license is transferred as authorized by [pursuant to] Section 15 of this administrative regulation.

(7) The boundaries and locations of each disposal unit shall be accurately located and mapped by means of a land survey. Near-surface disposal units shall be marked in [such] a way that the boundaries of each unit can be easily defined. Three (3) permanent survey marker control points, referenced to United States Geological Survey (USGS) or National Geodetic Survey (NGS) survey control stations, shall be established on the site to facilitate surveys. The USGS or NGS control stations shall provide horizontal and vertical controls as checked against USGS or NGS record files.

(8) A buffer zone of land shall be maintained between any buried waste and the disposal site boundary and beneath the disposed waste. The buffer zone shall be of adequate dimensions to carry out environmental monitoring activities specified in Section 25(4) of this administrative regulation and take mitigative measures if needed.

(9) Closure and stabilization measures set forth in the approved site closure plan shall be carried out as each disposal unit is filled and covered.

(10) Active waste disposal operations shall not have an adverse effect on completed closure and stabilization measures.

(11) Only wastes containing or contaminated with radioactive materials shall be disposed of at the disposal site.

(12) Proposals for disposal of waste that is not generally acceptable for near-surface disposal because the waste form and disposal methods must be different, and in general more stringent that those specified for Class C waste, may be submitted to the cabinet for approval.

Section 25. Environmental Monitoring. (1) When [At the time] a license application is submitted, the applicant shall have conducted a preoperational monitoring program to provide basic environmental data on the disposal site characteristics. The applicant shall obtain information about the ecology, meteorology, climate, hydrology, geology, geochemistry, and seismology of the disposal site. For those characteristics that are subject to seasonal variation, data shall [must] cover at least a twelve (12) month period.

(2) During the land disposal facility site construction and operation, the licensee shall maintain an environmental monitoring program. Measurements and observations shall [must] be made and recorded to provide data to evaluate the potential health and environmental impacts during both the construction and the operation of the facility and to enable the evaluation of long-term effects and the need for mitigative measures. The monitoring system shall [must] be capable of providing early warning of releases of radionuclides from the disposal site before they leave the site boundary.

(3) After the disposal site is closed, the licensee responsible for postoperational surveillance of the disposal site shall maintain a monitoring system based on the operating history and the closure and stabilization of the disposal site. The monitoring system shall [must] be capable of providing early warning of releases of radionuclides from the disposal site before they leave the site boundary.

(4) The licensee shall have plans for taking corrective measures if the environmental monitoring program detects migration of radionuclides which would indicate that the performance objectives may not be met.

Section 26. Alternative Requirements for Design and Operations. The cabinet may, upon request or on its own initiative, authorize provisions other than those set forth in Sections 23 through 25 of this administrative regulation for the segregation and disposal of waste and for the design and operation of a land disposal facility on a specific basis, if it finds reasonable assurance of compliance with the performance objectives of this administrative regulation.

Section 27. Institutional Requirements. (1) Land ownership. Disposal of radioactive waste received from other persons may be permitted only on land owned, in fee, by the Commonwealth of Kentucky or federal government.

(2) Institutional control. The land owner or custodial agency shall carry out an institutional control program to physically control access to the disposal site following transfer of control of the disposal site from the disposal site operator. The institutional

control program shall also include, but not be limited to, carrying out an environmental monitoring program at the disposal site, periodic surveillance, minor custodial care, and other requirements as determined by the cabinet; and administration of funds to cover the costs for these activities. The period of controls shall [will] be determined by the cabinet, but controls may not be relied upon for more than 100 years following transfer of control of the disposal site to the owner.

Section 28. Alternative Requirements for Waste Classification and Characteristics. The cabinet licensing a low-level disposal facility may, upon request or on its own initiative, authorize other provisions for the classification and characteristics of waste on a specific basis, if, after evaluation of the specific characteristics of the waste, disposal site, method of disposal, it finds reasonable assurance of compliance with the performance objectives specified in this administrative regulation.

Section 29. Applicant Qualifications and Assurances. Each applicant shall show that it either possesses the necessary funds or has reasonable assurance of obtaining the necessary funds, or by a combination of the two, to cover the estimated costs of conducting all licensed activities over the planned operating life of the project, including costs of construction and disposal.

Section 30. Funding for Disposal Site Closure and Stabilization. (1) The applicant shall provide assurances prior to the commencement of operations that sufficient funds shall [will] be available to carry out disposal site closure and stabilization, including:

(a) Decontamination or dismantlement of land disposal facility structures;

(b) Closure and stabilization of the disposal site so that following transfer of the disposal site to the site owner, the need for ongoing active maintenance is eliminated to the extent practicable and only minor custodial care, surveillance, and monitoring are required; and

(c) Assurances shall be based on cabinet approved cost estimates reflecting the cabinet approved plan for disposal site closure and stabilization. The applicant's cost estimates shall [must] take into account total costs that would be incurred if an independent contractor were hired to perform the closure and stabilization work.

(2) In order to avoid unnecessary duplication and expense, the cabinet may [will] accept financial sureties that have been consolidated with earmarked financial or surety arrangements established to meet requirements of other federal or state agencies [and/]or local governing bodies for such decontamination, closure and stabilization. The cabinet may [will] accept these arrangements only if they are considered adequate to satisfy these requirements and that the portion of the surety which covers the closure of the disposal site is clearly identified and committed for use in accomplishing these activities.

(3) The licensee's surety mechanism shall [will] be submitted annually for review by the cabinet to assure that sufficient funds are available for completion of the closure plan, assuming that the work has to be performed by an independent contractor.

(4) The amount of surety liability shall [should] change in accordance with the predicted cost of future closure and stabilization. Factors affecting closure and stabilization cost estimates include: inflation; increases in the amount of disturbed land; changes in engineering plans; closure and stabilization that has already been accomplished and [any] other conditions affecting costs. This shall [will] yield a surety that is at least sufficient at all times to cover the costs of closure of the disposal units that are expected to be used before the next license renewal.

(5) The term of the surety mechanism shall be open unless it can be demonstrated that another arrangement would provide an equivalent level of assurance. This assurance shall [could] be provided with a surety mechanism which is written for a specified period of time (e.g., five (5) years) yet which shall be automatically renewed unless the party who issues the surety notifies the cabinet and the beneficiary (the site owner) and the principal (the licensee) not less than ninety (90) days prior to the renewal date of its intention not to renew. In this [such a] situation the licensee shall [must] submit a replacement surety within thirty (30) days after notification of cancellation. If the licensee fails to provide a replacement surety acceptable to the cabinet, the site owner may collect on the original surety.

(6) Proof of forfeiture shall not be necessary to collect the surety so that if [in the event that] the licensee could not provide an acceptable replacement surety within the required time, the surety shall be automatically collected prior to its expiration. The conditions described above would have to be clearly stated on a [any] surety instrument which is not open-ended, and shall be agreed to by all parties. Liability under the surety mechanism shall remain in effect until the closure and stabilization program has been completed and approved by the cabinet and the license has been transferred to the site owner.

(7) Financial surety arrangements generally acceptable to the cabinet include: surety bonds, cash deposits, certificates of deposit, deposits of government securities, escrow accounts, irrevocable letters or lines of credit, trust funds, and combinations of the above or [such] other types of arrangements as may be approved by the cabinet. However, self-insurance, or an [any] arrangement which essentially constitutes pledging the assets of the licensee, shall [will] not satisfy the surety requirement for private sector applicants since this provides no additional assurance other than that which already exists through license requirements.

Section 31. Financial Assurances for Institutional Controls. (1) Prior to the issuance of the license, the applicant shall provide for cabinet review and approval a copy of a binding arrangement, such as a lease, between the applicant and the disposal site owner that ensures that sufficient funds shall [will] be available to cover the costs of monitoring and [any] required maintenance during the institutional control period. The binding arrangement shall [will] be reviewed periodically by the cabinet to ensure that changes in inflation, technology and disposal

facility operations are reflected in the arrangements.

(2) Subsequent changes to the binding arrangement specified in subsection (1) of this section relevant to institutional control shall be submitted to the cabinet for approval.

Section 32. Maintenance of Records, Reports, and Transfers. (1) Each licensee shall maintain [any] records and make [any] reports in connection with the licensed activities as may be required by the conditions of the license or by the rules, administrative regulations, and orders of the cabinet.

(2) Records which are required by these administrative regulations or by license conditions shall be maintained for a period specified by the appropriate administrative regulations in this section or by license condition. If a retention period is not otherwise specified, these records shall [must] be maintained and transferred to the officials specified in subsection (5) of this section as a condition of license termination unless the cabinet otherwise authorizes their disposition.

(3) Records which shall be maintained as required by [pursuant to] this section may be the original or a reproduced copy or microfilm if this reproduced copy or microfilm is capable of producing copy that is clear and legible at the end of the required retention period.

(4) If there is a conflict between the cabinet's administrative regulations, license condition, or other written cabinet approval or authorization pertaining to the retention period for the same type of record, the longest retention period specified takes precedence.

(5) In addition to the requirements of [Notwithstanding] subsections (1) through (4) of this section, copies of records of the location and the quantity of radioactive wastes contained in the disposal site shall [must] be transferred upon license termination to the chief executive of the nearest municipality, the chief executive of the county in which the facility is located, the county zoning board or land development and planning agency, the [state] Governor of the Commonwealth of Kentucky and other Kentucky [state,] local and federal governmental agencies as designated by the cabinet when the [at the time of] license is terminated [termination].

(6) Following receipt and acceptance of a shipment of radioactive waste, the licensee shall record the date of disposal of the waste, the location in the disposal site, the condition of the waste packages as received, any discrepancies between materials listed on the manifest and those received, and any evidence of leaking or damaged packages or radiation or contamination levels in excess of limits specified in U.S. Department of Transportation and cabinet administrative regulations. The licensee shall briefly describe [any] repackaging operations of [any of] the waste packages included in the shipment, plus [any] other information required by the cabinet as a license condition.

(7) Each licensee authorized to dispose of radioactive waste received from other persons shall file a copy of its financial report or a certified financial statement annually with the cabinet in order to update the information base for determining financial qualifications.

(8)(a) Each licensee authorized to dispose of waste materials received from other persons, authorized by [pursuant to] this administrative regulation, shall submit annual reports to the cabinet. Reports shall be submitted by the end of the first calendar quarter of each year for the preceding year;

(b) The reports shall include:

1. Specification of the quantity of each of the principal radionuclides released to unrestricted areas in liquid and in airborne effluents during the preceding year;

2. The results of the environmental monitoring program;

3. A summary of licensee disposal unit survey and maintenance activities;

4. A summary, by waste class, of activities and quantities of radionuclides disposed of;

5. [Any] Instances in which observed site characteristics were significantly different from those described in the application for a license; and

6. [Any] Other information the cabinet may require.

(c) If the quantities of radioactive materials released during the reporting period, monitoring results, or maintenance performed are significantly different from those expected in the materials previously reviewed as part of the licensing action, the report shall [must] cover this specifically.

Section 33. Tests at Land Disposal Facilities. Each licensee shall perform, or permit the cabinet to perform, any tests the cabinet deems appropriate or necessary for the administration of this administrative regulation, including, but not limited to, tests of:

(1) Radioactive wastes and facilities used for the receipt, storage, treatment, handling, and disposal of radioactive wastes;

(2) Radiation detection and monitoring instruments; and

(3) Other equipment and devices used in connection with the receipt, possession, handling, treatment, storage, or disposal of radioactive waste.

Section 34. Cabinet Inspections of Land Disposal Facilities. (1) Each licensee shall afford to the cabinet at all reasonable times opportunity to inspect radioactive waste not yet disposed of, and the premises, equipment, operations, and facilities in which radioactive wastes are received, possessed, handled, treated, stored, or disposed.

(2) Provide the cabinet with the [any] necessary equipment to meet the activities, such as monitoring, surveying, and recordkeeping as required by this section.

(3) Each licensee shall make available to the cabinet for inspection, upon reasonable notice, records kept by it as required by [pursuant to] this administrative regulation. Authorized representatives of the cabinet may copy and take away copies of, for the cabinet's use, any record required to be kept by [pursuant to] this administrative regulation.

C. HERNANDEZ, M.D., Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: September 27, 1991
FILED WITH LRC: October 11, 1991 at 3 p.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 21, 1991, at 9 a.m. in the Department for Employment Services second floor conference room, Cabinet

for Human Resources Building. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 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: John A. Volpe
(1) Type and number of entities affected: Currently no radioactive material licensees are affected by this regulation.
(a) Direct and indirect costs or savings to those affected: There are no direct or indirect costs or savings to radioactive material licensees.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: There is no 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 and local revenues is anticipated.
(4) Assessment of alternative methods; reasons why alternatives were rejected: This regulation must be identical to that of the U.S. Nuclear Regulatory Commission and other states. No alternative is available.
(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: There is no conflict.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict.
(6) Any additional information or comments:
TIERING: Was tiering applied? Yes. Tiering was applied because different types of licensees are regulated based on their disposal of radioactive material.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Section 274 of the Atomic Energy Act of 1954, as amended and 10 CFR.
2. State compliance standards. This administrative regulation establishes procedures, criteria, terms and conditions upon which the cabinet issues licenses for the land disposal of radioactive wastes received from other persons.
3. Minimum or uniform standards contained in the federal mandate. Federal and state requirements are identical.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The requirements/responsibilities are identical to those of the U.S. Nuclear Regulatory Commission.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Federal and state standards are identical.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 100:025. Concentrations above natural background for air and water.

RELATES TO: KRS 211.842 to 211.852, 211.990(4)
STATUTORY AUTHORITY: KRS 194.050, 211.090, 211.844
NECESSITY AND FUNCTION: The Cabinet for Human Resources is authorized [empowered] by KRS 211.844 to provide for the registration and licensing of the possession or use of [any] sources of ionizing or electronic product radiation and to regulate the handling and disposal of radioactive waste. [The purpose of] This administrative regulation [is to] provides for the concentrations of radioactivity in air and water above natural background.

Section 1. Applicability. This administrative regulation shall apply [applies] to persons licensed as authorized by [pursuant to] the cabinet's radiation administrative regulations.

Section 2. Table. The following table provides for the average concentrations of radioactivity in air and water above natural background if [where] applicable in the cabinet's radiation administrative regulations:

Element (Atomic Number)		Isotope	Table I Column 1 Air (uc/ml)	Table I Column 2 Water (uc/ml)	Table II Column 1 Air (uc/ml)	Table II Column 2 Water (uc/ml)
Actinium (89)	Ac 227	S	$2x10^{-12}$	$6x10^{-5}$	$8x10^{-14}$	$2x10^{-6}$
		I	$3x10^{-11}$	$9x10^{-3}$	$9x10^{-13}$	$3x10^{-4}$
	Ac 228	S	$8x10^{-8}$	$3x10^{-3}$	$3x10^{-9}$	$9x10^{-5}$
		I	$2x10^{-8}$	$3x10^{-3}$	$6x10^{-10}$	$9x10^{-5}$
Americium (95)	Am 241	S	$6x10^{-12}$	$1x10^{-4}$	$2x10^{-13}$	$4x10^{-6}$
		I	$1x10^{-10}$	$8x10^{-4}$	$4x10^{-12}$	$3x10^{-5}$
	Am 242 M	S	$6x10^{-12}$	$1x10^{-4}$	$2x10^{-13}$	$4x10^{-6}$
		I	$3x10^{-10}$	$3x10^{-3}$	$9x10^{-12}$	$9x10^{-5}$
	Am 242	S	$4x10^{-8}$	$4x10^{-3}$	$1x10^{-9}$	$1x10^{-4}$
		I	$5x10^{-8}$	$4x10^{-3}$	$2x10^{-9}$	$1x10^{-4}$
	Am 243	S	$6x10^{-12}$	$1x10^{-4}$	$2x10^{-13}$	$4x10^{-6}$
		I	$1x10^{-10}$	$8x10^{-4}$	$4x10^{-12}$	$3x10^{-5}$
	Am 244	S	$4x10^{-6}$	$1x10^{-1}$	$1x10^{-7}$	$5x10^{-3}$
		I	$2x10^{-5}$	$1x10^{-1}$	$8x10^{-7}$	$5x10^{-3}$
Antimony (51)	Sb 122	S	$2x10^{-7}$	$8x10^{-4}$	$6x10^{-9}$	$3x10^{-5}$
		I	$1x10^{-7}$	$8x10^{-4}$	$5x10^{-9}$	$3x10^{-5}$
	Sb 124	S	$2x10^{-7}$	$7x10^{-4}$	$5x10^{-9}$	$2x10^{-5}$
		I	$2x10^{-8}$	$7x10^{-4}$	$7x10^{-10}$	$2x10^{-5}$
	Sb 125	S	$5x10^{-7}$	$3x10^{-3}$	$2x10^{-8}$	$1x10^{-4}$
		I	$3x10^{-8}$	$3x10^{-3}$	$9x10^{-10}$	$1x10^{-4}$
Argon (18)	A 37	Sub	$6x10^{-3}$	------	$1x10^{-4}$	------
	A 41	Sub	$2x10^{-6}$	------	$4x10^{-8}$	------
Arsenic (33)	As 73	S	$2x10^{-6}$	$1x10^{-2}$	$7x10^{-8}$	$5x10^{-4}$
		I	$4x10^{-7}$	$1x10^{-2}$	$1x10^{-8}$	$5x10^{-4}$
	As 74	S	$3x10^{-7}$	$2x10^{-3}$	$1x10^{-8}$	$5x10^{-5}$
		I	$1x10^{-7}$	$2x10^{-3}$	$4x10^{-9}$	$5x10^{-5}$
	As 76	S	$1x10^{-7}$	$6x10^{-4}$	$4x10^{-9}$	$2x10^{-5}$
		I	$1x10^{-7}$	$6x10^{-4}$	$3x10^{-9}$	$2x10^{-5}$
	As 77	S	$5x10^{-7}$	$2x10^{-3}$	$2x10^{-8}$	$8x10^{-5}$
		I	$4x10^{-7}$	$2x10^{-3}$	$1x10^{-8}$	$8x10^{-5}$
	Cf 251	S	$2x10^{-12}$	$1x10^{-4}$	$6x10^{-14}$	$4x10^{-6}$
		I	$1x10^{-10}$	$8x10^{-4}$	$3x10^{-12}$	$3x10^{-5}$
Astatine (85)	At 211	S	$7x10^{-9}$	$5x10^{-5}$	$2x10^{-10}$	$2x10^{-6}$
		I	$3x10^{-8}$	$2x10^{-3}$	$1x10^{-9}$	$7x10^{-5}$
Barium (56)	Ba 131	S	$1x10^{-6}$	$5x10^{-3}$	$4x10^{-8}$	$2x10^{-4}$
		I	$4x10^{-7}$	$5x10^{-3}$	$1x10^{-8}$	$2x10^{-4}$
	Ba 140	S	$1x10^{-7}$	$8x10^{-4}$	$4x10^{-9}$	$3x10^{-5}$
		I	$4x10^{-8}$	$7x10^{-4}$	$1x10^{-9}$	$2x10^{-5}$
Berkelium (97)	Bk 249	S	$9x10^{-10}$	$2x10^{-2}$	$3x10^{-11}$	$6x10^{-4}$
		I	$1x10^{-7}$	$2x10^{-2}$	$4x10^{-9}$	$6x10^{-4}$
	Bk 250	S	$1x10^{-7}$	$6x10^{-3}$	$5x10^{-9}$	$2x10^{-4}$
		I	$1x10^{-6}$	$6x10^{-3}$	$4x10^{-8}$	$2x10^{-4}$
Beryllium (4)	Be 7	S	$6x10^{-6}$	$5x10^{-2}$	$2x10^{-7}$	$2x10^{-3}$
		I	$1x10^{-6}$	$5x10^{-2}$	$4x10^{-8}$	$2x10^{-3}$
Bismuth (83)	Bi 206	S	$2x10^{-7}$	$1x10^{-3}$	$6x10^{-9}$	$4x10^{-5}$
		I	$1x10^{-7}$	$1x10^{-3}$	$5x10^{-9}$	$4x10^{-5}$
	Bi 207	S	$2x10^{-7}$	$2x10^{-3}$	$6x10^{-9}$	$6x10^{-5}$
		I	$1x10^{-8}$	$2x10^{-3}$	$5x10^{-10}$	$6x10^{-5}$
	Bi 210	S	$6x10^{-9}$	$1x10^{-3}$	$2x10^{-10}$	$4x10^{-5}$
		I	$6x10^{-9}$	$1x10^{-3}$	$2x10^{-10}$	$4x10^{-5}$
	Bi 212	S	$1x10^{-7}$	$1x10^{-2}$	$3x10^{-9}$	$4x10^{-4}$
		I	$2x10^{-7}$	$1x10^{-2}$	$7x10^{-9}$	$4x10^{-4}$
Bromine (35)	Br 82	S	$1x10^{-6}$	$8x10^{-3}$	$4x10^{-8}$	$3x10^{-4}$
		I	$2x10^{-7}$	$1x10^{-3}$	$6x10^{-9}$	$4x10^{-5}$
Cadmium (48)	Cd 109	S	$5x10^{-8}$	$5x10^{-3}$	$2x10^{-9}$	$2x10^{-4}$
		I	$7x10^{-8}$	$5x10^{-3}$	$3x10^{-9}$	$2x10^{-4}$
	Cd 115 m	S	$4x10^{-8}$	$7x10^{-4}$	$1x10^{-9}$	$3x10^{-5}$
		I	$4x10^{-8}$	$7x10^{-4}$	$1x10^{-9}$	$3x10^{-5}$
	Cd 115	S	$2x10^{-7}$	$1x10^{-3}$	$8x10^{-9}$	$3x10^{-5}$
		I	$2x10^{-7}$	$1x10^{-3}$	$6x10^{-9}$	$4x10^{-5}$
Calcium (20)	Ca 45	S	$3x10^{-8}$	$3x10^{-4}$	$1x10^{-9}$	$9x10^{-6}$
		I	$1x10^{-7}$	$5x10^{-3}$	$4x10^{-9}$	$2x10^{-4}$
	Ca 47	S	$2x10^{-7}$	$1x10^{-3}$	$6x10^{-9}$	$5x10^{-5}$
		I	$2x10^{-7}$	$1x10^{-3}$	$6x10^{-9}$	$3x10^{-5}$
Californium (98)	Cf 249	S	$2x10^{-12}$	$1x10^{-4}$	$5x10^{-14}$	$4x10^{-6}$
		I	$1x10^{-10}$	$7x10^{-4}$	$3x10^{-12}$	$2x10^{-5}$
	Cf 250	S	$5x10^{-12}$	$4x10^{-4}$	$2x10^{-13}$	$1x10^{-5}$
		I	$1x10^{-10}$	$7x10^{-4}$	$3x10^{-12}$	$3x10^{-5}$

Element (Atomic Number)	Isotope		Table I Column 1 Air (uc/ml)	Table I Column 2 Water (uc/ml)	Table II Column 1 Air (uc/ml)	Table II Column 2 Water (uc/ml)
	Cf 251	S	2×10^{-12}	1×10^{-4}	6×10^{-14}	4×10^{-6}
		I	1×10^{-10}	8×10^{-4}	3×10^{-12}	3×10^{-5}
	Cf 252	S	6×10^{-12}	2×10^{-4}	2×10^{-13}	7×10^{-6}
		I	3×10^{-11}	2×10^{-4}	1×10^{-12}	7×10^{-6}
	Cf 253	S	8×10^{-10}	4×10^{-3}	3×10^{-11}	1×10^{-4}
		I	8×10^{-10}	4×10^{-3}	3×10^{-11}	1×10^{-4}
	Cf 254	S	5×10^{-12}	4×10^{-6}	2×10^{-13}	1×10^{-7}
		I	5×10^{-12}	4×10^{-6}	2×10^{-13}	1×10^{-7}
Carbon (6)	C 14	S	4×10^{-6}	2×10^{-2}	1×10^{-7}	8×10^{-4}
	(Co_2)	Sub	5×10^{-5}	———	1×10^{-6}	———
Cerium (58)	Ce 141	S	4×10^{-7}	3×10^{-3}	2×10^{-8}	9×10^{-5}
		I	2×10^{-7}	3×10^{-3}	5×10^{-9}	9×10^{-5}
	Ce 143	S	3×10^{-7}	1×10^{-3}	9×10^{-9}	4×10^{-5}
		I	2×10^{-7}	1×10^{-3}	7×10^{-9}	4×10^{-5}
	Ce 144	S	1×10^{-8}	3×10^{-4}	3×10^{-10}	1×10^{-5}
		I	6×10^{-9}	3×10^{-4}	2×10^{-10}	1×10^{-5}
Cesium (55)	Cs 131	S	1×10^{-5}	7×10^{-2}	4×10^{-7}	2×10^{-3}
		I	3×10^{-6}	3×10^{-2}	1×10^{-7}	9×10^{-4}
	Cs 134 M	S	4×10^{-5}	2×10^{-1}	1×10^{-6}	6×10^{-3}
		I	6×10^{-6}	3×10^{-2}	2×10^{-7}	1×10^{-3}
	Cs 134	S	4×10^{-8}	3×10^{-4}	1×10^{-9}	9×10^{-6}
		I	1×10^{-8}	1×10^{-3}	4×10^{-10}	4×10^{-5}
	Cs 135	S	5×10^{-7}	3×10^{-3}	2×10^{-8}	1×10^{-4}
		I	9×10^{-8}	7×10^{-3}	3×10^{-9}	2×10^{-4}
	Cs 136	S	4×10^{-7}	2×10^{-3}	1×10^{-8}	9×10^{-5}
		I	2×10^{-7}	2×10^{-3}	6×10^{-9}	6×10^{-5}
	Cs 137	S	6×10^{-8}	4×10^{-4}	2×10^{-9}	2×10^{-5}
		I	1×10^{-8}	1×10^{-3}	5×10^{-10}	4×10^{-5}
Chlorine (17)	Cl 36	S	4×10^{-7}	2×10^{-3}	1×10^{-8}	8×10^{-5}
		I	2×10^{-8}	2×10^{-3}	8×10^{-10}	6×10^{-5}
	Cl 38	S	3×10^{-6}	1×10^{-2}	9×10^{-8}	4×10^{-4}
		I	2×10^{-6}	1×10^{-2}	7×10^{-8}	4×10^{-4}
Chromium (24)	Cr 51	S	1×10^{-5}	5×10^{-2}	4×10^{-7}	2×10^{-3}
		I	2×10^{-6}	5×10^{-2}	8×10^{-8}	2×10^{-3}
Cobalt (27)	Co 57	S	3×10^{-6}	2×10^{-2}	1×10^{-7}	5×10^{-4}
		I	2×10^{-7}	1×10^{-2}	6×10^{-9}	4×10^{-4}
	Co 58 M	S	2×10^{-5}	8×10^{-2}	6×10^{-7}	3×10^{-3}
		I	9×10^{-6}	6×10^{-2}	3×10^{-7}	2×10^{-3}
	Co 58	S	8×10^{-7}	4×10^{-3}	3×10^{-8}	1×10^{-4}
		I	5×10^{-8}	3×10^{-3}	2×10^{-9}	9×10^{-5}
	Co 60	S	3×10^{-7}	1×10^{-3}	1×10^{-8}	5×10^{-5}
		I	9×10^{-9}	1×10^{-3}	3×10^{-10}	3×10^{-5}
Copper (29)	Cu 64	S	2×10^{-6}	1×10^{-2}	7×10^{-8}	3×10^{-4}
		I	1×10^{-6}	6×10^{-3}	4×10^{-8}	2×10^{-4}
Curium (96)	Cm 242	S	1×10^{-10}	7×10^{-4}	4×10^{-12}	2×10^{-5}
		I	2×10^{-10}	7×10^{-4}	6×10^{-12}	2×10^{-5}
	Cm 243	S	6×10^{-12}	1×10^{-4}	2×10^{-13}	5×10^{-6}
		I	1×10^{-10}	7×10^{-4}	3×10^{-12}	2×10^{-5}
	Cm 244	S	9×10^{-12}	2×10^{-4}	3×10^{-13}	7×10^{-6}
		I	1×10^{-10}	8×10^{-4}	3×10^{-12}	3×10^{-5}
	Cm 245	S	5×10^{-12}	1×10^{-4}	2×10^{-13}	4×10^{-6}
		I	1×10^{-10}	8×10^{-4}	4×10^{-12}	3×10^{-5}
	Cm 246	S	5×10^{-12}	1×10^{-4}	2×10^{-13}	4×10^{-6}
		I	1×10^{-10}	8×10^{-4}	4×10^{-12}	3×10^{-5}
	Cm 247	S	5×10^{-12}	1×10^{-4}	2×10^{-13}	4×10^{-6}
		I	1×10^{-10}	6×10^{-4}	4×10^{-12}	2×10^{-5}
	Cm 248	S	6×10^{-13}	1×10^{-5}	2×10^{-14}	4×10^{-7}
		I	1×10^{-11}	4×10^{-5}	4×10^{-13}	1×10^{-6}
	Cm 249	S	1×10^{-5}	6×10^{-2}	4×10^{-7}	2×10^{-3}
		I	1×10^{-5}	6×10^{-2}	4×10^{-7}	2×10^{-3}
Dysprosium (66)	Dy 165	S	3×10^{-6}	1×10^{-2}	9×10^{-8}	4×10^{-4}
		I	2×10^{-6}	1×10^{-2}	7×10^{-8}	4×10^{-4}
	Dy 166	S	2×10^{-7}	1×10^{-3}	8×10^{-9}	4×10^{-5}
		I	2×10^{-7}	1×10^{-3}	7×10^{-9}	4×10^{-5}
Einsteinium (99)	Es 253	S	8×10^{-10}	7×10^{-4}	3×10^{-11}	2×10^{-5}
		I	6×10^{-10}	7×10^{-4}	2×10^{-11}	2×10^{-5}
	Es 254 M	S	5×10^{-9}	5×10^{-4}	2×10^{-10}	2×10^{-5}
		I	6×10^{-9}	5×10^{-4}	2×10^{-10}	2×10^{-5}
	Es 254	S	2×10^{-11}	4×10^{-4}	6×10^{-13}	1×10^{-5}
		I	1×10^{-10}	4×10^{-4}	4×10^{-12}	1×10^{-5}

Element (Atomic Number)	Isotope		Table I Column 1 Air (uc/ml)	Table I Column 2 Water (uc/ml)	Table II Column 1 Air (uc/ml)	Table II Column 2 Water (uc/ml)
	Es 255	S	$5x10^{-10}$	$8x10^{-4}$	$2x10^{-11}$	$3x10^{-5}$
		I	$4x10^{-10}$	$8x10^{-4}$	$1x10^{-11}$	$3x10^{-5}$
Erbium (68)	Er 169	S	$6x10^{-7}$	$3x10^{-3}$	$2x10^{-8}$	$9x10^{-5}$
		I	$4x10^{-7}$	$3x10^{-3}$	$1x10^{-8}$	$9x10^{-5}$
	Er 171	S	$7x10^{-7}$	$3x10^{-3}$	$2x10^{-8}$	$1x10^{-4}$
		I	$6x10^{-7}$	$3x10^{-3}$	$2x10^{-8}$	$1x10^{-4}$
Europium (63)	Eu 152 (T/2=9.2 Hrs.)	S	$4x10^{-7}$	$2x10^{-3}$	$1x10^{-8}$	$6x10^{-5}$
		I	$3x10^{-7}$	$2x10^{-3}$	$1x10^{-8}$	$6x10^{-5}$
	Eu 152 (T/2= 13 Hrs.)	S	$1x10^{-8}$	$2x10^{-3}$	$4x10^{-10}$	$8x10^{-5}$
		I	$2x10^{-8}$	$2x10^{-3}$	$6x10^{-10}$	$8x10^{-5}$
	Eu 154	S	$4x10^{-9}$	$6x10^{-4}$	$1x10^{-10}$	$2x10^{-5}$
		I	$7x10^{-9}$	$6x10^{-4}$	$2x10^{-10}$	$2x10^{-5}$
	Eu 155	S	$9x10^{-8}$	$6x10^{-3}$	$3x10^{-9}$	$2x10^{-4}$
		I	$7x10^{-8}$	$6x10^{-3}$	$3x10^{-9}$	$2x10^{-4}$
Fermium (100)	Fm 254	S	$6x10^{-8}$	$4x10^{-3}$	$2x10^{-9}$	$1x10^{-4}$
		I	$7x10^{-8}$	$4x10^{-3}$	$2x10^{-9}$	$1x10^{-4}$
	Fm 255	S	$2x10^{-8}$	$1x10^{-3}$	$6x10^{-10}$	$3x10^{-5}$
		I	$1x10^{-8}$	$1x10^{-3}$	$4x10^{-10}$	$3x10^{-5}$
	Fm 256	S	$3x10^{-9}$	$3x10^{-5}$	$1x10^{-10}$	$9x10^{-7}$
		I	$2x10^{-9}$	$3x10^{-5}$	$6x10^{-11}$	$9x10^{-7}$
Fluorine (9)	F 18	S	$5x10^{-6}$	$2x10^{-2}$	$2x10^{-7}$	$8x10^{-4}$
		I	$3x10^{-6}$	$1x10^{-2}$	$9x10^{-8}$	$5x10^{-4}$
Gadolinium (64)	Gd 153	S	$2x10^{-7}$	$6x10^{-3}$	$8x10^{-9}$	$2x10^{-4}$
		I	$9x10^{-8}$	$6x10^{-3}$	$3x10^{-9}$	$2x10^{-4}$
	Gd 159	S	$5x10^{-7}$	$2x10^{-3}$	$2x10^{-8}$	$8x10^{-5}$
		I	$4x10^{-7}$	$2x10^{-3}$	$1x10^{-8}$	$8x10^{-5}$
Gallium (31)	Ga 72	S	$2x10^{-7}$	$1x10^{-3}$	$8x10^{-9}$	$4x10^{-5}$
		I	$2x10^{-7}$	$1x10^{-3}$	$6x10^{-9}$	$4x10^{-5}$
Germanium (32)	Ge 68	S	$4x10^{-6}$	$2x10^{-2}$	$1x10^{-7}$	$8x10^{-4}$
		I	$1x10^{-8}$	———	$5x10^{-10}$	———
	Ge 71	S	$1x10^{-5}$	$5x10^{-2}$	$4x10^{-7}$	$2x10^{-3}$
		I	$6x10^{-6}$	$5x10^{-2}$	$2x10^{-7}$	$2x10^{-3}$
Gold (79)	Au 195	S	$8x10^{-6}$	$4x10^{-2}$	$3x10^{-7}$	$1x10^{-3}$
		I	$6x10^{-8}$	$6x10^{-3}$	$2x10^{-9}$	$2x10^{-4}$
	Au 196	S	$1x10^{-6}$	$5x10^{-3}$	$4x10^{-8}$	$2x10^{-4}$
		I	$6x10^{-7}$	$4x10^{-3}$	$2x10^{-8}$	$1x10^{-4}$
	Au 198	S	$3x10^{-7}$	$2x10^{-3}$	$1x10^{-8}$	$5x10^{-5}$
		I	$2x10^{-7}$	$1x10^{-3}$	$8x10^{-9}$	$5x10^{-5}$
	Au 199	S	$1x10^{-6}$	$5x10^{-3}$	$4x10^{-8}$	$2x10^{-4}$
		I	$8x10^{-7}$	$4x10^{-3}$	$3x10^{-8}$	$2x10^{-4}$
Hafnium (72)	Hf 181	S	$4x10^{-8}$	$2x10^{-3}$	$1x10^{-9}$	$7x10^{-5}$
		I	$7x10^{-8}$	$2x10^{-3}$	$3x10^{-9}$	$7x10^{-5}$
Holmium (67)	Ho 166	S	$2x10^{-7}$	$9x10^{-4}$	$7x10^{-9}$	$3x10^{-5}$
		I	$2x10^{-7}$	$9x10^{-4}$	$6x10^{-9}$	$3x10^{-5}$
Hydrogen (1)	H 3	S	$5x10^{-6}$	$1x10^{-1}$	$2x10^{-7}$	$3x10^{-3}$
		I	$5x10^{-6}$	$1x10^{-1}$	$2x10^{-7}$	$3x10^{-3}$
		Sub	$2x10^{-3}$	———	$4x10^{-5}$	———
Indium (49)	In 113 M	S	$8x10^{-6}$	$4x10^{-2}$	$3x10^{-7}$	$1x10^{-3}$
		I	$7x10^{-6}$	$4x10^{-2}$	$2x10^{-7}$	$1x10^{-3}$
	In 114 M	S	$1x10^{-7}$	$5x10^{-4}$	$4x10^{-9}$	$2x10^{-5}$
		I	$2x10^{-8}$	$5x10^{-4}$	$7x10^{-10}$	$2x10^{-5}$
	In 115 M	S	$2x10^{-6}$	$1x10^{-2}$	$8x10^{-8}$	$4x10^{-4}$
		I	$2x10^{-6}$	$1x10^{-2}$	$6x10^{-8}$	$4x10^{-4}$
	In 115	S	$2x10^{-7}$	$3x10^{-3}$	$9x10^{-9}$	$9x10^{-5}$
		I	$3x10^{-8}$	$3x10^{-3}$	$1x10^{-9}$	$9x10^{-5}$
Iodine (53)	I 125	S	$5x10^{-9}$	$4x10^{-5}$	$8x10^{-11}$	$2x10^{-7}$
		I	$2x10^{-7}$	$6x10^{-3}$	$6x10^{-9}$	$2x10^{-4}$
	I 126	S	$8x10^{-9}$	$5x10^{-5}$	$9x10^{-11}$	$3x10^{-7}$
		I	$3x10^{-7}$	$3x10^{-3}$	$1x10^{-8}$	$9x10^{-5}$
	I 129	S	$2x10^{-9}$	$1x10^{-5}$	$2x10^{-11}$	$6x10^{-8}$
		I	$7x10^{-8}$	$6x10^{-3}$	$2x10^{-9}$	$2x10^{-4}$
	I 131	S	$9x10^{-9}$	$6x10^{-5}$	$1x10^{-10}$	$3x10^{-7}$
		I	$3x10^{-7}$	$2x10^{-3}$	$1x10^{-8}$	$6x10^{-5}$
	I 132	S	$2x10^{-7}$	$2x10^{-3}$	$3x10^{-9}$	$8x10^{-6}$
		I	$9x10^{-7}$	$5x10^{-3}$	$3x10^{-8}$	$2x10^{-4}$
	I 133	S	$3x10^{-8}$	$2x10^{-4}$	$4x10^{-10}$	$1x10^{-6}$
		I	$2x10^{-7}$	$1x10^{-3}$	$7x10^{-9}$	$4x10^{-5}$
	I 134	S	$5x10^{-7}$	$4x10^{-3}$	$6x10^{-9}$	$2x10^{-5}$
		I	$3x10^{-6}$	$2x10^{-2}$	$1x10^{-7}$	$6x10^{-4}$
	I 135	S	$1x10^{-7}$	$7x10^{-4}$	$1x10^{-9}$	$4x10^{-6}$
		I	$4x10^{-7}$	$2x10^{-3}$	$1x10^{-8}$	$7x10^{-5}$
Iridium (77)	Ir 190	S	$1x10^{-6}$	$6x10^{-3}$	$4x10^{-8}$	$2x10^{-4}$

Element (Atomic Number)		Isotope	Table I Column 1 Air (uc/ml)	Table I Column 2 Water (uc/ml)	Table II Column 1 Air (uc/ml)	Table II Column 2 Water (uc/ml)
		I	$4x10^{-7}$	$5x10^{-3}$	$1x10^{-8}$	$2x10^{-4}$
	Ir 192	S	$1x10^{-7}$	$1x10^{-3}$	$4x10^{-9}$	$4x10^{-5}$
		I	$3x10^{-8}$	$1x10^{-3}$	$9x10^{-10}$	$4x10^{-5}$
	Ir 194	S	$2x10^{-7}$	$1x10^{-3}$	$8x10^{-9}$	$3x10^{-5}$
		I	$2x10^{-7}$	$9x10^{-4}$	$5x10^{-9}$	$3x10^{-5}$
Iron (26)	Fe 55	S	$9x10^{-7}$	$2x10^{-2}$	$3x10^{-8}$	$8x10^{-4}$
		I	$1x10^{-6}$	$7x10^{-2}$	$3x10^{-8}$	$2x10^{-3}$
	Fe 59	S	$1x10^{-7}$	$2x10^{-3}$	$5x10^{-9}$	$6x10^{-5}$
		I	$5x10^{-8}$	$2x10^{-3}$	$2x10^{-9}$	$5x10^{-5}$
Krypton (36)	KR 85 M	Sub	$6x10^{-6}$	———	$1x10^{-7}$	———
	Kr 85	Sub	$1x10^{-5}$	———	$3x10^{-7}$	———
	Kr 87	Sub	$1x10^{-6}$	———	$2x10^{-8}$	———
	Kr 88	Sub	$1x10^{-6}$	———	$2x10^{-8}$	———
Lanthanum (57)	La 140	S	$2x10^{-7}$	$7x10^{-4}$	$5x10^{-9}$	$2x10^{-5}$
		I	$1x10^{-7}$	$7x10^{-4}$	$4x10^{-9}$	$2x10^{-5}$
Lead (82)	Pb 203	S	$3x10^{-6}$	$1x10^{-2}$	$9x10^{-8}$	$4x10^{-4}$
		I	$2x10^{-6}$	$1x10^{-2}$	$6x10^{-8}$	$4x10^{-4}$
	Pb 210	S	$1x10^{-10}$	$4x10^{-6}$	$4x10^{-12}$	$1x10^{-7}$
		I	$2x10^{-10}$	$5x10^{-3}$	$8x10^{-12}$	$2x10^{-4}$
	Pb 212	S	$2x10^{-8}$	$6x10^{-4}$	$6x10^{-10}$	$2x10^{-5}$
		I	$2x10^{-8}$	$5x10^{-4}$	$7x10^{-10}$	$2x10^{-5}$
Lutetium (71)	Lu 177	S	$6x10^{-7}$	$3x10^{-3}$	$2x10^{-8}$	$1x10^{-4}$
		I	$5x10^{-7}$	$3x10^{-3}$	$2x10^{-8}$	$1x10^{-4}$
Manganese (25)	Mn 52	S	$2x10^{-7}$	$1x10^{-3}$	$7x10^{-9}$	$3x10^{-5}$
		I	$1x10^{-7}$	$9x10^{-4}$	$5x10^{-9}$	$3x10^{-5}$
	Mn 54	S	$4x10^{-7}$	$4x10^{-3}$	$1x10^{-8}$	$1x10^{-4}$
		I	$4x10^{-8}$	$3x10^{-3}$	$1x10^{-9}$	$1x10^{-4}$
	Mn 56	S	$8x10^{-7}$	$4x10^{-3}$	$3x10^{-8}$	$1x10^{-4}$
		I	$5x10^{-7}$	$3x10^{-3}$	$2x10^{-8}$	$1x10^{-4}$
Mercury (80)	Hg 197 M	S	$7x10^{-7}$	$6x10^{-3}$	$3x10^{-8}$	$2x10^{-4}$
		I	$8x10^{-7}$	$5x10^{-3}$	$3x10^{-8}$	$2x10^{-4}$
	Hg 197	S	$1x10^{-6}$	$9x10^{-3}$	$4x10^{-8}$	$3x10^{-4}$
		I	$3x10^{-6}$	$1x10^{-2}$	$9x10^{-8}$	$5x10^{-4}$
	Hg 203	S	$7x10^{-8}$	$5x10^{-4}$	$2x10^{-9}$	$2x10^{-5}$
		I	$1x10^{-7}$	$3x10^{-3}$	$4x10^{-9}$	$1x10^{-4}$
Molybdenum (42)	Mo 99	S	$7x10^{-7}$	$5x10^{-3}$	$3x10^{-8}$	$2x10^{-4}$
		I	$2x10^{-7}$	$1x10^{-3}$	$7x10^{-9}$	$4x10^{-5}$
Neodymium (60)	Nd 144	S	$8x10^{-11}$	$2x10^{-3}$	$3x10^{-12}$	$7x10^{-5}$
		I	$3x10^{-10}$	$2x10^{-3}$	$1x10^{-11}$	$8x10^{-5}$
	Nd 147	S	$4x10^{-7}$	$2x10^{-3}$	$1x10^{-8}$	$6x10^{-5}$
		I	$2x10^{-7}$	$2x10^{-3}$	$8x10^{-9}$	$6x10^{-5}$
	Nd 149	S	$2x10^{-6}$	$8x10^{-3}$	$6x10^{-8}$	$3x10^{-4}$
		I	$1x10^{-6}$	$8x10^{-3}$	$5x10^{-8}$	$3x10^{-4}$
Neptunium (93)	Np 237	S	$4x10^{-12}$	$9x10^{-5}$	$1x10^{-13}$	$3x10^{-6}$
		I	$1x10^{-10}$	$9x10^{-4}$	$4x10^{-12}$	$3x10^{-5}$
	Np 239	S	$8x10^{-7}$	$4x10^{-3}$	$3x10^{-8}$	$1x10^{-4}$
		I	$7x10^{-7}$	$4x10^{-3}$	$2x10^{-8}$	$1x10^{-4}$
Nickel (28)	Ni 59	S	$5x10^{-7}$	$6x10^{-3}$	$2x10^{-8}$	$2x10^{-4}$
		I	$8x10^{-7}$	$6x10^{-2}$	$3x10^{-8}$	$2x10^{-3}$
	Ni 63	S	$6x10^{-8}$	$8x10^{-4}$	$2x10^{-9}$	$3x10^{-5}$
		I	$3x10^{-7}$	$2x10^{-2}$	$1x10^{-8}$	$7x10^{-4}$
	Ni 65	S	$9x10^{-7}$	$4x10^{-3}$	$3x10^{-8}$	$1x10^{-4}$
		I	$5x10^{-7}$	$3x10^{-3}$	$2x10^{-8}$	$1x10^{-4}$
Niobium (41)	Nb 93 M	S	$1x10^{-7}$	$1x10^{-2}$	$4x10^{-9}$	$4x10^{-4}$
		I	$2x10^{-7}$	$1x10^{-2}$	$5x10^{-9}$	$4x10^{-4}$
	Nb 95	S	$5x10^{-7}$	$3x10^{-3}$	$2x10^{-8}$	$1x10^{-4}$
		I	$5x10^{-6}$	$3x10^{-2}$	$2x10^{-7}$	$9x10^{-4}$
	Nb 97	S	$6x10^{-6}$	$3x10^{-2}$	$2x10^{-7}$	$9x10^{-4}$
		I	$5x10^{-6}$	$3x10^{-2}$	$2x10^{-7}$	$9x10^{-4}$
Osmium (76)	Os 185	S	$5x10^{-7}$	$2x10^{-3}$	$2x10^{-8}$	$7x10^{-5}$
		I	$5x10^{-8}$	$2x10^{-3}$	$2x10^{-9}$	$7x10^{-5}$
	Os 191 M	S	$2x10^{-5}$	$7x10^{-2}$	$6x10^{-7}$	$3x10^{-3}$
		I	$9x10^{-6}$	$7x10^{-2}$	$3x10^{-7}$	$2x10^{-3}$
	Os 191	S	$1x10^{-6}$	$5x10^{-3}$	$4x10^{-8}$	$2x10^{-4}$
		I	$4x10^{-7}$	$5x10^{-3}$	$1x10^{-8}$	$2x10^{-4}$
	Os 193	S	$4x10^{-7}$	$2x10^{-3}$	$1x10^{-8}$	$6x10^{-5}$
		I	$3x10^{-7}$	$2x10^{-3}$	$9x10^{-9}$	$5x10^{-5}$
Palladium (46)	Pd 103	S	$1x10^{-6}$	$1x10^{-2}$	$5x10^{-8}$	$3x10^{-4}$
		I	$7x10^{-7}$	$8x10^{-3}$	$3x10^{-8}$	$3x10^{-4}$
	Pd 109	S	$6x10^{-7}$	$3x10^{-3}$	$2x10^{-8}$	$9x10^{-5}$

Element (Atomic Number)	Isotope		Table I Column 1 Air (uc/ml)	Table I Column 2 Water (uc/ml)	Table II Column 1 Air (uc/ml)	Table II Column 2 Water (uc/ml)
Phosphorus (15)	P 32	I	4×10^{-7}	2×10^{-3}	1×10^{-8}	7×10^{-5}
		S	7×10^{-8}	5×10^{-4}	2×10^{-9}	2×10^{-5}
Platinum (78)	Pt 191	I	8×10^{-8}	7×10^{-4}	3×10^{-9}	2×10^{-5}
		S	8×10^{-7}	4×10^{-3}	3×10^{-8}	1×10^{-4}
	Pt 193 M	I	6×10^{-7}	3×10^{-3}	2×10^{-8}	1×10^{-4}
		S	7×10^{-6}	3×10^{-2}	2×10^{-7}	1×10^{-3}
	Pt 193	I	5×10^{-6}	3×10^{-2}	2×10^{-7}	1×10^{-3}
		S	1×10^{-6}	3×10^{-2}	4×10^{-8}	9×10^{-4}
	Pt 197 M	I	3×10^{-7}	5×10^{-2}	1×10^{-8}	2×10^{-3}
		S	6×10^{-6}	3×10^{-2}	2×10^{-7}	1×10^{-3}
	Pt 197	I	5×10^{-6}	3×10^{-2}	2×10^{-7}	9×10^{-4}
		S	8×10^{-7}	4×10^{-3}	3×10^{-8}	1×10^{-4}
Plutonium (94)	Pu 238	I	6×10^{-7}	3×10^{-3}	2×10^{-8}	1×10^{-4}
		S	2×10^{-12}	1×10^{-4}	7×10^{-14}	5×10^{-6}
	Pu 239	I	3×10^{-11}	8×10^{-4}	1×10^{-12}	3×10^{-5}
		S	2×10^{-12}	1×10^{-4}	6×10^{-14}	5×10^{-6}
	Pu 240	I	4×10^{-11}	8×10^{-4}	1×10^{-12}	3×10^{-5}
		S	2×10^{-12}	1×10^{-4}	6×10^{-14}	5×10^{-6}
	Pu 241	I	4×10^{-11}	8×10^{-4}	1×10^{-12}	3×10^{-5}
		S	9×10^{-11}	7×10^{-3}	3×10^{-12}	2×10^{-4}
	Pu 242	I	4×10^{-8}	4×10^{-2}	1×10^{-9}	1×10^{-3}
		S	2×10^{-12}	1×10^{-4}	6×10^{-14}	5×10^{-6}
	Pu 243	I	4×10^{-11}	9×10^{-4}	1×10^{-12}	3×10^{-5}
		S	2×10^{-6}	1×10^{-2}	6×10^{-8}	3×10^{-4}
	Pu 244	I	2×10^{-6}	1×10^{-2}	8×10^{-8}	3×10^{-4}
		S	2×10^{-12}	1×10^{-4}	6×10^{-14}	4×10^{-6}
Polonium (84)	Po 210	I	3×10^{-11}	3×10^{-4}	1×10^{-12}	1×10^{-5}
		S	5×10^{-10}	2×10^{-5}	2×10^{-11}	7×10^{-7}
Potassium (19)	K 42	I	2×10^{-10}	8×10^{-4}	7×10^{-12}	3×10^{-5}
		S	2×10^{-6}	9×10^{-3}	7×10^{-8}	3×10^{-4}
Praseodymium (59)	Pr 142	I	1×10^{-7}	6×10^{-4}	4×10^{-9}	2×10^{-5}
		S	2×10^{-7}	9×10^{-4}	7×10^{-9}	3×10^{-5}
	Pr 143	I	2×10^{-7}	9×10^{-4}	5×10^{-9}	3×10^{-5}
		S	3×10^{-7}	1×10^{-3}	1×10^{-8}	5×10^{-5}
Promethium (61)	Pm 147	I	2×10^{-7}	1×10^{-3}	6×10^{-9}	5×10^{-5}
		S	6×10^{-8}	6×10^{-3}	2×10^{-9}	2×10^{-4}
	Pm 149	I	1×10^{-7}	6×10^{-3}	3×10^{-9}	2×10^{-4}
		S	3×10^{-7}	1×10^{-3}	1×10^{-8}	4×10^{-5}
Protactinum (91)	Pa 230	I	2×10^{-7}	1×10^{-3}	8×10^{-9}	4×10^{-5}
		S	2×10^{-9}	7×10^{-3}	6×10^{-11}	2×10^{-4}
	Pa 231	I	8×10^{-10}	7×10^{-3}	3×10^{-11}	2×10^{-4}
		S	1×10^{-12}	3×10^{-5}	4×10^{-14}	9×10^{-7}
	Pa 233	I	1×10^{-10}	8×10^{-4}	4×10^{-12}	2×10^{-5}
		S	6×10^{-7}	4×10^{-3}	2×10^{-8}	1×10^{-4}
Radium (88)	Ra 223	I	2×10^{-7}	3×10^{-3}	6×10^{-9}	1×10^{-4}
		S	2×10^{-9}	2×10^{-5}	6×10^{-11}	7×10^{-7}
	Ra 224	I	2×10^{-10}	1×10^{-4}	8×10^{-12}	4×10^{-6}
		S	5×10^{-9}	7×10^{-5}	2×10^{-10}	2×10^{-6}
	Ra 226	I	7×10^{-10}	2×10^{-4}	2×10^{-11}	5×10^{-6}
		S	3×10^{-11}	4×10^{-7}	3×10^{-12}	3×10^{-8}
	Ra 228	I	5×10^{-11}	9×10^{-4}	2×10^{-12}	3×10^{-5}
		S	7×10^{-11}	8×10^{-7}	2×10^{-12}	3×10^{-8}
Radon (86)	Rn 220	I	4×10^{-11}	7×10^{-4}	1×10^{-12}	3×10^{-5}
		S	3×10^{-7}	------	1×10^{-8}	------
	Rn 222	I	------	------	------	------
		S	3×10^{-8}	------	3×10^{-9}	------
Rhenium (75)	Re 183	S	3×10^{-6}	2×10^{-2}	9×10^{-8}	6×10^{-4}
	Re 186	I	2×10^{-7}	8×10^{-3}	5×10^{-9}	3×10^{-4}
		S	6×10^{-7}	3×10^{-3}	2×10^{-8}	9×10^{-5}
	Re 187	I	2×10^{-7}	1×10^{-3}	8×10^{-9}	5×10^{-5}
		S	9×10^{-6}	7×10^{-2}	3×10^{-7}	3×10^{-3}
	Re 188	I	5×10^{-7}	4×10^{-2}	2×10^{-8}	2×10^{-3}
		S	4×10^{-7}	2×10^{-3}	1×10^{-8}	6×10^{-5}
Rhodium (45)	Rh 103 M	I	2×10^{-7}	9×10^{-4}	6×10^{-9}	3×10^{-5}
		S	8×10^{-5}	4×10^{-1}	3×10^{-6}	1×10^{-2}
	Rh 105	I	6×10^{-5}	3×10^{-1}	2×10^{-6}	1×10^{-2}
		S	8×10^{-7}	4×10^{-3}	3×10^{-8}	1×10^{-4}
Rubidium (37)	Rb 86	I	5×10^{-7}	3×10^{-3}	2×10^{-8}	1×10^{-4}
		S	3×10^{-7}	2×10^{-3}	1×10^{-8}	7×10^{-5}
		I	7×10^{-8}	7×10^{-4}	2×10^{-9}	2×10^{-5}

Element (Atomic Number)	Isotope		Table I Column 1 Air (uc/ml)	Table I Column 2 Water (uc/ml)	Table II Column 1 Air (uc/ml)	Table II Column 2 Water (uc/ml)
	Rb 87	S	5×10^{-7}	3×10^{-3}	2×10^{-8}	1×10^{-4}
		I	7×10^{-8}	5×10^{-3}	2×10^{-9}	2×10^{-4}
Ruthenium (44)	Ru 97	S	2×10^{-6}	1×10^{-2}	8×10^{-8}	4×10^{-4}
		I	2×10^{-6}	1×10^{-2}	6×10^{-8}	3×10^{-4}
	Ru 103	S	5×10^{-7}	2×10^{-3}	2×10^{-8}	8×10^{-5}
		I	8×10^{-8}	2×10^{-3}	3×10^{-9}	8×10^{-5}
	Ru 105	S	7×10^{-7}	3×10^{-3}	2×10^{-8}	1×10^{-4}
		I	5×10^{-7}	3×10^{-3}	2×10^{-8}	1×10^{-4}
	Ru 106	S	8×10^{-8}	4×10^{-4}	3×10^{-9}	1×10^{-5}
		I	6×10^{-9}	3×10^{-4}	2×10^{-10}	1×10^{-5}
Samarium (62)	Sm 147	S	7×10^{-11}	2×10^{-3}	2×10^{-12}	6×10^{-5}
		I	3×10^{-10}	2×10^{-3}	9×10^{-12}	7×10^{-5}
	Sm 151	S	6×10^{-8}	1×10^{-2}	2×10^{-9}	4×10^{-4}
		I	1×10^{-7}	1×10^{-2}	5×10^{-9}	4×10^{-4}
	Sm 153	S	5×10^{-7}	2×10^{-3}	2×10^{-8}	8×10^{-5}
		I	4×10^{-7}	2×10^{-3}	1×10^{-8}	8×10^{-5}
Scandium (21)	Sc 46	S	2×10^{-7}	1×10^{-3}	8×10^{-9}	4×10^{-5}
		I	2×10^{-8}	1×10^{-3}	8×10^{-10}	4×10^{-5}
	Sc 47	S	6×10^{-7}	3×10^{-3}	2×10^{-8}	9×10^{-5}
		I	5×10^{-7}	3×10^{-3}	2×10^{-8}	9×10^{-5}
	Sc 48	S	2×10^{-7}	8×10^{-4}	6×10^{-9}	3×10^{-5}
		I	1×10^{-7}	8×10^{-4}	5×10^{-9}	3×10^{-5}
Selenium (34)	Se 75	S	1×10^{-6}	9×10^{-3}	4×10^{-8}	3×10^{-4}
		I	1×10^{-7}	8×10^{-3}	4×10^{-9}	3×10^{-4}
Silicon (14)	Si 31	S	6×10^{-6}	3×10^{-2}	2×10^{-7}	9×10^{-4}
		I	1×10^{-6}	6×10^{-3}	3×10^{-8}	2×10^{-4}
Silver (47)	Ag 105	S	6×10^{-7}	3×10^{-3}	2×10^{-8}	1×10^{-4}
		I	8×10^{-8}	3×10^{-3}	3×10^{-9}	1×10^{-4}
	Ag 110 M	S	2×10^{-7}	9×10^{-4}	7×10^{-9}	3×10^{-5}
		I	1×10^{-8}	9×10^{-4}	3×10^{-10}	3×10^{-5}
	Ag 111	S	3×10^{-7}	1×10^{-3}	1×10^{-8}	4×10^{-5}
		I	2×10^{-7}	1×10^{-3}	8×10^{-9}	4×10^{-5}
Sodium (11)	Na 22	S	2×10^{-7}	1×10^{-3}	6×10^{-9}	4×10^{-5}
		I	9×10^{-9}	9×10^{-4}	3×10^{-10}	3×10^{-5}
	Na 24	S	1×10^{-6}	6×10^{-3}	4×10^{-8}	2×10^{-4}
		I	1×10^{-7}	8×10^{-4}	5×10^{-9}	3×10^{-3}
Strontium (38)	Sr 85 M	S	4×10^{-5}	2×10^{-1}	1×10^{-6}	7×10^{-3}
		I	3×10^{-5}	2×10^{-1}	1×10^{-6}	7×10^{-3}
	Sr 85	S	2×10^{-7}	3×10^{-3}	8×10^{-9}	1×10^{-4}
		I	1×10^{-7}	5×10^{-3}	4×10^{-9}	2×10^{-4}
	Sr 89	S	3×10^{-8}	3×10^{-4}	3×10^{-10}	3×10^{-6}
		I	4×10^{-8}	8×10^{-4}	1×10^{-9}	3×10^{-5}
	Sr 90	S	1×10^{-9}	1×10^{-5}	3×10^{-11}	3×10^{-7}
		I	5×10^{-9}	1×10^{-3}	2×10^{-10}	4×10^{-5}
	Sr 91	S	4×10^{-7}	2×10^{-3}	2×10^{-8}	7×10^{-5}
		I	3×10^{-7}	1×10^{-3}	9×10^{-9}	5×10^{-5}
	Sr 92	S	4×10^{-7}	2×10^{-3}	2×10^{-8}	7×10^{-5}
		I	3×10^{-7}	2×10^{-3}	1×10^{-8}	6×10^{-5}
Sulphur (16)	S 35	S	3×10^{-7}	2×10^{-3}	9×10^{-9}	6×10^{-5}
		I	3×10^{-7}	8×10^{-3}	9×10^{-9}	3×10^{-4}
Tantalum (73)	Ta 182	S	4×10^{-8}	1×10^{-3}	1×10^{-9}	4×10^{-5}
		I	2×10^{-8}	1×10^{-3}	7×10^{-10}	4×10^{-5}
Technetium (43)	Tc 96 M	S	8×10^{-5}	4×10^{-1}	3×10^{-6}	1×10^{-2}
		I	3×10^{-5}	3×10^{-1}	1×10^{-6}	1×10^{-2}
	Tc 96	S	6×10^{-7}	3×10^{-3}	2×10^{-8}	1×10^{-4}
		I	2×10^{-7}	1×10^{-3}	8×10^{-9}	5×10^{-5}
	Tc 97 M	S	2×10^{-6}	1×10^{-2}	8×10^{-8}	4×10^{-4}
		I	2×10^{-7}	5×10^{-3}	5×10^{-9}	2×10^{-4}
	Tc 97	S	1×10^{-5}	5×10^{-2}	4×10^{-7}	2×10^{-3}
		I	3×10^{-7}	2×10^{-2}	1×10^{-8}	8×10^{-4}
	Tc 99 M	S	4×10^{-5}	2×10^{-1}	1×10^{-6}	6×10^{-3}
		I	1×10^{-5}	8×10^{-2}	5×10^{-7}	3×10^{-3}
	Tc 99	S	2×10^{-6}	1×10^{-2}	7×10^{-8}	3×10^{-4}
		I	6×10^{-8}	5×10^{-3}	2×10^{-9}	2×10^{-4}
Tellurium (52)	Te 125 M	S	4×10^{-7}	5×10^{-3}	1×10^{-8}	2×10^{-4}
		I	1×10^{-7}	3×10^{-3}	4×10^{-9}	1×10^{-4}
	Te 127 M	S	1×10^{-7}	2×10^{-3}	5×10^{-9}	6×10^{-5}
		I	4×10^{-8}	2×10^{-3}	1×10^{-9}	5×10^{-5}
	Te 127	S	2×10^{-6}	8×10^{-3}	6×10^{-8}	3×10^{-4}
		I	9×10^{-7}	5×10^{-3}	3×10^{-8}	2×10^{-4}

Element (Atomic Number)	Isotope		Table I Column 1 Air (uc/ml)	Table I Column 2 Water (uc/ml)	Table II Column 1 Air (uc/ml)	Table II Column 2 Water (uc/ml)
	Te 129 M	S	$8x10^{-8}$	$1x10^{-3}$	$3x10^{-9}$	$3x10^{-5}$
		I	$3x10^{-8}$	$6x10^{-4}$	$1x10^{-9}$	$2x10^{-5}$
	Te 129	S	$5x10^{-6}$	$2x10^{-2}$	$2x10^{-7}$	$8x10^{-4}$
		I	$4x10^{-6}$	$2x10^{-2}$	$1x10^{-7}$	$8x10^{-4}$
	Te 131 M	S	$4x10^{-7}$	$2x10^{-3}$	$1x10^{-8}$	$6x10^{-5}$
		I	$2x10^{-7}$	$1x10^{-3}$	$6x10^{-9}$	$4x10^{-5}$
	Te 132	S	$2x10^{-7}$	$9x10^{-4}$	$7x10^{-9}$	$3x10^{-5}$
		I	$1x10^{-7}$	$6x10^{-4}$	$4x10^{-9}$	$2x10^{-5}$
Terbium (65)	Tb 160	S	$1x10^{-7}$	$1x10^{-3}$	$3x10^{-9}$	$4x10^{-5}$
		I	$3x10^{-8}$	$1x10^{-3}$	$1x10^{-9}$	$4x10^{-5}$
Thallium (81)	Tl 200	S	$3x10^{-6}$	$1x10^{-2}$	$9x10^{-8}$	$4x10^{-4}$
		I	$1x10^{-6}$	$7x10^{-3}$	$4x10^{-8}$	$2x10^{-4}$
	Tl 201	S	$2x10^{-6}$	$9x10^{-3}$	$7x10^{-8}$	$3x10^{-4}$
		I	$9x10^{-7}$	$5x10^{-3}$	$3x10^{-8}$	$2x10^{-4}$
	Tl 202	S	$8x10^{-7}$	$4x10^{-3}$	$3x10^{-8}$	$1x10^{-4}$
		I	$2x10^{-7}$	$2x10^{-3}$	$8x10^{-9}$	$7x10^{-5}$
	Tl 204	S	$6x10^{-7}$	$3x10^{-3}$	$2x10^{-8}$	$1x10^{-4}$
		I	$3x10^{-8}$	$2x10^{-3}$	$9x10^{-10}$	$6x10^{-5}$
Thorium (90)	Th 227	S	$3x10^{-10}$	$5x10^{-4}$	$1x10^{-11}$	$2x10^{-5}$
		I	$2x10^{-10}$	$5x10^{-4}$	$6x10^{-12}$	$2x10^{-5}$
	Th 228	S	$9x10^{-12}$	$2x10^{-4}$	$3x10^{-13}$	$7x10^{-6}$
		I	$6x10^{-12}$	$4x10^{-4}$	$2x10^{-13}$	$1x10^{-5}$
	Th 230	S	$2x10^{-12}$	$5x10^{-5}$	$8x10^{-14}$	$2x10^{-6}$
		I	$1x10^{-11}$	$9x10^{-4}$	$3x10^{-13}$	$3x10^{-5}$
	Th 231	S	$1x10^{-6}$	$7x10^{-3}$	$5x10^{-8}$	$2x10^{-4}$
		I	$1x10^{-6}$	$7x10^{-3}$	$4x10^{-8}$	$2x10^{-4}$
	Th 232	S	$3x10^{-11}$	$5x10^{-5}$	$1x10^{-12}$	$2x10^{-6}$
		I	$3x10^{-11}$	$1x10^{-3}$	$1x10^{-12}$	$4x10^{-5}$
	Th Natural	S	$6x10^{-11}$	$6x10^{-5}$	$2x10^{-12}$	$2x10^{-6}$
		I	$6x10^{-11}$	$6x10^{-4}$	$2x10^{-12}$	$2x10^{-5}$
	Th 234	S	$6x10^{-8}$	$5x10^{-4}$	$2x10^{-9}$	$2x10^{-5}$
		I	$3x10^{-8}$	$5x10^{-4}$	$1x10^{-9}$	$2x10^{-5}$
Thulium (69)	Tm 170	S	$4x10^{-8}$	$1x10^{-3}$	$1x10^{-9}$	$5x10^{-5}$
		I	$3x10^{-8}$	$1x10^{-3}$	$1x10^{-9}$	$5x10^{-5}$
	Tm 171	S	$1x10^{-7}$	$1x10^{-2}$	$4x10^{-9}$	$5x10^{-4}$
		I	$2x10^{-7}$	$1x10^{-2}$	$8x10^{-9}$	$5x10^{-4}$
Tin (50)	Sn 113	S	$4x10^{-7}$	$2x10^{-3}$	$1x10^{-8}$	$9x10^{-5}$
		I	$5x10^{-8}$	$2x10^{-3}$	$2x10^{-9}$	$8x10^{-5}$
	Sn 125	S	$1x10^{-7}$	$5x10^{-4}$	$4x10^{-9}$	$2x10^{-5}$
		I	$8x10^{-8}$	$5x10^{-4}$	$3x10^{-9}$	$2x10^{-5}$
Tungsten (74)	W 181	S	$2x10^{-6}$	$1x10^{-2}$	$8x10^{-8}$	$4x10^{-4}$
		I	$1x10^{-7}$	$1x10^{-2}$	$4x10^{-9}$	$3x10^{-4}$
	W 185	S	$8x10^{-7}$	$4x10^{-3}$	$3x10^{-8}$	$1x10^{-4}$
		I	$1x10^{-7}$	$3x10^{-3}$	$4x10^{-9}$	$1x10^{-4}$
	W 187	S	$4x10^{-7}$	$2x10^{-3}$	$2x10^{-8}$	$7x10^{-5}$
		I	$3x10^{-7}$	$2x10^{-3}$	$1x10^{-8}$	$6x10^{-5}$
Uranium (92)	U 230	S	$3x10^{-10}$	$1x10^{-4}$	$1x10^{-11}$	$5x10^{-6}$
		I	$1x10^{-10}$	$1x10^{-4}$	$4x10^{-12}$	$5x10^{-6}$
	U 232	S	$1x10^{-10}$	$8x10^{-4}$	$3x10^{-12}$	$3x10^{-5}$
		I	$3x10^{-11}$	$8x10^{-4}$	$9x10^{-13}$	$3x10^{-5}$
	U 233	S	$5x10^{-10}$	$9x10^{-4}$	$2x10^{-11}$	$3x10^{-5}$
		I	$1x10^{-10}$	$9x10^{-4}$	$4x10^{-12}$	$3x10^{-5}$
	U 234	S	$6x10^{-10}$	$9x10^{-4}$	$2x10^{-11}$	$3x10^{-5}$
		I	$1x10^{-10}$	$9x10^{-4}$	$4x10^{-12}$	$3x10^{-5}$
	U 235	S	$5x10^{-10}$	$8x10^{-4}$	$2x10^{-11}$	$3x10^{-5}$
		I	$1x10^{-10}$	$8x10^{-4}$	$4x10^{-12}$	$3x10^{-5}$
	U 236	S	$6x10^{-10}$	$1x10^{-3}$	$2x10^{-11}$	$3x10^{-5}$
		I	$1x10^{-10}$	$1x10^{-3}$	$4x10^{-12}$	$3x10^{-5}$
	U 238	S	$7x10^{-11}$	$1x10^{-3}$	$3x10^{-12}$	$4x10^{-5}$
		I	$1x10^{-10}$	$1x10^{-3}$	$5x10^{-12}$	$4x10^{-5}$
	U 240	S	$2x10^{-7}$	$1x10^{-3}$	$8x10^{-9}$	$3x10^{-5}$
		I	$2x8^{-7}$	$1x10^{-3}$	$6x10^{-9}$	$3x10^{-5}$
	U Natural	S	$1x10^{-10}$	$1x10^{-3}$	$5x10^{-12}$	$3x10^{-5}$
		I	$1x10^{-10}$	$1x10^{-3}$	$5x10^{-12}$	$3x10^{-5}$
Vanadium (23)	V 48	S	$2x10^{-7}$	$9x10^{-4}$	$6x10^{-9}$	$3x10^{-5}$
		I	$6x10^{-8}$	$8x10^{-4}$	$2x10^{-9}$	$3x10^{-5}$
Xenon (54)	Xe 131 M	Sub	$2x10^{-5}$	------	$4x10^{-7}$	------
	Xe 133 M	Sub	$1x10^{-5}$	------	$3x10^{-7}$	------

Element (Atomic Number)	Isotope		Table I Column 1 Air (uc/ml)	Table I Column 2 Water (uc/ml)	Table II Column 1 Air (uc/ml)	Table II Column 2 Water (uc/ml)
	Xe 133	Sub	$1x10^{-5}$	------	$3x10^{-7}$	------
	Xe 135	Sub	$4x10^{-6}$	------	$1x10^{-7}$	------
Ytterbium (70)	Yb 175	S	$7x10^{-7}$	$3x10^{-3}$	$2x10^{-8}$	$1x10^{-4}$
		I	$6x10^{-7}$	$3x10^{-3}$	$2x10^{-8}$	$1x10^{-4}$
Yttrium (39)	Y 88	S	$3x10^{-7}$	$2x10^{-3}$	$6x10^{-9}$	$7x10^{-5}$
		I	$5x10^{-8}$	$3x10^{-3}$	$2x10^{-9}$	$9x10^{-5}$
	Y 90	S	$1x10^{-7}$	$6x10^{-4}$	$4x10^{-9}$	$2x10^{-5}$
		I	$1x10^{-7}$	$6x10^{-4}$	$3x10^{-9}$	$2x10^{-5}$
	Y 91 M	S	$2x10^{-5}$	$1x10^{-1}$	$8x10^{-7}$	$3x10^{-3}$
		I	$2x10^{-5}$	$1x10^{-1}$	$6x10^{-7}$	$3x10^{-3}$
	Y 91	S	$4x10^{-8}$	$8x10^{-4}$	$1x10^{-9}$	$3x10^{-5}$
		I	$3x10^{-8}$	$8x10^{-4}$	$1x10^{-9}$	$3x10^{-5}$
	Y 92	S	$4x10^{-7}$	$2x10^{-3}$	$1x10^{-8}$	$6x10^{-5}$
		I	$3x10^{-7}$	$2x10^{-3}$	$1x10^{-8}$	$6x10^{-5}$
	Y 93	S	$2x10^{-7}$	$8x10^{-4}$	$6x10^{-9}$	$3x10^{-5}$
		I	$1x10^{-7}$	$8x10^{-4}$	$5x10^{-9}$	$3x10^{-5}$
Zinc (30)	Zn 65	S	$1x10^{-7}$	$3x10^{-3}$	$4x10^{-9}$	$1x10^{-4}$
		I	$6x10^{-8}$	$5x10^{-3}$	$2x10^{-9}$	$2x10^{-4}$
	Zn 69 M	S	$4x10^{-7}$	$2x10^{-3}$	$1x10^{-8}$	$7x10^{-5}$
		I	$3x10^{-7}$	$2x10^{-3}$	$1x10^{-8}$	$6x10^{-5}$
	Zn 69	S	$7x10^{-6}$	$5x10^{-2}$	$2x10^{-7}$	$2x10^{-3}$
		I	$9x10^{-6}$	$5x10^{-2}$	$3x10^{-7}$	$2x10^{-3}$
Zirconium (40)	Zr 93	S	$1x10^{-7}$	$2x10^{-2}$	$4x10^{-9}$	$8x10^{-4}$
		I	$3x10^{-7}$	$2x10^{-2}$	$1x10^{-8}$	$8x10^{-4}$
	Zr 95	S	$1x10^{-7}$	$2x10^{-3}$	$4x10^{-9}$	$6x10^{-5}$
		I	$3x10^{-8}$	$2x10^{-3}$	$1x10^{-9}$	$6x10^{-5}$
	Zr 97	S	$1x10^{-7}$	$5x10^{-4}$	$4x10^{-9}$	$2x10^{-5}$
		I	$9x10^{-8}$	$5x10^{-4}$	$3x10^{-9}$	$2x10^{-5}$
Any single radionuclide not listed above with decay mode other than alpha emission or spontaneous fission and with radioactive half-life less than 2 hours.		Sub	$1x10^{-6}$	------	$3x10^{-8}$	------
Any single radionuclide not listed above with decay mode other than Alpha emission or spontaneous fission and with radioactive half-life greater than 2 hours.			$3x10^{-9}$	$9x10^{-5}$	$1x10^{-10}$	$3x10^{-6}$
Any single radionuclide not listed above, which decays by alpha emission or spontaneous fission.			$6x10^{-13}$	$4x10^{-7}$	$2x10^{-14}$	$3x10^{-8}$

Section 3. Footnotes to Table. In any case where there is a mixture in air or water of more than one (1) radionuclide, the limiting values for purposes of this regulation should be determined as follows:

(1) If the identity and concentration of each radionuclide in the mixture are known, the limiting values should be derived as follows: Determine, for each radionuclide in the mixture, the ration between the quantity present in the mixture and the limit otherwise established in this regulation for the specific radionuclide when not in a mixture. The sum of such ratios for all the radionuclides in the mixture may not exceed "1" (i.e., "unity").

EXAMPLE: If radionuclides a, b and c are present in concentrations Ca, Cb, and Cc, and if the applicable MPC's are MPCa, and MPCb, and MPCc respectively, then the concentrations shall be limited so that the following relationship exists:

$$\frac{Ca}{MPCa} + \frac{Cb}{MPCb} + \frac{Cc}{MPCc} \leq 1$$

(2) If either the identity or the concentration of any radionuclide in the mixture is not known, the limiting values for purposes of this regulation shall be:

(a) For purposes of Table I, Col. 1 – 6×10^{-13}.

(b) For purposes of Table I, Col. 2 – 4×10^{-7}.

(c) For purposes of Table II, Col. 1 – 2×10^{-14}.

(d) For purposes of Table II, Col. 2 – 3×10^{-8}.

(3) If any of the conditions specified below are met, the corresponding values specified in this subsection may be used in lieu of those specified in subsection (2) of this section.

(a) If the identity of each radionuclide in the mixture is known but the concentration of one (1) or more of the radionuclides in the mixture is not known, the concentration limit for the mixture is the limit specified in this regulation for the radionuclide in the mixture having the lowest concentration limit; or

(b) If the identity of each radionuclide in

the mixture is not known, but it is known that certain radionuclides specified in this regulation are present in the mixture, the concentration limit for the mixture is the lowest concentration limit specified in this regulation for any radionuclide which is not known to be absent from the mixture; or as specified in the following chart:

Element (atomic number) and isotope	Table I Column 1 Air (uc/ml)	Table I Column 2 Water (uc/ml)	Table II Column 1 Air (uc/ml)	Table II Column 2 Water (uc/ml)
If it is known that (I 129, Table II only), Ra 226, and Ra 228 are not present	----------	3×10^{-6}	----------	1×10^{-7}
If it is known that alpha-emitters and Sr 90, I 129, Pb 210, Ac 227, Ra 228, Pa 230, Pu 241, and Bk 249 are not present	3×10^{-9}	----------	1×10^{-10}	----------
If it is known that alpha-emitters and Pb 210, Ac 227, Ra 228, and Pu 241 are not present	3×10^{-10}	----------	1×10^{-11}	----------
If it is known that alpha-emitters and Ac 227 are not present	3×10^{-11}	----------	1×10^{-12}	----------
If it is known that Ac 227, Th 230, Pa 231, Pu 238, Pu 239, Pu 240, Pu 242, Pu 244, Cm 248, Cf 249, and Cf 251 are not present	3×10^{-12}	----------	1×10^{-13}	----------
If it is known that Sr 90, I 125, I 126, I 129, I 131, (I 133, Table II only), Pb 210, Po 210, At 211, Ra 223, Ra 224, Ra 226, Ac 227, Ra 228, Th 230, Pa 231, Th 232, Th-nat, Cm 248, Cf 254, and Fm 256 are not present	----------	9×10^{-5}	----------	3×10^{-6}
If it is known that Sr 90, I 125, I 126, I 129, (I 131, I 133, Table II only), Pb 210, Po 210, Ra 223, Ra 226, Ra 228, Pa 231, Th-nat, Cm 248, Cf 254, and Fm 256 are not present	----------	6×10^{-5}	----------	2×10^{-6}
If it is known that Sr 90, I 129, (I 125, I 126, I 131, Table II only), Pb 210, Ra 226, Ra 228, Cm 248, and Cf 254 are not present	----------	2×10^{-5}	----------	6×10^{-7}

(4) If the mixture of radionuclides consists of uranium and its daughter products in ore dust prior to chemical processing of the uranium ore, the values specified below may be used in lieu of those determined in accordance with subsection (1) of this section, or those specified in subsections (2) and (3) of this section.

(a) For purposes of Table I, Column I, 1×10^{-10} uc/ml gross alpha activity; or 5×10^{-11} uc/ml natural uranium; or 75 micrograms per cubic meter of air natural uranium.

(b) For purposes of Table II, Column 1, 3×10^{-12} uc/ml gross alpha activity; or 2×10^{-12} uc/ml natural uranium; or 3 micrograms per cubic meter of air natural uranium.

(5) For purposes of this note, a radionuclide may be considered as not present in a mixture if:

(a) The ratio of the concentration of that radionuclide in the mixture (C_a) to the concentration limit for that radionuclide specified in Table II of this regulation (MPC_a) does not exceed 1/10, (i.e.,

$$\frac{C_a}{MPC_a} \leq \frac{1}{10} \quad).$$

ON FORMULA, DRAW PARENTHESIS

(b) The sum of such ratios for all radionuclides considered as not present in the mixture does not exceed 1/4 (i.e.,

$$\frac{C_a}{MPC_a} + \frac{C_b}{MPC_b} + - - - \leq 1/4 \quad).$$

C. HERNANDEZ, M.D., Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 3, 1991
FILED WITH LRC: October 11, 1991 at 3 p.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 21, 1991, at 9 a.m. in the Department for Employment Services, second floor Conference Room, Cabinet for Human Resources Building. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 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: John A. Volpe

(1) Type and number of entities affected: 380 radioactive material licensees are affected by this regulation.

(a) Direct and indirect costs or savings to those affected: There are no direct or indirect costs or savings to radioactive material licensees.

1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: There is no 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 and local revenues is anticipated.

(4) Assessment of alternative methods; reasons why alternatives were rejected: This regulation must be identical to that of the U.S. Nuclear Regulatory Commission and other states. No alternative is available.

(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: There is no conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict.

(6) Any additional information or comments:

TIERING: Was tiering applied? Yes. Tiering was applied because different types of licensees are regulated based on their disposal of radioactive material.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Section 274 of the Atomic Energy Act of 1954, as amended and 10 CFR.

2. State compliance standards. This administrative regulation provides for the concentrations of radioactivity in air and water above natural background.

3. Minimum or uniform standards contained in the federal mandate. Federal and state requirements are identical.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The requirements/responsibilities are identical to those of the U.S. Nuclear Regulatory Commission.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Federal and state standards are identical.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 100:030. Posting and disposal requirements.

RELATES TO: KRS 211.842 to 211.852, 211.990(4)
STATUTORY AUTHORITY: KRS 194.050, 211.090, 211.844

NECESSITY AND FUNCTION: The Cabinet for Human Resources is authorized [empowered] by KRS 211.844 to provide by administrative regulation for the registration and licensing of the possession or use of [any] sources of ionizing or electronic product radiation and to regulate the handling and disposal of radioactive waste. [The purpose of] This administrative regulation [is to] provides for quantity requirements for posting and disposal of radioactive material.

Section 1. Applicability. This administrative regulation shall apply [applies] to persons licensed as authorized by [pursuant to] the cabinet's radiation administrative regulations.

Section 2. Table. The following table provides [for] the quantity requirements for posting and disposal of radioactive material as set forth in 902 KAR 100:020 and 902 KAR 100:021:

QUANTITY BASES FOR POSTING AND DISPOSAL REQUIREMENTS

Material	Micro-curies	Material	Micro-curies
Americium-241	0.01	Osmium-191	100
Antimony-122	100	Osmium-193	100
Antimony-124	10	Palladium-103	100
Antimony-125	10	Palladium-109	100
Arsenic-73	100	Phosphorus-32	10
Arsenic-74	10	Platinum-191	100
Arsenic-76	10	Platinum-193m	100
Arsenic-77	100	Platinum-193	100
Barium-131	10	Platinum-197m	100
Barium-133	10	Platinum 197	100
Barium-140	10	Plutonium-239	0.01
Bismuth-210	1	Polonium-210	0.1
Bromine-82	10	Potassium-42	10
Cadmium-109	10	Praseodymium-142	100
Cadmium-115m	10	Praseodymium-143	100
Cadmium-115	100	Promethium-147	10
Calcium-45	10	Promethium-149	10
Calcium-47	10	Radium-226	0.01
Carbon-14	100	Rhenium-186	100
Cerium-141	100	Rhenium-188	100
Cerium-143	100	Rhodium-103m	100
Cerium-144	1	Rhodium-105	100
Cesium-131	1,000	Rubidium-86	10
Cesium-134m	100	Rubidium-87	10
Cesium-134	1	Ruthenium-97	100
Cesium-135	10	Ruthenium-103	10
Cesium-136	10	Ruthenium-105	10
Cesium-137	10	Ruthenium-106	1
Chlorine-36	10	Samarium-151	10
Chlorine-38	10	Samarium-153	100
Chromium-51	1,000	Scandium-46	10
Cobalt-58m	10	Scandium-47	100
Cobalt-58	10	Scandium-48	10
Cobalt-60	1	Selenium-75	10
Copper-64	100	Silicon-31	100
Dysprosium-165	10	Silver-105	10
Dysprosium-166	100	Silver-110m	1
Erbium-169	100	Silver-111	100
Erbium-171	100	Sodium-22	1
Europium-152 (9.2h)	100	Sodium-24	10
		Strontium-85	10
Europium-152 (13 yr.)	1	Strontium-89	1
		Strontium-90	0.1
Europium-154	1	Strontium-91	10
Europium-155	10	Strontium-92	10
Fluorine-18	1,000	Sulphur-35	100
Gadolinium-153	10	Tantalum-182	10
Gadolinium-159	100	Technetium-96	10
Gallium-72	10	Technetium-97m	100
Germanium-71	100	Technetium-97	100
Gold-198	100	Technetium-99m	100
Gold-199	100	Technetium-99	10
Hafnium-181	10	Tellurium-125m	10
Holmium-166	100	Tellurium-127m	10
Hydrogen-3	1,000	Tellurium-127	100
Indium-113m	100	Tellurium-129m	10
Indium-114m	10	Tellurium-129	100
Indium-115m	100	Tellurium-131m	10
Indium-115	10	Tellurium-132	10
Iodine-125	1	Terbium-160	10
Iodine-126	1	Thallium-200	100
Iodine-129	0.1	Thallium-201	100
Iodine-131	1	Thallium-202	100
Iodine-132	10	Thallium-204	10
Iodine-133	1	Thorium natural	100
Iodine-134	10	Thulium-170	10
Iodine-135	10	Thulium-171	10
Iridium-192	10	Tin-113	10
Iridium-194	100	Tin-125	10
Iron-55	100	Tungsten-181	10
Iron-59	10	Tungsten-185	10
Krypton-85	100	Tungsten-187	100
Krypton-87	10	Uranium (natural)	100
Lanthanum-140	10	Uranium-233	0.01
Lutetium-177	100	Uranium-234	0.01
Manganese-52	10	Uranium-235	0.01
Manganese-54	10	Vanadium-48	10
Manganese-56	10	Xenon-131m	1,000
Mercury-197m	100	Xenon-133	100
Mercury-197	100	Xenon-135	100
Mercury-203	10	Ytterbium-175	100
Molybdenum-99	100	Ytterbium-90	10
Neodymium-147	100	Yttrium-91	10
Neodymium-149	100	Yttrium-92	100
Nickel-59	100	Yttrium-93	100
Nickel-63	10	Zinc-65	10
Nickel-65	100	Zinc-69m	100
Niobium-93m	10	Zinc-69	1,000
Niobium-95	10	Zirconium-93	10
Niobium-97	10	Zirconium-95	10
Osmium-185	10	Zirconium-97	10
Osmium-191m	100		

An [Any] alpha emitting radionuclide not listed above or mixture of alpha emitters of unknown composition 0.01

An [Any] radionuclide other than alpha emitting radionuclides, not listed above or mixtures of beta emitters of unknown composition 0.01

C. HERNANDEZ, M.D., Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: September 27, 1991
FILED WITH LRC: October 11, 1991 at 3 p.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 21, 1991, at 9 a.m. in the Department for Empolyment Services, second floor Conference Room, Cabinet for Human Resources Building. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 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: John A. Volpe
(1) Type and number of entities affected: 380 radioactive material licensees are affected by this regulation.
(a) Direct and indirect costs or savings to those affected: There are no direct or indirect costs or savings to radioactive material licensees.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: There is no 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 and local revenues is anticipated.

(4) Assessment of alternative methods; reasons why alternatives were rejected: This regulation must be identical to that of the U.S. Nuclear Regulatory Commission and other states. No alternative is available.

(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: There is no conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict.

(6) Any additional information or comments:

TIERING: Was tiering applied? Yes. Tiering was applied because different types of licensees are regulated based on their handling of radioactive material.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Section 274 of the Atomic Energy Act of 1954, as amended and 10 CFR.

2. State compliance standards. This administrative regulation provides for quantity requirements for posting and disposal of radioactive material.

3. Minimum or uniform standards contained in the federal mandate. Federal and state requirements are identical.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The requirements/responsibilities are identical to those of the U.S. Nuclear Regulatory Commission.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Federal and state standards are identical.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 100:035. Receiving radioactive material and special form tests.

RELATES TO: KRS 211.842 to 211.852, 211.990(4)

STATUTORY AUTHORITY: KRS 194.050, 211.090, 211.844

NECESSITY AND FUNCTION: The Cabinet for Human Resources is authorized [empowered] by KRS 211.844 to provide by administrative regulation for the registration and licensing of the possession or use of [any] sources of ionizing or electronic product radiation and the handling and disposal of radioactive waste. [The purpose of] This administrative regulation [is to] provides procedures for picking up, and receiving and opening packages containing radioactive material and describe the tests for special form licensed material.

Section 1. Applicability. This administrative regulation shall apply [applies] to [all] persons receiving licensed radioactive material and use of special form material.

Section 2. Procedures for Picking Up, Receiving and Opening Packages. (1) Each licensee who expects to receive a package containing quantities of radioactive material in excess of the A_2 quantities specified in 902 KAR 100:070, Section 21 shall:

(a) If the package is to be delivered to the licensee's facility by the carrier, make arrangements to receive the package when it is offered for delivery by the carrier; or

(b) If the package is to be picked up by the licensee at the carrier's terminal, make arrangements to receive notification from the carrier of the arrival of the package, upon [at the time of] arrival.

(c) Each licensee who picks up a package of radioactive material from a carrier's terminal shall pick up the package expeditiously upon receipt of notification from the carrier of its arrival.

(2)(a) Each licensee, upon receipt of a package of radioactive material, shall monitor the external surfaces of the package for radioactive contamination caused by leakage of the radioactive contents. The monitoring shall be performed as soon as practicable after receipt, but no later than three (3) hours after the package is received at the licensee's facility if received during the licensee's normal working hours or eighteen (18) hours if received after normal working hours. Such monitoring need not be performed on:

1. Packages containing less than one (1) millicurie of beta [and/]or gamma emitting radioactive material or ten (10) microcuries of alpha emitting radioactive material;

2. Packages containing no more than ten (10) millicuries of radioactive material consisting solely of tritium, carbon-14, sulfur-35, or iodine-125;

3. Packages containing only radioactive material as gases or in special form;

4. Packages containing only radioactive material in other than liquid form (including Mo-99/Tc-99m generators) and less than the A_2 quantity specified in 902 KAR 100:070, Section 21; and

5. Packages containing only radionuclides with half-lives of less than thirty (30) days and a total quantity of no more then 100 millicuries.

(b) If removable radioactive contamination in excess of 0.01 microcurie (22,000 disintegrations per minute) per 100 square centimeters of package surface is found on the external surfaces of the package, the licensee shall immediately notify, by telephone and telegraph, the final delivering carrier and the cabinet.

(3)(a) Each licensee, upon receipt of a

package containing quantities of radioactive material in excess of the A_2 quantities specified in 902 KAR 100:070, Section 21, other than those transported by exclusive use vehicle, shall monitor the radiation levels external to the package. The package shall be monitored as soon as practicable after receipt, but no later than three (3) hours after the package is received at the licensee's facility if received during the licensee's normal working hours, or eighteen (18) hours if received after normal working hours.

(b) If radiation levels are found on the external surface of the package in excess of 200 millirems per hour, or at one (1) meter from the external surface of the package in excess of ten (10) millirems per hour, the licensee or registrant shall immediately notify, by telephone and telegraph, the final delivering carrier and the cabinet.

(4) Each licensee or registrant shall establish and maintain procedures for safely opening packages in which radioactive material is received, [and shall] assure that such procedures are followed and that due consideration is given to special instructions for the type of package being opened.

Section 3. Tests for Special Form Licensed Material. The following tests shall apply to special form licensed material for transportation.

(1) Free drop - a free drop through a distance of thirty (30) feet onto a flat, essentially unyielding, horizontal surface, striking the surface in such a position as to suffer maximum damage.

(2) Percussion - impact of the flat circular end of a one (1) inch diameter steel rod weighing three (3) pounds, dropped through a distance of forty (40) inches. The capsule or material shall be placed on a sheet of lead, of hardness number 3.5 to 4.5 on the Vickers scale, and not more than one (1) inch thick, supported by a smooth essentially unyielding surface.

(3) Heating - heating in air to a temperature of 1,475 degrees Fahrenheit and remaining at that temperature for a period of ten (10) minutes.

(4) Immersion - immersion for twenty-four (24) hours in water at room temperature. The water shall be at pH 6-pH 8, with a maximum conductivity of ten (10) micromhos per centimeter.

C. HERNANDEZ, M.D., Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: September 27, 1991
FILED WITH LRC: October 11, 1991 at 3 p.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 21, 1991, at 9 a.m. in the Department for Employment Services, second floor Conference Room, Cabinet for Human Resources Building. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 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: John A. Volpe

(1) Type and number of entities affected: 380 radioactive material licensees are affected by this regulation.

(a) Direct and indirect costs or savings to those affected: There are no direct or indirect costs or savings to radioactive material licensees.

1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: There is no 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 and local revenues is anticipated.

(4) Assessment of alternative methods; reasons why alternatives were rejected: This regulation must be identical to that of the U.S. Nuclear Regulatory Commission and other states. No alternative is available.

(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: There is no conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict.

(6) Any additional information or comments:

TIERING: Was tiering applied? Yes. Tiering was applied because different types of licensees are regulated based on their handling of radioactive material.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Section 274 of the Atomic Energy Act of 1954, as amended and 10 CFR.

2. State compliance standards. This administrative regulation provides procedures for picking up, receiving and opening packages containing radioactive material and describes the tests for special form licensed material.

3. Minimum or uniform standards contained in the federal mandate. Federal and state requirements are identical.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The requirements/responsibilities are identical to those of the U.S. Nuclear Regulatory Commission.

5. Justification for the imposition of the stricter standard, or additional or different

responsibilities or requirements. Federal and state standards are identical.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 100:045. Exemptions.

RELATES TO: KRS 211.842 to 211.852, 211.990(4)
STATUTORY AUTHORITY: KRS 194.050, 211.090, 211.844
NECESSITY AND FUNCTION: The Cabinet for Human Resources is authorized [empowered] by KRS 211.844 to provide by administrative regulation for the registration and licensing of the possession or use of [any] sources of ionizing or electronic product radiation and the handling and disposal of radioactive waste. [The purpose of] This administrative regulation [is to] provides exemptions for certain uses of radioactive material and specific devices containing radioactive material.

Section 1. Applicability. This administrative regulation exempts certain uses of radioactive material and devices containing radioactive material from the requirements [provisions] of these administrative regulations.

Section 2. Exemption of Source Material. (1) A [Any] person is exempt from these administrative regulations to the extent that the [such] person receives, possesses, uses, or transfers source material in a [any] chemical mixture, compound, solution, or alloy in which the source material is by weight less than one-twentieth of one (1) percent (0.05 percent) of the mixture, compound, solution, or alloy.

(2) A [Any] person is exempt from these administrative regulations to the extent that the [such] person receives, possesses, uses, or transfers unrefined and unprocessed ore containing source material; [provided that,] except that, as authorized in a specific license, the [such] person shall not refine or possess the [such] ore.

(3) A [Any] person is exempt from these administrative regulations to the extent that the [such] person receives, possesses, uses, or transfers:

(a) Any quantities of thorium contained in:

1. Incandescent gas mantles;
2. Vacuum tubes;
3. Welding rods;
4. Electric lamps for illuminating purposes except [provided] that each lamp does not contain more than fifty (50) milligrams of thorium;
5. Germicidal lamps, sun lamps, and lamps for outdoor or industrial lighting except [provided] that each lamp shall [does] not contain more than two (2) grams of thorium;
6. Rare earth metals and compounds, mixtures, and products containing not more than 0.25 percent by weight thorium, uranium, or any combination of these; or
7. Personal neutron dosimeters, except [provided] that each dosimeter shall [does] not contain more than fifty (50) milligrams of thorium.

(b) Source material contained in the following products:

1. Glazed ceramic tableware, except [provided] that the glaze contains not more than twenty (20) percent by weight source material;
2. Glassware containing not more than ten (10) percent by weight source material; but not including commercially manufactured glass brick, pane glass, ceramic tile, or other glass, glass enamel, or ceramic used in construction;
3. Glass enamel or glass enamel frit containing not more than ten (10) percent by weight source material imported or ordered for importation into the United States, or initially distributed by manufacturers in the United States, before July 25, 1983;
4. Piezoelectric ceramic containing not more than two (2) percent by weight source material.

(c) Photographic film, negatives, and prints containing uranium or thorium.

(d) A [Any] finished product or part fabricated of, or containing, tungsten-thorium or magnesium-thorium alloys, except [provided] that the thorium content of the alloy shall [does] not exceed four (4) percent by weight and that the exemption contained in this paragraph shall not be deemed to authorize the chemical, physical, or metallurgical treatment or processing of the [any such] product or part.

(e) Uranium contained in counterweights installed in aircraft, rockets, projectiles, and missiles, or stored or handled in connection with installation or removal of the [such] counterweights; provided that:

1. The counterweights are manufactured in accordance with a specific license issued by the U.S. Nuclear Regulatory Commission authorizing distribution by the licensee as authorized by [pursuant to] 10 CFR Part 40;
2. Each counterweight has been impressed with following legend clearly legible through any plating or other covering: "DEPLETED URANIUM;"
3. Each counterweight is durably and legibly labeled or marked with identification of the manufacturer, and the statement: "UNAUTHORIZED ALTERATIONS PROHIBITED;" and
4. The exemption contained in this subsection shall not be deemed to authorize the chemical, physical, or metallurgical treatment or processing of the [such] counterweights other than repair or restoration of a [any] plating or other covering.

(f) Natural or depleted uranium metal used as shielding constituting part of a [any] shipping container; provided that:

1. The shipping container is conspicuously and legibly impressed with the legend "CAUTION - RADIOACTIVE SHIELDING - URANIUM"; and
2. The uranium metal is encased in mild steel or equally fire resistant metal of minimum wall thickness of one-eighth inch (3.2mm).

(g) Thorium contained in finished optical lenses, except [provided] that each lens shall [does] not contain more than thirty (30) percent by weight of thorium. The exemption contained in this subsection shall not be deemed to authorize either:

1. The shaping, grinding, or polishing of [such] lens or manufacturing processes other than the assembly of [such] lens into optical systems and devices without any alteration of the lens; or
2. The receipt, possession, use, or transfer of thorium contained in contact lenses, or in spectacles, or in eyepieces in binoculars or other optical instruments.

(h) Uranium contained in detector heads for use in fire detection units, if [provided that]

each detector head contains not more than 0.005 microcurie of uranium.

(i) Thorium contained in a [any] finished aircraft engine part containing nickel-thoria alloy, if [provided that]:

1. The thorium is dispersed in the nickel-thoria alloy in the form of finely divided thoria (thorium dioxide); and

2. The thorium content in the nickel-thoria alloy does not exceed four (4) percent by weight.

(4) The exemptions in this section of this administrative regulation do not authorize the manufacture [of any] of the products described herein.

Section 3. Exemption of Radioactive Material Other than Source Material. (1) Exempt concentrations.

(a) Except as provided in paragraph (b) of this subsection, a [any] person is exempt from these administrative regulations to the extent that the [such] person receives, possesses, uses, transfers, owns, or acquires products or materials containing radioactive material in concentrations not in excess of those listed in 902 KAR 100:085.

(b) No person may introduce radioactive material into a product or material knowing or having reason to believe that it will be transferred to persons exempt under paragraph (a) of this subsection or equivalent regulations of the U.S. Nuclear Regulatory Commission or an [any] agreement state, except in accordance with a license issued as authorized by [pursuant to] these administrative regulations.

(2) Certain items containing radioactive material. Except for persons who apply radioactive material to, or persons who incorporate radioactive material into the following products, a [any] person is exempt from these administrative regulations to the extent that he receives, possesses, uses, transfers, owns, or acquires the following products:

(a) Timepieces or hand or dials containing not more than the following specified quantities of radioactive material and not exceeding the following specified levels of radiation:

1. Twenty-five (25) millicuries of tritium per timepiece;

2. Five (5) millicuries of tritium per hand; or

3. Fifteen (15) millicuries of tritium per dial (bezels if [when] used shall be considered as part of the dial).

4. 100 microcuries of promethium-147 per watch or 200 microcuries of promethium-147 per [any] other timepiece;

5. Twenty (20) microcuries of promethium-147 per watch hand or forty (40) microcuries of promethium-147 per other timepiece hand; or

6. Sixty (60) microcuries of promethium-147 per watch dial or 120 microcuries of promethium-147 per other timepiece dial (bezels if [when] used shall be considered as part of the dial).

7. The radiation dose rate from hands and dials containing promethium-147 shall [will] not exceed, when measured through fifty (50) milligrams per square centimeter of absorber:

a. For wrist watches, one-tenth (0.1) millirad per hour at ten (10) centimeters from a [any] surface;

b. For pocket watches, one-tenth (0.1) millirad per hour at one (1) centimeter from a [any] surface;

c. For [any] other timepiece, two-tenths (0.2) millirad per hour at ten (10) centimeters from a [any] surface.

8. One (1) microcurie of radium-226 per timepiece in timepieces acquired prior to January 3, 1986.

(b) Lock illuminators containing not more than fifteen (15) millicuries of tritium or not more than two (2) millicuries of promethium-147 installed in automobile locks. The radiation dose rate from each lock illuminator containing promethium-147 shall [will] not exceed one (1) millirad per hour at one (1) centimeter from a [any] surface when measured through fifty (50) milligrams per square centimeter of absorber.

(c) Precision balances containing not more than one (1) millicurie of tritium per balance or not more than five-tenths (0.5) millicurie of tritium per balance part.

(d) Automobile shift quadrants containing not more than twenty-five (25) millicuries of tritium.

(e) Marine compasses containing not more than 750 millicuries of tritium gas and other marine navigational instruments containing not more than 250 millicuries of tritium gas.

(f) Thermostat dials and pointers containing not more than twenty-five (25) millicuries of tritium per thermostat.

(g) Electron tubes; if [provided, that] each tube does not contain more than one (1) of the following specified quantities of radioactive material:

1. 150 millicuries of tritium per microwave receiver protector tube or ten (10) millicuries of tritium per [any] other electron tube.

2. One (1) microcurie of cobalt-60.

3. Five (5) microcuries of nickel-63.

4. Thirty (30) microcuries of krypton-85.

5. Five (5) microcuries of cesium-137.

6. Thirty (30) microcuries of promethium-147; and [provided further], that the radiation dose rate due to radioactive material contained in each electron tube does not exceed one (1) millirad per hour at one (1) centimeter from a [any] surface when measured through seven (7) milligrams per square centimeter of absorber. For purposes of this subparagraph, "electron tubes" include spark gap tubes, power tubes, gas tubes including glow lamps, receiving tubes, microwave tubes, indicator tubes, pickup tubes, radiation detection tubes, and [any] other completely sealed tubes that are [is] designed to conduct or control electrical currents.

(h) Ionizing radiation measuring instruments containing, for purposes of internal calibration or standardization, one (1) or more sources of radioactive material not exceeding the applicable quantity set forth in these administrative regulations except [provided] that:

1. Each source contains no more than one (1) exempt quantity set forth in 902 KAR 100:080;

2. Each instrument contains no more than ten (10) exempt quantities. For purposes of this requirement, an instrument's source(s) may contain either one (1) or different types of radionuclides and an individual exempt quantity may be composed of fractional parts of one (1) or more of the exempt quantities in 902 KAR 100:080, except [provided] that the sum of the [such] fractions shall not exceed unity; and

3. For purposes of this paragraph, 0.05 microcuries of americium-241 is considered an exempt quantity under 902 KAR 100:080.

(i) Spark cap irradiators containing not more than one (1) microcurie of cobalt-60 per spark gap irradiator for use in electrically ignited fuel oil burners having a firing rate of at least three (3) gallons per hour.

(3) Resins containing scandium 46 and designed for sand consolidation in oil wells. A [Any] person is exempt from these administrative regulations to the extent that the [such] person receives, possesses, uses, transfers, owns, or acquires synthetic plastic resins containing scandium-46 which are designed for sand consolidation in oil wells. The [Such] resins shall have been manufactured or imported in accordance with a specific license issued by the U.S. Nuclear Regulatory Commission, or shall have been manufactured in accordance with the specifications contained in a specific license issued by the cabinet or an [any] agreement state to the manufacturer of the [such] resins as authorized by the [pursuant to] licensing requirements equivalent to those in Section 32.16 and 32.17 of 10 CFR Part 32 of the regulations of the U.S. Nuclear Regulatory Commission. This exemption does not authorize the manufacture of [any] resins containing scandium-46.

(4) Gas and aerosol detectors containing radioactive material. Except for persons who manufacture, process, or produce gas and aerosol detectors containing radioactive material, a [any] person is exempt from these administrative regulations to the extent that the [such] person receives, possesses, uses, transfers, owns, or acquires radioactive material in gas and aerosol detectors designed to protect life or property from fires and airborne hazards provided:

(a) Detectors containing by-product material shall have been manufactured, imported, or transferred in accordance with a specific license issued by the U.S. Nuclear Regulatory Commission as authorized by [pursuant to] Section 32.26 of 10 CFR, Part 32, which license authorizes the transfer of the detectors to persons who are exempt from regulatory requirements; or

(b) Detectors containing other than by-product, source, or special nuclear material shall have been manufactured or transferred in accordance with a specific license issued by the cabinet or an [any] agreement state authorized by [pursuant to] licensing requirements equivalent to those set forth in 902 KAR 100:058, which license authorizes the transfer of the detectors to persons who are exempt from regulatory requirements.

(5) Self-luminous products containing radioactive material.

(a) Tritium, krypton-85, or promethium-147. Except for persons who manufacture, process, or produce self-luminous products containing tritium, krypton-85, or promethium-147, a [any] person is exempt from these administrative regulations to the extent that the [such] person receives, possesses, uses, transfers, owns, or acquires tritium, krypton-85, or promethium-147 in self-luminous products manufactured, processed, produced, imported, or transferred in accordance with a specific license issued by the U.S. Nuclear Regulatory Commission as authorized by [pursuant to] Section 32.22 of 10 CFR, Part 32, which license authorizes the transfer of the product to persons who are exempt from regulatory requirements. The exemption in this subsection does not apply to tritium, krypton-85, or promethium-147, used in products for frivolous purposes or in toys or adornments.

(b) Radium-226. A [Any] person is exempt from these administrative regulations to the extent that the [such] person receives, possesses, uses, transfers, or owns articles containing less than one-tenth (0.1) microcurie of radium-226 which were acquired prior to January 3, 1986.

(6) Exempt quantities.

(a) Except as provided in paragraphs (c) and (d) of this subsection, a [any] person is exempt from these administrative regulations to the extent that the [such] person receives, possesses, uses, transfers, owns, or acquires radioactive material in individual quantities each of which does not exceed the applicable quantity set forth in 902 KAR 100:080.

(b) A [Any] person who possesses radioactive material received or acquired under the general license formerly provided in RH-8, Section 3(a)(2) of the Kentucky State Board of Health "RH" Regulations, effective October, 1968, is exempt from the requirements for a license set forth in these administrative regulations to the extent that the [such] person possesses, uses, transfers or owns the [such] radioactive material. The [Such] exemption does not apply for radium-226.

(c) Paragraphs (a) and (b) of this subsection do not authorize the production, packaging or repackaging of radioactive material for purposes of commercial distribution, or the incorporation of radioactive material into products intended for commercial distribution.

(d) No person may, for purposes of commercial distribution, transfer radioactive material in the individual quantities set forth in 902 KAR 100:080 knowing or having reason to believe that the [such] quantities of radioactive material will be transferred to persons exempt under this subsection or equivalent regulations of the U.S. Nuclear Regulatory Commission or an [any] agreement state, except in accordance with a specific license issued by the U.S. Nuclear Regulatory Commission as authorized by [pursuant to] Section 32.18 of 10 CFR, Part 32, or by the cabinet, which license states that the radioactive material may be transferred by the licensee to persons exempt under this paragraph or the equivalent regulations of the U.S. Nuclear Regulatory Commission or an [any] agreement state.

C. HERNANDEZ, M.D., Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: September 27, 1991
FILED WITH LRC: October 11, 1991 at 3 p.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 21, 1991, at 9 a.m. in the Department for Employment Services, second floor Conference Room, Cabinet for Human Resources Building. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 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: John A. Volpe

(1) Type and number of entities affected: 380

radioactive material licensees are affected by this regulation.

(a) Direct and indirect costs or savings to those affected: There are no direct or indirect costs or savings to radioactive material licensees.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: There is no 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 and local revenues is anticipated.

(4) Assessment of alternative methods; reasons why alternatives were rejected: This regulation must be identical to that of the U.S. Nuclear Regulatory Commission and other states. No alternative is available.

(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: There is no conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict.

(6) Any additional information or comments:

TIERING: Was tiering applied? Yes. Tiering was applied because different types of licensees are regulated based on their use of radioactive material.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Section 274 of the Atomic Energy Act of 1954, as amended and 10 CFR.

2. State compliance standards. This administrative regulation provides exemptions for certain uses of radioactive material and specific devices containing radioactive material.

3. Minimum or uniform standards contained in the federal mandate. Federal and state requirements are identical.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The requirements/responsibilities are identical to those of the U.S. Nuclear Regulatory Commission.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Federal and state standards are identical.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 100:052. Broad scope licenses.

RELATES TO: KRS 211.842 to 211.852, 211.990(4)

STATUTORY AUTHORITY: KRS 194.050, 211.090, 211.844

NECESSITY AND FUNCTION: The Cabinet for Human Resources is authorized [empowered] by KRS 211.844 to provide by administrative regulation for the registration and licensing of the possession or use of [any] sources of ionizing or electronic product radiation and the handling and disposal of radioactive waste. [The purpose of] This administrative regulation [is to] prescribes requirements for the issuance of specific licenses of broad scope for radioactive material.

Section 1. Applicability. This administrative regulation establishes requirements for specific licensees to possess, use or transfer radioactive material for licenses of broad scope.

Section 2. Types of Specific Licenses of Broad Scope. (1) A "Type A specific license of broad scope" is a specific license authorizing receipt, acquisition, ownership, possession, use and transfer of a [any] chemical or physical form of the radioactive material specified in the license, but not exceeding quantities specified in the license, for any authorized purpose. The quantities specified are usually in the multicurie range.

(2) A "Type B specific license of broad scope" is a specific license authorizing receipt, acquisition, ownership, possession, use and transfer of a [any] chemical or physical form of radioactive material specified in 902 KAR 100:090, relating to broad license quantities, for any authorized purpose. The possession limit for a Type B broad license, if only one (1) radionuclide is possessed [thereunder], is the quantity specified for that radionuclide in Column I of the table in Section 2 of 902 KAR 100:090. If two (2) or more radionuclides are possessed [thereunder], the possession limit for each is determined as follows: for each radionuclide, determine the ratio of the quantity possessed to the applicable quantity specified in Column I of the table in Section 2 of 902 KAR 100:090 for that radionuclide. The sum of the ratios for all radionuclides possessed under the license shall not exceed unity.

(3) A "Type C specific license of broad scope" is a specific license authorizing receipt, acquisition, ownership, possession, use and transfer of a [any] chemical or physical form of radioactive material specified in 902 KAR 100:090, relating to broad licensed quantities, for any authorized purpose. The possession limit for a Type C broad license, if only one (1) radionuclide is possessed [thereunder], is the quantity specified for that radionuclide in Column II of the table in Section 2 of 902 KAR 100:090. If two (2) or more radionuclides are possessed [thereunder], the possession limit is determined for each as follows: for each radionuclide determine the ratio of the quantity possessed to the applicable quantity specified in Column II of the table in Section 2 of 902 KAR 100:090 for that radionuclide. The sum of

the ratios for all radionuclides possessed under the license shall not exceed unity.

Section 3. Requirements for the Issuance of a Type A Specific License of Broad Scope. An application for a Type A specific license of broad scope will be approved if:

(1) The applicant satisfies the general requirements specified in 902 KAR 100:040;

(2) The applicant has engaged in a reasonable number of activities involving the use of radioactive material; and

(3) The applicant has established administrative controls and requirements [provisions] relating to organization, [and] management, procedures, recordkeeping, material control and accounting, and management review that are necessary to assure safe operations, including:

(a) The establishment of a radiation safety committee composed of [such] persons, such as a radiation safety officer, a representative of management, and persons trained and experienced in the safe use of radioactive materials;

(b) The appointment of a radiation safety officer who is qualified by training and experienced in radiation protection, [and] who is available for advice and assistance on radiological safety matters; and

(c) The establishment of appropriate administrative procedures to assure control of procurement and use of radioactive material; completion of safety evaluation of proposed uses of radioactive material which take into consideration [such] matters, such as the adequacy of facilities and equipment, training and experience of the user, and the operating or handling procedures; and review, approval, and recording by the radiation safety committee of safety evaluations of proposed uses prepared in accordance with this subsection prior to use of the radioactive material.

Section 4. Requirements for the Issuance of a Type B Specific License of Broad Scope. An application for a Type B specific license of broad scope will be approved if:

(1) The applicant satisfies the general requirements specified in 902 KAR 100:040; and

(2) The applicant has established administrative controls and provisions relating to organization, [and] management, procedures, recordkeeping, material control and accounting, and management review that are necessary to assure safe operations, including:

(a) The appointment of a radiation safety officer who is qualified by training and experience in radiation protection, [and] who is available for advice and assistance on radiological safety matters; and

(b) The establishment of appropriate administrative procedures to assure control of procurement and use of radioactive material; completion of safety evaluations or proposed uses of radioactive materials which take into consideration such matters as the adequacy of facilities and equipment, training and experience of the user, [and] the operating or handling procedures; and review, approval and recording by the radiation safety officer of safety evaluations of proposed uses prepared in accordance with this subsection prior to use of the radioactive material.

Section 5. Requirements for the Issuance of a Type C Specific License of Broad Scope. An application for a Type C specific license of broad scope shall [will] be approved if:

(1) The applicant satisfies the general requirements specified in 902 KAR 100:040;

(2) The applicant submits a statement that radioactive material will be used only by, or under the direct supervision of, individuals who have received:

(a) A college degree at the bachelor level, or equivalent training and experience, in the physical or biological sciences or in engineering; [and]

(b) At least forty (40) hours of training and experience in the safe handling of radioactive materials, [and in the] characteristics of ionizing radiation, units of radiation dose and quantities, radiation detection instrumentation, [and] biological hazards of exposure to radiation appropriate to the type and forms of radioactive material to be used; and

(3) The applicant has established administrative controls and provisions relating to procurement of radioactive material, procedures, recordkeeping, material control and accounting, and management review necessary to assure safe operations.

Section 6. Prohibited Acts and Conditions for Specific Licenses of Broad Scope. (1) Unless otherwise specifically authorized by these administrative regulations, persons licensed under this administrative regulation shall not:

(a) Conduct tracer studies in the environment involving direct release of radioactive material;

(b) Receive, acquire, own, possess, use, or transfer, devices containing 100,000 curies or more of radioactive material in sealed sources used for irradiation of materials;

(c) Conduct activities for which a specific license issued by the cabinet under 902 KAR 100:051 or 902 KAR 100:058 is required; or

(d) Add or cause the addition of radioactive material to a [any] food, beverage, cosmetic, drug, or other product designed for ingestion or inhalation by, or application to, a human being.

(2) Each Type A specific license of broad scope issued under this administrative regulation shall be subject to the condition that radioactive material possessed under the license may only be used by, or under the direct supervision of, individuals approved by the licensee's radiation safety committee.

(3) Each Type B specific license of broad scope issued under this administrative regulation shall be subject to the condition that radioactive material possessed under the license may only be used by, or under the direct supervision of, individuals approved by the licensee's radiation safety officer.

(4) Each Type C specific license of broad scope issued under this administrative regulation shall be subject to the condition that radioactive material possessed under this license may only be used by, or under the direct supervision of, individuals who satisfy the requirements of Section 5 of this administrative regulation.

C. HERNANDEZ, M.D., Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: September 27, 1991
FILED WITH LRC: October 11, 1991 at 3 p.m.
PUBLIC HEARING: A public hearing on this

regulation has been scheduled for November 21, 1991, at 9 a.m. in the Department for Employment Services, second floor Conference Room, Cabinet for Human Resources Building. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 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: John A. Volpe

(1) Type and number of entities affected: 5 radioactive material licensees are affected by this regulation.

(a) Direct and indirect costs or savings to those affected: There are no direct or indirect costs or savings to radioactive material licensees.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: There is no 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 and local revenues is anticipated.

(4) Assessment of alternative methods; reasons why alternatives were rejected: This regulation must be identical to that of the U.S. Nuclear Regulatory Commission and other states. No alternative is available.

(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: There is no conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict.

(6) Any additional information or comments:

TIERING: Was tiering applied? Yes. Tiering was applied because different types of licensees are regulated based on their use of radioactive material.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Section 274 of the Atomic Energy Act of 1954, as amended and 10 CFR.

2. State compliance standards. This administrative regulation prescribes requirements for the issuance of specific licenses of broad scope for radioactive material.

3. Minimum or uniform standards contained in the federal mandate. Federal and state requirements are identical.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The requirements/responsibilities are identical to those of the U.S. Nuclear Regulatory Commission.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Federal and state standards are identical.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 100:058. Specific licenses to manufacture, assemble, repair, or distribute products.

RELATES TO: KRS 211.842 to 211.852, 211.990(4)

STATUTORY AUTHORITY: KRS 194.050, 211.090, 211.844

NECESSITY AND FUNCTION: The Cabinet for Human Resources is authorized [empowered] by KRS 211.844 to regulate the possession or use of [any] sources of ionizing or electronic product radiation and the handling and disposal of radioactive waste. [The purpose of] This administrative regulation [is to] prescribes requirements for the issuance of specific licenses to persons who manufacture, assemble, repair, or distribute commodities, products, or devices which contain radioactive material.

Section 1. Applicability. The requirements in this administrative regulation shall apply to [all] licensees who manufacture, assemble, repair, or distribute commodities, products, or devices.

Section 2. Licensing the Introduction of Radioactive Material into Products in Exempt Concentrations. In addition to the requirements set forth in 902 KAR 100:040, Section 5, a specific license authorizing the introduction of radioactive material into a product or material owned by or in the possession of the licensee or another to be transferred to persons exempt under 902 KAR 100:045, Section 3(1)(a) shall be issued if:

(1) The applicant submits a description of the product or material into which the radioactive material will be introduced, intended use of the radioactive material, [and] the product into which it is introduced, method of introduction, initial concentration of the radioactive material in the product or material, control methods to assure that no more than the specified concentration is introduced into the product or material, estimated time interval between introduction and transfer of the product or material and estimated concentrations of the radioactive material in the product or material when [at the time of] transferred; [and]

(2) The applicant provides reasonable assurance that the concentrations of the radioactive material when [at the time of] transferred will not exceed the concentrations in 902 KAR 100:085, relating to concentrations of certain radionuclides, that reconcentration of the radioactive material in concentrations exceeding those in 902 KAR 100:085 is not

likely, that use of lower concentrations is not feasible, and that the product or material is not likely to be incorporated in a [any] food, beverage, cosmetic, drug or other commodity or product designed for ingestion or inhalation by, or application to, a human being; and [.]

(3) Each person licensed under this administrative regulation shall file an annual report with the cabinet which shall identify the type and quantity of each product or material into which radioactive material has been introduced during the reporting period; name and address of the person who owned or possessed the product or material, into which radioactive material has been introduced, at the time of introduction; the type and quantity of radionuclide introduced into each such product or material; and the initial concentrations of the radionuclide in the product or material when [at the time of transfer of] the radioactive material is transferred by the licensee. If no transfers of radioactive material have been made as authorized by [pursuant to] this administrative regulation during the reporting period, the report shall so indicate. The report shall cover the year ending June 30, and shall be filed within thirty (30) days thereafter.

Section 3. Licensing the Manufacture and Distribution of Devices to Persons Generally Licensed under 902 KAR 100:050. An application for a specific license to distribute certain devices containing radioactive material, excluding special nuclear material, to persons generally licensed shall be issued only if:

(1) The applicant submits sufficient information relating to the design, manufacture, prototype testing, quality control, labels, proposed uses, installation, servicing, leak testing, operating and safety instructions and potential hazards of the device to provide reasonable assurance that:

(a) Under accident conditions, such as fire and explosion associated with handling, storage, and use of the device, it is unlikely that a [any] person would receive an external radiation dose or dose commitment in excess of the following organ doses:

1. Whole body; head and trunk; active blood-forming organs; gonads; or lens of eye - 15 rems

2. Hands and forearms; feet and ankles; localized areas of skin averaged over areas no larger than one (1) square centimeter - 200 rems

3. Other organs - 50 rems;

(b) Under ordinary conditions of handling, storage, and use of the device, the radioactive material contained in the device shall [will] not be released or inadvertently removed from the device, and it is unlikely that a [any] person will receive in a [any] period of one (1) calendar quarter a dose in excess of ten (10) percent of the limits specified in 902 KAR 100:020, Section 2;

(c) The device can be safely operated by individuals not having training in radiological protection.

(2) Each device bears a durable, legible, clearly visible label or labels approved by the cabinet, which contain in a clearly identified and separate statement:

(a) Instructions and precautions necessary to assure safe installation, operation, and servicing of the device; documents such as operating and service manuals, may be identified in the label and used to provide this information;

(b) The requirement, or lack of requirement, for leak testing, or for testing an [any] "on-off" mechanism and indicator, including the maximum time interval for the [such] testing, and the identification of radioactive material by isotope, quantity of radioactivity, and date of determination of the quantity; and

(c) The information called for in the following statement, in the same or substantially similar form:

"The receipt, possession, use, and transfer of this device, Model _____, Serial No. _____, are subject to a general license or the equivalent and the regulations of the U.S. Nuclear Regulatory Commission or an Agreement State. This label shall be maintained on the device in a legible condition. Removal of this label is prohibited.

CAUTION - RADIOACTIVE MATERIAL

_____

Name of manufacturer or distributor"

The model, serial number, and name of the manufacturer or distributor may be omitted from this label provided the information is elsewhere specified in labeling affixed to the device.

(3) In the event the applicant desires that the device be required to be tested for proper operation of the "on-off" mechanism and indicator, if any, or for leakage of radioactive material, subsequent to the initial tests required by these administrative regulations at intervals longer than six (6) months but not exceeding three (3) years, the applicant shall include in the application sufficient information to demonstrate that the [such] longer interval is justified by performance characteristics of the device or similar devices, and by design features which have a significant bearing on the probability or consequences of leakage of radioactive material from the device or failure of the "on-off" mechanism and indicator. In determining the acceptable interval for the test for leakage of radioactive material, the cabinet may [will] consider information on particulars which includes, but is not limited to:

(a) Primary containment or source capsule;

(b) Protection of primary containment;

(c) Method of sealing containment;

(d) Containment construction materials;

(e) Form of contained radioactive material;

(f) Maximum temperature withstood during prototype tests;

(g) Maximum pressure withstood during prototype tests;

(h) Maximum quantity of contained radioactive material;

(i) Radiotoxicity of contained radioactive material; and

(j) Operating experience with identical devices or similarly designed and constructed devices.

(4) In the event the applicant desires that the general licensee under 902 KAR 100:050, Section 3, or under equivalent regulations of the U.S. Nuclear Regulatory Commission or an Agreement State be authorized to install the device, collect the sample to be analyzed by a specific licensee for leakage of radioactive material, service the device, test the "on-off" mechanism and indicator, or remove the device

from installation, the applicant shall include in the application written instructions to be followed by the general licensee, estimated calendar quarter doses associated with the [such] activity or activities, and bases for such estimates. The submitted information shall demonstrate that performance of the [such] activity or activities by an individual untrained in radiological protection, in addition to other handling, storage, and use of devices under the general license, is unlikely to cause that individual to receive a calendar quarter dose in excess of ten (10) percent of the limits specified in 902 KAR 100:020, Section 2.

(5) Each person licensed under this administrative regulation to distribute devices to generally licensed persons shall:

(a) Furnish a copy of the general license contained in 902 KAR 100:050, Section 3, to each person the licensee, directly or through an intermediate person, transfers radioactive material in a device for use as authorized by a [pursuant to the] general license;

(b) Furnish a copy of the general license contained in the U.S. Nuclear Regulatory Commission's or Agreement State's regulation equivalent, or alternatively, furnish a copy of the general license to each person the licensee directly or through an intermediate person transfers radioactive material in a device for use pursuant to the general license of the U.S. Nuclear Regulatory Commission or the Agreement State. If a copy of the general license is furnished to the [such a] person, it shall be accompanied by a note explaining that the use of the device is regulated by the U.S. Nuclear Regulatory Commission or Agreement State under requirements substantially the same as those in 902 KAR 100:050, Section 3;

(c) Report to the cabinet all transfers of the [such] devices to persons for use under the general license. The [Such] report shall identify each general licensee by name and address, an individual by name [and/]or position who may constitute a point of contact between the cabinet and the general licensee, the type and model number of device transferred, and the quantity and type of radioactive material contained in the device. If one (1) or more intermediate persons will temporarily possess the device at the intended place of use prior to its possession by the user, the report shall include identification of each intermediate person by name, address, contact, and relationship to the intended user. If no transfers have been made to persons generally licensed during the reporting period, the report shall so indicate. The report shall cover each calendar quarter and [shall] be filed within thirty (30) days thereafter;

(d) Furnish reports to other agencies:

1. Report to the U.S. Nuclear Regulatory Commission all transfers of such devices to persons for use under the U.S. Nuclear Regulatory Commission general license in Section 31.5 of 10 CFR Part 31; or

2. Report to the responsible state agency all transfers of devices manufactured and distributed for use under a general license in that state's regulations equivalent to 902 KAR 100:050, Section 3.

3. The [Such] reports shall identify each general licensee by name and address, an individual by name [and/]or position who may constitute a point of contact between the agency and the general licensee, the type and model of the device transferred, and the quantity and type of radioactive material contained in the device. If one (1) or more intermediate persons will temporarily possess the device at the intended place of use prior to its possession by the user, the report shall include identification of each intermediate person by name, address, contact, and relationship to the intended user. The report shall be submitted within thirty (30) days after the end of each calendar quarter in which the [such a] device is transferred to the generally licensed person;

4. If no transfers have been made to U.S. Nuclear Regulatory Commission licensees during the reporting period, this information shall be reported to the U.S. Nuclear Regulatory Commission;

5. If no transfers have been made to general licensees within a particular state during the reporting period, this information shall be reported to the responsible state agency upon request of that agency; and

(e) Keep records showing the name, address, and the point of contact for each general licensee to which the licensee directly or through an intermediate person transfers radioactive material in devices for use as authorized by a [pursuant to the] general license or equivalent regulations of the U.S. Nuclear Regulatory Commission or an Agreement State. The records shall show the date of each transfer, the radionuclide and the quantity of radioactivity in each device transferred, the identity of the [any] intermediate person, and compliance with the report requirements.

Section 4. Special Requirements for the Manufacture, Assembly, or Repair of Luminous Safety Devices for use in Aircraft. An application for a specific license to manufacture, assemble, or repair luminous safety devices containing tritium or promethium-147 for use in aircraft, for distribution to persons generally licensed under 902 KAR 100:050 may [will] be approved if:

(1) The applicant satisfies the general requirements specified in 902 KAR 100:040; and

(2) The applicant satisfies the requirements of U.S. Nuclear Regulatory Commission 10 CFR Part 32, Sections 32.53, 32.54, 32.55, 32.56, and 32.101, or their equivalent.

Section 5. Special Requirements for License to Manufacture Calibration Sources Containing Americium-241, Plutonium or Radium-226 for Distribution to Persons Generally Licensed under 902 KAR 100:050. An application for a specific license to manufacture calibration and reference sources containing americium-241, plutonium or radium-226 to persons generally licensed under 902 KAR 100:050 may [will] be approved if:

(1) The applicant satisfies the general requirements of 902 KAR 100:040; and

(2) The applicant satisfies the requirements of U.S. Nuclear Regulatory Commission 10 CFR Part 32, Sections 32.57, 32.58, 32.59, and 32.102 and 10 CFR Part 70, Section 70.29, or their equivalent.

Section 6. Manufacture and Distribution of Radioactive Material for Medical use under a General License. An application for a specific license to distribute radioactive material for

use by physicians under the general license of these administrative regulations shall be approved if:

(1) The applicant satisfies the general requirements specified in 902 KAR 100:040;

(2) The applicant submits evidence that the radioactive material is to be manufactured, labeled and packaged in accordance with a new drug application which the Commissioner of Food and Drug Administration has approved, or in accordance with a license for a biologic product issued by the Secretary, U.S. Department of Health and Human Services; and

(3) The following statement, or a substantially similar statement, appears on the label affixed to the container or appears in the leaflet or brochure which accompanies the package:

"This radioactive drug may be received, possessed and used only by physicians licensed to dispense drugs in the practice of medicine. Its receipt, possession, use and transfer are subject to the administrative regulations and a general license or the equivalent of the United States Nuclear Regulatory Commission or of an Agreement State.

_____
(Name of Manufacturer)"

Section 7. Manufacture and Distribution of Radioactive Material for Certain In Vitro Clinical or Laboratory Testing under a General License. Application for a specific license to manufacture or distribute radioactive material for use under the general license of these administrative regulations may [will] be approved if:

(1) The applicant satisfies the general requirements specified in 902 KAR 100:040;

(2) The radioactive material is to be prepared for distribution in prepackaged units of:

(a) Iodine-125 in units not exceeding ten (10) microcuries each.

(b) Iodine-131 in units not exceeding ten (10) microcuries each.

(c) Carbon-14 in units not exceeding ten (10) microcuries each.

(d) Hydrogen-3 (tritium) in units not exceeding fifty (50) microcuries each.

(e) Iron-59 in units not exceeding twenty (20) microcuries each.

(f) Selenium-75 in units not exceeding ten (10) microcuries each.

(g) Mock iodine-125 in units not exceeding 0.05 microcurie of iodine-129 and 0.005 microcurie of americium-241 each.

(h) Cobalt-57 in units not exceeding fifty (50) microcuries each.

(3) Each prepackaged unit bears a durable, clearly visible label:

(a) Identifying the radioactive contents as to chemical form and radionuclide, and indicating that the amount of radioactivity does not exceed ten (10) microcuries of iodine-131, iodine-125, selenium-75, cobalt-57, or carbon-14; fifty (50) microcuries of hydrogen-3 (tritium); twenty (20) microcuries of iron-59; or mock iodine-125 in units not exceeding 0.05 microcurie of iodine-129 and 0.005 microcurie of americium-241 each; and

(b) Displaying the radiation caution symbol and the words, "Caution, Radioactive Material," and "Not for Internal or External Use in Humans or Animals;"

(4) The following statement, or a substantially similar statement which contains the information called for in the following statement, appears on a label affixed to each prepackaged unit or appears in a leaflet or brochure which accompanies the package:

"This radioactive material may be received, acquired, possessed, and used only by physicians, veterinarians, clinical laboratories or hospitals and only for in vitro clinical or laboratory tests not involving internal or external administration of the material, or the radiation therefrom, to human beings or animals. Its receipt, acquisition, possession, use, and transfer are subject to the administrative regulations and a general license or the equivalent of the United States Nuclear Commission or of an Agreement State.

_____
(Name of Manufacturer)"; and

(5) The label affixed to the unit, or the leaflet or brochure which accompanies the package, contains adequate information as to the precautions to be observed in handling and storing the [such] radioactive material. In the case of the mock iodine-125 reference or calibration source, the information accompanying the source shall also contain directions to the licensee regarding the waste disposal requirements set out in these administrative regulations.

Section 8. Licensing the Manufacture and Distribution of Ice Detection Devices. An application for a specific license to manufacture and distribute ice detection devices to persons generally licensed may [will] be approved if:

(1) The applicant satisfies the general requirements of 902 KAR 100:040; and

(2) The criteria of U.S. Nuclear Regulatory Commission 10 CFR Part 32, Sections 32.61, 32.62, and 32.103 are met.

Section 9. Manufacture and Distribution of Radiopharmaceuticals Containing Radioactive Material for Medical Use Under Specific Licenses. An application for a specific license to manufacture and distribute radiopharmaceuticals containing radioactive material for use by persons licensed for the uses listed in 902 KAR 100:073, Sections 29, 31 and 35 may [will] be approved if:

(1) The applicant satisfies the general requirements specified in 902 KAR 100:040;

(2) The applicant submits evidence that:

(a) The radiopharmaceutical containing radioactive material will be manufactured, labeled, and packaged in accordance with the Federal Food, Drug and Cosmetic Act or the Public Health Service Act, such as a new drug application (NDA) approved by the Food and Drug Administration (FDA), or a "Notice of Claimed Investigational Exemption for a New Drug" (IND) that has been accepted by the FDA; or

(b) The manufacture and distribution of the radiopharmaceutical containing radioactive material is not subject to the Federal Food, Drug and Cosmetic Act and the Public Health Service Act;

(3) The applicant submits information on the radionuclide, chemical and physical form, packaging including maximum activity per package, and shielding provided by the packaging of the radioactive material which is appropriate for safe handling and storage of

radiopharmaceuticals by group licensees; and

(4)(a) The label affixed to each package of the radiopharmaceutical contains information on the radionuclide, quantity, and date of assay and the label affixed to each package, or the leaflet or brochure which accompanies each package, contains a statement that the radiopharmaceutical is licensed by the cabinet for distribution to persons licensed under the requirements of [pursuant to] 902 KAR 100:073 for uses listed in 902 KAR 100:073, Sections 29, 31 and 35, or under equivalent licenses of the U.S. Nuclear Regulatory Commission or an Agreement State.

(b) The labels, leaflets, or brochures required by this subsection are in addition to the labeling required by the Food and Drug Administration (FDA) and they may be separate from or, with the approval of FDA, may be combined with the labeling required by FDA.

Section 10. Manufacture and Distribution of Generators or Reagent Kits for Preparation of Radiopharmaceuticals Containing Radioactive Material. An application for a specific license to manufacture and distribute generators or reagent kits containing radioactive material for preparation of radiopharmaceuticals by persons licensed as authorized by [pursuant to] 902 KAR 100:073 for the uses listed in 902 KAR 100:073, Section 31 may [will] be approved if:

(1) The applicant satisfies the general requirements specified in 902 KAR 100:040;

(2) The applicant submits evidence that:

(a) The generator or reagent kit is to be manufactured, labeled and packaged in accordance with the Federal Food, Drug and Cosmetic Act or the Public Health Service Act, such as a new drug application (NDA) approved by the Food and Drug Administration (FDA), or a "Notice of Claimed Investigational Exemption for a New Drug" (IND) that has been accepted by the FDA; or

(b) The manufacture and distribution of the generator or reagent kit are not subject to the Federal Food, Drug and Cosmetic Act and the Public Health Service Act;

(3) The applicant submits information on the radionuclide, chemical and physical form, packaging including maximum activity per package, and shielding provided by the packaging of the radioactive material contained in the generator or reagent kit;

(4) The label affixed to the generator or reagent kit contains information on the radionuclide, quantity, and date of assay; and

(5) The label affixed to the generator or reagent kit, or the leaflet or brochure which accompanies the generator or reagent kit, contains:

(a) Adequate information, from a radiation safety standpoint, on the procedures to be followed and the equipment and shielding to be used in eluting the generator or processing radioactive material with the reagent kit; and

(b) A statement that this generator or reagent kit, as appropriate, is approved for use by persons licensed by the cabinet as authorized by [pursuant to] 902 KAR 100:073 for uses listed in 902 KAR 100:073, Section 31 or under equivalent licenses of the U.S. Nuclear Regulatory Commission or an Agreement State. The labels, leaflets, or brochures required by this section are in addition to the labeling required by the Food and Drug Administration (FDA) and they may be separate from or, with the approval of FDA, may be combined with the labeling required by FDA.

Section 11. Manufacture and Distribution of Sources or Devices Containing Radioactive Material for Medical Use. An application for a specific license to manufacture and distribute sources and devices containing radioactive material to persons licensed as authorized by [pursuant to] 902 KAR 100:073 for use as a calibration or reference source or for medical uses may [will] be approved if:

(1) The applicant satisfies the general requirements in 902 KAR 100:040;

(2) The applicant submits sufficient information regarding each type of source or device pertinent to an evaluation of its radiation safety, including:

(a) The radioactive material contained, its chemical and physical form, and amount;

(b) Details of design and construction of the source or device;

(c) Procedures for, and results of, prototype tests to demonstrate that the source or device will maintain its integrity under stresses likely to be encountered in normal use and accidents;

(d) For devices containing radioactive material, the radiation profile of a prototype device;

(e) Details of quality control procedures to assure that production sources and devices meet the standards of the design and prototype tests;

(f) Procedures and standards for calibrating sources and devices;

(g) Legend and methods for labeling sources and devices as to their radioactive content; and

(h) Instructions for handling and storing the source or device from the radiation safety standpoint. [;] These instructions are to be included on a durable label attached to the source or device or attached to a permanent storage container for the source or device; except [provided,] that, instructions which are too lengthy for the [such] label may be summarized on the label and printed in detail on a brochure which is referenced on the label;

(3) The label affixed to the source or device, or to the permanent storage container for the source or device, contains information on the radionuclide, quantity, and date of assay, and a statement that the name of source or device is licensed by the cabinet for distribution to persons licensed as authorized by [pursuant to] 902 KAR 100:073 or under equivalent licenses of the U.S. Nuclear Regulatory Commission or an Agreement State, except [provided] that, the [such] labeling for sources which do not require long term storage may be on a leaflet or brochure which accompanies the source;

(4) In the event the applicant desires that the source or device be required to be tested for leakage of radioactive material at intervals longer than six (6) months, he shall include in the application sufficient information to demonstrate that the [such] longer interval is justified by performance characteristics of the source or device or similar sources or devices and by design features that have a significant bearing on the probability or consequence of leakage of radioactive material from the source; and

(5) In determining the acceptable interval for tests of leakage of radioactive material, the cabinet may [will] consider information that

includes, but is not limited to:
(a) Primary containment or source capsule;
(b) Protection of primary containment;
(c) Method of sealing containment;
(d) Containment construction materials;
(e) Form of contained radioactive material;
(f) Maximum temperature withstood during prototype tests;
(g) Maximum pressure withstood during prototype tests;
(h) Maximum quantity of contained radioactive material;
(i) Radiotoxicity of contained radioactive material; and
(j) Operating experience with identical sources or devices or similarly designed and constructed sources or devices.

Section 12. Requirements for License to Manufacture and Distribute Industrial Products Containing Depleted Uranium for Mass-volume Applications. (1) An application for a specific license to manufacture industrial products and devices containing depleted uranium for use authorized by [pursuant to] 902 KAR 100:050 or equivalent regulations of the U.S. Nuclear Regulatory Commission or an Agreement State may [will] be approved if:
(a) The applicant satisfies the general requirements specified in 902 KAR 100:040;
(b) The applicant submits sufficient information relating to the design, manufacture, prototype testing, quality control procedures, labeling or marking, proposed uses, and potential hazards of the industrial product or device to provide reasonable assurance that possession, use, or transfer of the depleted uranium in the product or device is not likely to cause an [any] individual to receive in a [any] period of one (1) calendar quarter a radiation dose in excess of ten (10) percent of the limits specified in 902 KAR 100:020; and
(c) The applicant submits sufficient information regarding the industrial product or device and the presence of depleted uranium for a mass-volume application in the product or device to provide reasonable assurance that unique benefits will accrue to the public because of the usefulness of the product or device.
(2) In the case of an industrial product or device whose unique benefits are questionable, the cabinet may [will] approve an application for a specific license under this section only if the product or device is found to combine a high degree of utility and low probability of uncontrolled disposal and dispersal of significant quantities of depleted uranium into the environment.
(3) The cabinet may deny an [any] application for a specific license under this section if the end use(s) of the industrial product or device cannot be reasonably foreseen.
(4) Each person licensed as authorized by [pursuant to] this section shall:
(a) Maintain the level of quality control required by the license in the manufacture of the industrial product or device and in the installation of the depleted uranium into the product or device;
(b) Label or mark each unit to:
1. Identify the manufacturer of the product or device and the number of the license under which the product or device was manufactured, the fact that the product or device contains depleted uranium, and the quantity of depleted uranium in each product or device; and
2. State that the receipt, possession, use, and transfer of the product or device are subject to a general license, or the equivalent, and the regulations of the U.S. Nuclear Regulatory Commission or an Agreement State;
(c) Assure that the depleted uranium before being installed in each product or device has been impressed with the following legend clearly legible through [any] plating or other covering: "Depleted Uranium;"
(d) Furnish the following:
1. A copy of the general license contained in 902 KAR 100:050 to each person to whom depleted uranium is transferred in a product or device for use authorized by [pursuant to] the general license contained in 902 KAR 100:050; or
2. A copy of the general license contained in the U.S. Nuclear Regulatory Commission's or Agreement State's regulation equivalent to 902 KAR 100:050 and a copy of an [any] applicable U.S. Nuclear Regulatory Commission's or Agreement State's certificate, to each person to whom depleted uranium is transferred in a product or device for use as authorized by [pursuant to] the general license of the U.S. Nuclear Regulatory Commission or an Agreement State, with a note explaining that use of the product or device is regulated by the U.S. Nuclear Regulatory Commission or an Agreement State under requirements substantially the same as those in 902 KAR 100:050;
(e) Report to the cabinet all transfers of industrial products or devices to persons for use under the general license in 902 KAR 100:050. The [Such] report shall identify each general licensee by name and address, an individual by name [and/]or position who may constitute a point of contact between the cabinet and the general licensee, the type and model number of device transferred, and the quantity of depleted uranium contained in the product or device. The report shall be submitted within thirty (30) days after the end of each calendar quarter in which the [such a] product or device is transferred to the generally licensed person. If no transfers have been made to persons generally licensed under 902 KAR 100:050 during the reporting period, the report shall so indicate;
(f) Furnish the following:
1. A report to the U.S. Nuclear Regulatory Commission of all transfers of industrial products or devices to persons for use under the U.S. Nuclear Regulatory Commission general license in 10 CFR Part 40.25;
2. A report to the responsible Agreement State agency all transfers of devices manufactured and distributed as authorized by [pursuant to] this section for use under a general license in that state's regulations equivalent to 902 KAR 100:050;
3. Reports identifying each general licensee by name and address, an individual by name [and/]or position who may constitute a point of contact between the agency and the general licensee, the type and model number of the device transferred, and the quantity of depleted uranium contained in the product or device. Reports shall be submitted within thirty (30) days after the end of each calendar quarter in which the [such] product or device is transferred to the generally licensed person.
4. A report, upon the request of the

responsible agency, that no transfers have been made to a general licensee of that agency; and

(g) Keep records showing the name, address, and point of contact for each general licensee to whom he transfers depleted uranium in industrial products or devices for use authorized by [pursuant to] the general license provided in 902 KAR 100:050 or equivalent regulations of the U.S. Nuclear Regulatory Commission or an Agreement State. The records shall be maintained for a period of two (2) years and shall show the date of each transfer, the quantity of depleted uranium in each product or device transferred, and compliance with the report requirements of this section.

Section 13. Licensing the Distribution of Naturally Occurring and Accelerator Produced Radioactive Material (NARM) in Exempt Quantities. (1) An application for a specific license to distribute NARM to persons exempted from these regulations authorized by [pursuant to] 902 KAR 100:045 may [will] be approved if:

(a) The radioactive material is not contained in a [any] food, beverage, cosmetic, drug, or other commodity designed for ingestion or inhalation by, or application to, a human being;

(b) The radioactive material is in the form of processed chemical elements, compounds, or mixtures, tissue samples, bioassay samples, counting standards, plated or encapsulated sources, or similar substances, identified as radioactive and to be used for its radioactive properties, but is not incorporated into a [any] manufactured or assembled commodity, product, or device intended for commercial distribution; and

(c) The applicant submits copies of prototype labels and brochures and the cabinet approves the [such] labels and brochures.

(2) The license issued under this section is subject to the following conditions:

(a) No more than ten (10) exempt quantities shall be sold or transferred in a [any] single transaction. However, an exempt quantity may be composed of fractional parts of one (1) or more of the exempt quantity provided the sum of the fractions shall not exceed unity.

(b) Each exempt quantity shall be separately and individually packaged. No more than ten (10) [such] packaged exempt quantities shall be contained in an [any] outer package for transfer to persons exempt as authorized by [pursuant to] 902 KAR 100:045. The dose rate at the external surface of the outer package shall [be such that the dose rate at the external surface of the package does] not exceed five-tenths (0.5) millirem per hour.

(c) The immediate container of each quantity or separately packaged fractional quantity of radioactive material shall bear a durable, legible label which:

1. Identifies the radionuclide and the quantity of radioactivity; and

2. Bears the words "Radioactive Material."

(d) In addition to the labeling information required by this subsection, the label affixed to the immediate container, or an accompanying brochure, shall:

1. State that the contents are exempt from licensing agency requirements;

2. Bear the words "Radioactive Material - Not for Human Use - Introduction into Foods, Beverages, Cosmetics, Drugs, or Medicinals, or into Products Manufactured for Commercial Distribution is Prohibited - Exempt Quantities Should Not Be Combined;" and

3. Set forth appropriate additional radiation safety precautions and instructions relating to the handling, use, storage, and disposal of the radioactive material.

(3) Each person licensed under this section shall maintain records identifying, by name and address, each person to whom radioactive material is transferred for use under 902 KAR 100:045 or the equivalent regulations of a licensing agency, and stating the kinds and quantities of radioactive material transferred. An annual summary report stating the total quantity of each radionuclide transferred under the specific license shall be filed with the cabinet. Each report shall cover the year ending June 30, and shall be filed within thirty (30) days thereafter. If no transfers of radioactive material have been made as authorized by [pursuant to] this section during the reporting period, the report shall so indicate.

Section 14. Licensing the Incorporation of Naturally Occurring and Accelerator Produced Radioactive Material (NARM) into Gas and Aerosol Detectors. An application for a specific license authorizing the incorporation of NARM into gas and aerosol detectors to be distributed to persons exempt under 902 KAR 100:045 may [will] be approved if the application satisfies requirements equivalent to those contained in U.S. Nuclear Regulatory Commission 10 CFR Part 32.26. The maximum quantity of radium-226 in each device shall not exceed one-tenth (0.1) microcurie.

C. HERNANDEZ, M.D., Commissioner
HARRY J. COWHERD, M.D., Secretary

APPROVED BY AGENCY: September 27, 1991

FILED WITH LRC: October 11, 1991 at 3 p.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 21, 1991, at 9 a.m. in the Department for Employment Services second floor conference room, Cabinet for Human Resources Building. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 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: John A. Volpe

(1) Type and number of entities affected: 8 radioactive material licensees are affected by this regulation.

(a) Direct and indirect costs or savings to those affected: There are no direct or indirect costs or savings to radioactive material licensees.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: There is no 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 and local revenues is anticipated.

(4) Assessment of alternative methods; reasons why alternatives were rejected: This regulation must be identical to that of the U.S. Nuclear Regulatory Commission and other states. No alternative is available.

(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: There is no conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict.

(6) Any additional information or comments:

TIERING: Was tiering applied? Yes. Tiering was applied because different types of licensees are regulated based on their handling of radioactive material.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Section 274 of the Atomic Energy Act of 1954, as amended and 10 CFR.

2. State compliance standards. This administrative regulation prescribes requirements for the issuance of licenses to persons who manufacture, assemble, repair, or distribute commodities, products, or devices which contain radioactive material.

3. Minimum or uniform standards contained in the federal mandate. Federal and state requirements are identical.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The requirements/responsibilities are identical to those of the U.S. Nuclear Regulatory Commission.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Federal and state standards are identical.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 100:060. Leak testing.

RELATES TO: KRS 211.842 to 211.852, 211.990(4)

STATUTORY AUTHORITY: KRS 194.050, 211.090, 211.844

NECESSITY AND FUNCTION: The Cabinet for Human Resources is authorized [empowered] by KRS 211.844 to provide by administrative regulation for the registration and licensing of the possession or use of [any] sources of ionizing or electronic product radiation and to regulate the handling and disposal of radioactive waste. [The purpose of] This administrative regulation [is to] provides requirements and procedures for the testing of sealed radioactive sources for leakage and contamination.

Section 1. Applicability. This administrative regulation establishes leak testing procedures for sealed sources [licensed under these regulations].

Section 2. Tests for Leakage and Contamination of Sealed Sources. (1) Requirements. Each licensee possessing or using sealed sources of radioactive material, foil sources, or plated alpha sources shall have the [such] sources periodically tested for leakage and contamination as prescribed in this section. Records of these tests shall be maintained and made available for inspection by the cabinet.

(2) Method of testing. Tests for leakage and contamination shall be performed only by persons specifically authorized to perform the [such] tests by the cabinet, United States Nuclear Regulatory Commission, or an Agreement State. The test sample shall be taken from the surface of the source or from the surface of the device in which the source is stored or mounted and on which one might expect contamination to accumulate. The test sample shall be analyzed for radioactive contamination and the test shall be capable of detecting the presence of 0.005 microcurie of radioactivity on the test sample. The results of the test shall be kept in units of microcuries and maintained for five (5) years unless otherwise specified by these administrative regulations or license conditions.

(3) Interval of testing. Each sealed source of radioactive material or foil source shall be tested for leakage and contamination at intervals not to exceed six (6) months. [and] Each source designed for the purpose of emitting alpha particles shall be tested at intervals not to exceed three (3) months. In the absence of a certificate from a transferor indicating that a test has been made prior to the transfer, the sealed source shall not be put into use until tested. In addition to [Notwithstanding] the leak test intervals specified in this administrative regulation [herein], the cabinet may authorize extended leak test intervals for specific sources used in certain specific applications.

(4) Leaking or contaminated sources. If the leak test reveals the presence of 0.005 microcurie or more of removable contamination, the licensee shall immediately withdraw the source from use and shall cause it to be decontaminated, repaired, or disposed of in accordance with the cabinet's radiation administrative regulations. All equipment which has been in contact with the leaking source shall be checked for contamination and decontaminated as specified by the cabinet. A report within five (5) days of the test describing the equipment involved, the test results and the corrective actions taken shall be filed with: Manager, Radiation Control, Kentucky Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

(5) Exemptions. In addition to [Notwithstanding] the requirements of this section, the following sources are exempted from periodic leak testing:

(a) Hydrogen-3 sources;

(b) Sources of radioactive material with a half-life of thirty (30) days or less;

(c) Sealed sources of radioactive material in

gaseous form;
(d) Sources of beta or gamma emitting radioactive material with an activity of 100 microcuries or less;
(e) Sources of alpha emitting radioactive material with an activity of ten (10) microcuries or less;
(f) Nickel-63 foil sources of 100 microcuries or less; and
(g) Plated alpha sources, other than Californium-252 sources, with an activity of one-tenth (0.1) microcurie or less.

C. HERNANDEZ, M.D., Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: September 27, 1991
FILED WITH LRC: October 11, 1991 at 3 p.m.
PUBLIC HEARING: A public hearing on this regulation will be held on November 21, 1991, at 9 a.m. in the Department for Employment Services Conference Room, 2nd Floor, CHR Building, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office by November 16, 1991: Ryan Halloran, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: John A. Volpe
(1) Type and number of entities affected: 380 radioactive material licensees are affected by this regulation.
(a) Direct and indirect costs or savings to those affected: There are no direct or indirect costs or savings to radioactive material licensees.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: There is no 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 and local revenues is anticipated.
(4) Assessment of alternative methods; reasons why alternatives were rejected: This regulation must be identical to that of the U.S. Nuclear Regulatory Commission and other states. No alternative is available.
(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: There is no conflict.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict.
(6) Any additional information or comments:
TIERING: Was tiering applied? Yes. Tiering was applied because different types of licensees are regulated based on their use of radioactive material.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Section 274 of the Atomic Energy Act of 1954, as amended and 10 CFR.
2. State compliance standards. This administrative regulation provides for requirements and procedures for the testing of sealed radioactive sources for leakage and contamination.
3. Minimum or uniform standards contained in the federal mandate. Federal and state requirements are identical.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The requirements/responsibilities are identical to those of the U.S. Nuclear Regulatory Commission.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Federal and state standards are identical.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 100:065. Reciprocal recognition.

RELATES TO: KRS 211.842 to 211.852, 211.990(4)
STATUTORY AUTHORITY: KRS 194.050, 211.090, 211.842
NECESSITY AND FUNCTION: The Cabinet for Human Resources is authorized [empowered] by KRS 211.844 to provide by administrative regulation for the registration and licensing of the possession or use of [any] sources of ionizing or electronic product radiation and the handling and disposal of radioactive waste. [The purpose of] This administrative regulation [is to] provides for the reciprocal recognition of radioactive material licenses issued by the United States Nuclear Regulatory Commission or another Agreement State.

Section 1. Applicability. [The provisions of] This administrative regulation apply to [all] persons who possess, use or transfer radioactive material in Kentucky as authorized in a license issued by the United States Nuclear Regulatory Commission or another Agreement State.

Section 2. Reciprocal Recognition of Licenses. (1) Subject to these administrative regulations, a [any] person who holds a specific license from the United States Nuclear Regulatory Commission or an [any] Agreement State, and issued by the agency having jurisdiction where the licensee maintains an office for directing the licensed activity and at which radiation safety records are normally maintained, is hereby granted a general license to conduct the activities authorized in the [such] licensing document within the Commonwealth of Kentucky [this state] for a period of 180 days in a [any] calendar year if [provided that]:

(a) The licensing document does not limit the activity authorized by the [such a] document to specified installations or locations;

(b) The out-of-state licensee notifies the cabinet in writing at least three (3) days prior to engaging in the [such] activity. The [Such] notification shall indicate the date of arrival, the duration of use, nature and scope of the use, the company where the radioactive material is to be used, the person in charge, the exact location and type of proposed possession within this state, and shall be accompanied by a copy of the pertinent licensing document. If, for a specific case, the three (3) day period would impose an undue hardship on the out-of-state licensee, the licensee may, upon application to the cabinet, obtain permission to proceed sooner. The cabinet may waive the requirement for filing additional written notifications during the remainder of the calendar year following the receipt of the initial notification from a person engaging in activities under the general license provided in this section;

(c) The out-of-state licensee complies with all applicable administrative regulations of the cabinet and with all the terms and conditions of his licensing document, except the [any such] terms and conditions which may be inconsistent with applicable administrative regulations of the cabinet;

(d) Provided further that the cabinet may require the out-of-state licensee to supply [such] other information as the cabinet may reasonably request;

(e) The licensee does not establish a permanent office in this state; and

(f) The out-of-state licensee shall not transfer or dispose of radioactive material possessed or used under the general license provided in this section except by transfer to a person:

1. Specifically licensed by the cabinet or by the United States Nuclear Regulatory Commission to receive the [such] material; or

2. Exempt from the requirements for a license for the [such] material under these administrative regulations.

(2) In addition to [Notwithstanding] the provisions of subsection (1) of this section, a [any] person who holds a specific license or equivalent licensing document issued by the United States Nuclear Regulatory Commission or an Agreement State authorizing the holder to manufacture, transfer, install or service a device described in 902 KAR 100:050, Section 3(3)(a), relating to the general licensing of certain uses of radioactive material and specific devices containing radioactive material within areas subject to the jurisdiction of the licensing body is hereby granted a general license to install, transfer, demonstrate or service the [such a] device in the Commonwealth of Kentucky if [this state provided that]:

(a) The [Such] person shall satisfy the requirements of these administrative regulations;

(b) The device has been manufactured, labeled, installed and serviced in accordance with applicable provisions of the specified license issued to the [such] person by the United States Nuclear Regulatory Commission or an Agreement State;

(c) The [Such] person shall assure that [any] labels required to be affixed to the device under administrative regulations of the authority which licensed manufacture of the device bear a statement that "removal of this label is prohibited;"

(d) The holder of the specific license shall furnish to each general licensee to whom he transfers a [such] device or on whose premises he installs a [such] device a copy of the general license contained in 902 KAR 100:050, Section 3(3), relating to the general licensing of certain uses of radioactive materials and specific devices containing radioactive material; and

(e) The [Such] person shall file a report with the cabinet within thirty (30) days after the end of each calendar quarter in which a [any] device is transferred to a person or installed in a location within the jurisdiction of the cabinet. Each report shall identify each general licensee to whom the [such] a device is transferred by name and address, the type of device transferred, and the quantity and type of radioactive material contained in the device.

(3) The cabinet may withdraw, limit, or qualify its acceptance of a [any] specific license or equivalent licensing document issued by another agency, or of a [any] product distributed as authorized by a [pursuant to such] licensing document, upon determining that the [such] action is necessary in order to prevent undue hazard to public health and safety and property.

C. HERNANDEZ, M.D., Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: September 27, 1991
FILED WITH LRC: October 11, 1991 at 3 p.m.

PUBLIC HEARING: A public hearing on this regulation will be held on November 21, 1991, at 9 a.m. in the Department for Employment Services Conference Room, 2nd Floor, CHR Building, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office by November 16, 1991: Ryan Halloran, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: John A. Volpe

(1) Type and number of entities affected: This regulation applies only to out-of-state licensees entering our state under an agreement state or U.S. Nuclear Regulatory Commission license.

(a) Direct and indirect costs or savings to those affected: There are no direct or indirect costs or savings to radioactive material licensees.

1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: There is no 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 and local revenues is anticipated.
(4) Assessment of alternative methods; reasons why alternatives were rejected: This regulation must be identical to that of the U.S. Nuclear Regulatory Commission and other states. No alternative is available.
(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: There is no conflict.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict.
(6) Any additional information or comments:
TIERING: Was tiering applied? Yes. Tiering was applied because different types of licensees are regulated based on their use of radioactive material.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Section 274 of the Atomic Energy Act of 1954, as amended and 10 CFR.
2. State compliance standards. This administrative regulation provides for the reciprocal recognition of radioactive material licenses issued by the U.S. Nuclear Regulatory Commission or another agreement state.
3. Minimum or uniform standards contained in the federal mandate. Federal and state requirements are identical.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The requirements/responsibilities are identical to those of the U.S. Nuclear Regulatory Commission.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Federal and state standards are identical.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 100:070. Transportation of radioactive material.

RELATES TO: KRS 211.842 to 211.852, 211.990(4)
STATUTORY AUTHORITY: KRS 194.050, 211.090, 211.844
NECESSITY AND FUNCTION: The Cabinet for Human Resources is authorized [empowered] by KRS 211.844 to provide by administrative regulation for the registration and licensing of the possession or use of [any] sources of ionizing or electronic product radiation and the handling and disposal of radioactive waste. [The purpose of] This administrative regulation [is to] provides requirements for the transportation of radioactive material.

Section 1. Applicability. The provisions of this administrative regulation shall apply to [all] persons who transport or deliver radioactive material in Kentucky.

Section 2. Transportation of Radioactive Material. No person shall deliver radioactive material to a carrier for transport or transport radioactive material except as authorized in a general or specific license issued by the cabinet or as exempted in Section 3 of this administrative regulation.

Section 3. Exemptions. (1) Common and contract carriers, freight forwarders, and warehousemen who are subject to the requirements of the U.S. Department of Transportation in 49 CFR 170 through 189 or the U.S. Postal Service in the Postal Service Manual (Domestic Mail Manual), Section 124.3 incorporated by reference, 39 CFR 111.11(1974), are exempt from these administrative regulations to the extent that they transport or store radioactive material in the regular course of their carriage for another or storage incident to the transportation and storage of radioactive material [thereto]. Common and contract carriers who are not subject to the requirements of the U.S. Department of Transportation or U.S. Postal Service are subject to Section 2 of this administrative regulation and other applicable sections of these administrative regulations.
(2) A [Any] licensee is exempt from Section 2 of this administrative regulation to the extent that he delivers to a carrier for transport a package containing radioactive material having a specific activity not greater than 0.002 microcurie per gram.
(3) A licensee is exempt from all requirements of this administrative regulation, other than Sections 4 and 13 of this administrative regulation, with respect to shipment or carriage of the following:
(a) Packages containing no more than Type A quantities of radioactive material if the package contains no fissile material; or
(b) Packages transported between locations within the United States which contain only americium or plutonium in special form with an aggregate radioactivity not to exceed twenty (20) curies.

Section 4. Transportation of Licensed Material. (1) Each licensee who transports licensed material outside of the confines of his plant or other place of use, or who delivers licensed material to a carrier for transport shall:
(a) Comply with the applicable requirements, appropriate to the mode of transport, of the regulations of the U.S. Department of Transportation; and
(b) Assure that [any] special instructions needed to safely open the package are sent to or have been made available to the consignee.
(2) If, for any reason, the regulations of the U.S. Department of Transportation are not applicable to a shipment of licensed material, the licensee shall conform to the standards and requirements of those regulations to the same extent as if the shipment was subject to the administrative regulations.

Section 5. General Licenses for Carriers. (1) A general license is hereby issued to a [any]

common or contract carrier not exempt under Section 3 of this administrative regulation to receive, possess, transport, and store radioactive material in the regular course of their carriage for another or storage incident to the transportation and storage [thereto], provided the transportation and storage is in accordance with the applicable requirements, appropriate to the mode of transport, of the U.S. Department of Transportation insofar as the [such] requirements relate to the loading and storage of packages, placarding of the transporting vehicle, and incident reporting.

(2) A general license is hereby issued to a [any] private carrier to transport radioactive material, provided the transportation is in accordance with the applicable requirements, appropriate to the mode of transport, of the U.S. Department of Transportation insofar as the [such] requirements relate to the loading and storage of packages, placarding of the transporting vehicle, and incident reporting.

(3) The [Any] notification of incidents referred to in those U.S. Department of Transportation requirements shall be filed with, or made to, the cabinet.

(4) Persons who transport radioactive material as authorized by [pursuant to] the general licenses in this section are exempt from the requirements of 902 KAR 100:020 and 902 KAR 100:165 of these administrative regulations to the extent that they transport radioactive material.

Section 6. General License: NRC Approved Packages. (1) A general license is hereby issued to a [any] licensee of the cabinet to transport, or to deliver to a carrier for transport, licensed material in a package for which a license, certificate of compliance, or other approval has been issued by the U.S. Nuclear Regulatory Commission (NRC).

(2) This general license applies only to a licensee who:

(a) Has a copy of the specific license, certificate of compliance, or other approval of the package and has the drawings and other documents referenced in the approval relating to the use and maintenance of the packaging and to the actions to be taken prior to shipment;

(b) Complies with the terms and conditions of the license, certificate, or other approval, as applicable, and the applicable requirements of this administrative regulation;

(c) Prior to the licensee's first use of the package, has registered with the U.S. Nuclear Regulatory Commission; and

(d) Has a quality assurance program, as required by Section 19 of this administrative regulation, approved by the cabinet.

(3) The general license in subsection (1) of this section applies only if [when] the package approval authorizes use of the package under this general license.

(4) For previously approved Type B packages which are not designated as either B(U) or B(M) in the NRC Certificate of Compliance, this general license is subject to additional restrictions of Section 7 of this administrative regulation.

Section 7. Previously Approved Type B Packages. A Type B package previously approved by the NRC, but not designated as B(U) or B(M) in the NRC Certificate of Compliance, may be used under the general license of Section 6 of this administrative regulation with the following additional limitations:

(1) Fabrication of the packaging was satisfactorily completed before August 31, 1986, as demonstrated by application of its model number in accordance with U.S. NRC Regulations; and

(2) The package may not be used for a shipment to a location outside the United States after August 31, 1986, except under special arrangement approved by the U.S. Department of Transportation in accordance with 49 CFR 173.471.

Section 8. General License: DOT Specification Container. (1) A general license is issued to a [any] licensee of the cabinet to transport or to deliver to a carrier for transport licensed material in a specification container for a Type B quantity of radioactive material as specified in the regulations of the U.S. DOT in 49 CFR Parts 173 and 178.

(2) This general license applies only to a licensee who has a quality assurance program approved by the cabinet as satisfying the requirements [provisions] of Section 19 of this administrative regulation.

(3) This general license applies only to a licensee who:

(a) Has a copy of the specification; and

(b) Complies with the terms and conditions of the specification, and the applicable requirements of this administrative regulation.

(4) The general license in subsection (1) of this section is subject to the limitation that the specification container may not be used for a shipment to a location outside the United States after August 31, 1986 except under special arrangements approved by U.S. DOT in accordance with 49 CFR 173.472.

Section 9. General License: Use of Foreign Approved Package. (1) A general license is issued to a [any] licensee of the cabinet to transport or to deliver to a carrier for transport licensed material in a package the design of which has been approved in a foreign national competent authority certificate which has been revalidated by the U.S. DOT as meeting the applicable requirements of 49 CFR 171.12.

(2) This general license applies only to shipments made to or from locations outside the United States.

(3) This general license applies to a licensee who:

(a) Has a copy of the applicable certificate, the revalidation, and the drawings and other documents referenced in the certificate relating to the use and maintenance of the packaging and to the actions to be taken prior to shipment; and

(b) Complies with the terms and conditions of the certificate and revalidation and with the applicable requirements of this administrative regulation.

Section 10. General License: Type A, Fissile Class II Packages. (1) A general license is hereby issued to a [any] licensee to transport fissile material, or to deliver fissile material to a carrier for transport, if the material is shipped as a Fissile Class II package.

(2) This general license applies only if [when] a package contains no more than a Type A quantity of radioactive material, including only one (1) of the following:

(a) Up to forty (40) grams of uranium–235; or
(b) Up to thirty (30) grams of uranium–233; or
(c) Up to twenty–five (25) grams of the fissile radionuclides of plutonium, except that for encapsulated plutonium–beryllium neutron sources in special form, an A_1 quantity of plutonium may be present; or
(d) A combination of fissile radionuclides in which the sum of the ratios of the amount of each radionuclide to the corresponding maximum amounts in this subsection does not exceed unity.
(3) This general license applies only if [when], except as specified below for encapsulated plutonium–beryllium sources, a package containing more than fifteen (15) grams of fissile radionuclides is labeled with a transport index not less than the number given by the following equation, where the package contains x grams of uranium–235, y grams of uranium–233, and z grams of the fissile radionuclides of plutonium:

$$\text{minimum transport index} = (0.4x+0.67y+z)\left(1 - \frac{15}{x+y+z}\right)$$

For a package in which the only fissile material is in the form of encapsulated plutonium–beryllium neutron sources in special form, the transport index based on criticality considerations may be taken as 0.026 times the number of grams of the fissile radionuclides of plutonium in excess of fifteen (15) grams. In all cases, the transport index must be rounded up to one (1) decimal place, and may not exceed ten (10).

Section 11. General License: Restricted, Fissile Class II Package. (1) A general license is hereby issued to a [any] licensee to transport fissile material, or to deliver fissile material to a carrier for transport, if the material is shipped as a Fissile Class II package.
(2) This general license applies only if [when]:
(a) The package contains no more than a Type A quantity of radioactive material;
(b) Neither beryllium nor hydrogenous material enriched in deuterium is present;
(c) The total mass of graphite present does not exceed 150 times the total mass of uranium–235 plus plutonium;
(d) Substances having a higher hydrogen density than water, (e.g. certain hydrocarbon oils, are not present, except that polyethylene may be used for packing or wrapping);
(e) Uranium–233 is not present, and the amount of plutonium does not exceed one (1) percent of the amount of uranium–235; and
(f) The amount of uranium–235 is limited as follows:
1. If the fissile radionuclides are not uniformly distributed, the maximum amount of uranium–235 per package may not exceed the value given in the following table:

Table I

Uranium enrichment in weight percent of uranium–235 not exceeding	Permissible maximum grams of uranium–235 per package
24	40
20	42
15	45
11	48
10	51
9.5	52
9	54
8.5	55
8	57
7.5	59
7	60
6.5	62
6	65
5.5	68
5	72
4.5	76
4	80
3.5	88
3	100
2.5	120
2	164
1.5	272
1.35	320
1	680*
0.92	1200*

*Pursuant to its agreement with the U.S. Nuclear Regulatory Commission, the cabinet jurisdiction extends only to 350 grams of uranium–235.

2. If the fissile radionuclides are distributed uniformly (i.e., cannot form a lattice arrangement within the packaging) the maximum amount of uranium–235 per package may not exceed the value given in the following table:

Table II

Uranium enrichment in weight percent of uranium–235 not exceeding	Permissible maximum grams of uranium–235 per package
4	84
3.5	92
3	112
2.5	148
2	240
1.5	569*
1.35	800*

*Pursuant to its agreement with the U.S. Nuclear Regulatory Commission, the cabinet jurisdiction extends only to 350 grams of uranium–235.

(g) The transport index of each package based on critically considerations is taken as ten (10) times the number of grams of uranium–235 in the package divided by the maximum allowable number of grams per package in accordance with Table I or II above as applicable.

Section 12. Fissile Material: Assumptions as to Unknown Properties. If [When] the isotopic abundance, mass, concentration, degree of irradiation, degree of moderation, or other pertinent property of fissile material in a [any] package is not known, the licensee shall package the fissile material as if the unknown properties have credible values that may [will] cause the maximum nuclear reactivity.

Section 13. Preliminary Determinations. Prior to the first use of a [any] packaging for the shipment of radioactive material:
(1) The licensee shall ascertain that there

are no defects which may [could] significantly reduce the effectiveness of the packaging;

(2) If [Where] the maximum normal operating pressure will exceed thirty-four and three-tenths (34.3) kilopascal (five (5) psi) gauge, the licensee shall test the containment system at an internal pressure at least fifty (50) percent higher than the maximum normal operating pressure to verify the capability of that system to maintain its structural integrity at that pressure.

(3) The licensee shall conspicuously and durably mark the packaging with its model number, gross weight, and a package identification number assigned by the U.S. Nuclear Regulatory Commission. Prior to applying the model number, the licensee shall determine that the packaging has been fabricated in accordance with the design approved by the U.S. Nuclear Regulatory Commission.

Section 14. Routine Determinations. Prior to each shipment of licensed material, the licensee shall ensure that the package with its contents satisfies the applicable requirements of this administrative regulation and of the license. The licensee shall determine that:

(1) The package is proper for the contents to be shipped;

(2) The package is in unimpaired physical condition except for superficial defects, such as marks or dents;

(3) Each closure device of the packaging, including any required gasket, is properly installed and secured and free of defects;

(4) A [Any] system for containing liquid is adequately sealed and has adequate space or other specified provision for expansion of the liquid;

(5) A [Any] pressure relief device is operable and set in accordance with written procedures;

(6) The package has been loaded and closed in accordance with written procedures;

(7) A [Any] structural part of the package which could be used to lift or tie down the package during transport is rendered inoperable for that purpose unless it satisfies design requirements specified by the U.S. Nuclear Regulatory Commission.

(8)(a) The level of nonfixed (removable) radioactive contamination on the external surfaces of each package offered for shipment is as low as reasonably achievable. The level of nonfixed radioactive contamination may be determined by wiping an area of 300 square centimeters of the surface concerned with an absorbent material, using moderate pressure, and measuring the activity on the wiping material. Sufficient measurements shall [must] be taken in the most appropriate locations to yield a representative assessment of the nonfixed contamination levels. Except as provided under paragraph (b) of this subsection, the amount of radioactivity measured on a [any] single wiping material [when] averaged over the surface wiped, shall [must] not exceed the limits given in Table III of this subsection at any time during transport. Other methods of assessment of equal or greater efficiency may be used. If [When] other methods are used, the detection efficiency of the method used shall [must] be taken into account and in no case may the nonfixed contamination on the external surfaces of the package exceed ten (10) times the limits listed in Table III of this subsection.

Table III
REMOVABLE EXTERNAL RADIOACTIVE CONTAMINATION WIPE LIMITS

Contaminant	Maximum Permissible Limits uCi/cm^2	dpm/cm^2
Beta-gamma emitting radionuclides; all radionuclides with half-lives less than ten (10) days; natural uranium; natural thorium; uranium-235; uranium-238; thorium-228; thorium-230 and thorium-232 when contained in ores or physical concentrates	10^{-5}	22
All other alpha emitting radionuclides	10^{-6}	2.2

(b) In the case of packages transported as exclusive use shipments by rail or highway only, the nonfixed radioactive contamination at any time during transport shall [must] not exceed ten (10) times the levels prescribed in paragraph (a) of this subsection. The levels at the beginning of transport shall [must] not exceed the levels prescribed in paragraph (a) of this subsection.

(9) External radiation levels around the package and around the vehicle, if applicable, shall [will] not exceed 200 millirem per hour at a [any] point in the external surface of the package at any time during transportation. The transport index shall not exceed ten (10).

(10) For a package transported as exclusive use by rail, highway or water, radiation levels external to the package may exceed the limits specified in subsection (9) of this section but shall [must] not exceed [any of] the following:

(a) 200 millirem/hour on the accessible external surface of the package unless the following conditions are met, in which case the limit is 1000 millirem per hour.

1. The shipment is made in a closed transport vehicle;

2. Provisions are made to secure the package so that its position within the vehicle remains fixed during transportation; and

3. There are no loading or unloading operations between the beginning and end of the transportation;

(b) 200 millirem/hour at a [any] point on the outer surface of the vehicle, including the upper and lower surfaces, or in the case of an open vehicle, at a [any] point on the vertical planes projected from the outer edges of the vehicle, on the upper surface of the load, and on the lower external surface of the vehicle;

(c) Ten (10) millirem/hour at a [any] point two (2) meters from the vertical planes represented by the outer lateral surfaces of the vehicle, or, in the case of an open vehicle, at a [any] point two (2) meters from the vertical planes projected from the outer edges of the vehicle; and

(d) Two (2) millirem/hour in a [any] normally occupied positions of the vehicle, except that this provision does not apply to private motor carriers if [when] persons occupying these positions are provided with special health supervision, personnel radiation exposure

monitoring devices, and training in accordance with 902 KAR 100:165, Section 3.

(11) A package shall [must] be prepared for transport so that in still air at 100 degrees Fahrenheit (thirty-eight (38) degrees Centigrade) and in the shade, no accessible surface of a package would have a temperature exceeding 122 degrees Fahrenheit (fifty (50) degrees Centigrade) in a nonexclusive use shipment or 180 degrees Fahrenheit (eighty-two (82) degrees Centigrade) in an exclusive use shipment. Accessible package surface temperatures shall not exceed these limits at any time during transportation.

Section 15. Air Transport of Plutonium. In addition to [Notwithstanding] the requirements [provisions] of a [any] general license[s] and [notwithstanding any] exemptions stated [directly] in this administrative regulation or included [indirectly] by citation of U.S. Department of Transportation regulations, as may be applicable, the licensee shall assure that plutonium in any form is not transported by air or delivered to a carrier for air transport unless:

(1) The plutonium is contained in a medical device designed for individual human application;

(2) The plutonium is contained in a material in which the specific activity is not greater than 0.002 microcurie per gram of material and in which the radioactivity is essentially uniformly distributed;

(3) The plutonium is shipped in a single package containing no more than an A_2 quantity of plutonium in an [any] isotope or form and is shipped in accordance with Section 4 of this administrative regulation; or

(4) The plutonium is shipped in a package specifically authorized for the shipment of plutonium by air in the Certificate of Compliance for that package issued by the U.S. Nuclear Regulatory Commission.

Section 16. Records. (1) Each licensee shall maintain for a period of two (2) years after shipment a record of each shipment of licensed material not exempt under Section 3 of this administrative regulation, showing, if [where] applicable:

(a) Identification of the packaging by model number;

(b) Verification that there are no significant defects in the packaging, as shipped;

(c) Volume and identification or coolant;

(d) Type and quantity of licensed material in each package, and the total quantity of each shipment;

(e) Date of the shipment;

(f) Name and address of the transferee;

(g) Address to which the shipment was made; and

(h) Results of the determinations required by Section 13 of this administrative regulation.

(2) The licensee shall make available to the cabinet for inspection, upon reasonable notice, all records required by this administrative regulation.

Section 17. Reports. The licensee shall report to the cabinet within thirty (30) days:

(1) An [Any] instance in which there is significant reduction in the effectiveness of an [any] authorized packaging during use; and

(2) Details of [any] defects with safety significance in the packaging after first use, with the means employed to repair the defects and prevent their recurrence.

Section 18. Advance Notification of Transport of Nuclear Waste. (1) Prior to the transport of [any] nuclear waste outside of the confines of the licensee's facility or other place of use or storage, or prior to the delivery of [any] nuclear waste to a carrier for transport, each licensee shall provide advance notification of the [such] transport to the governor, or governor's designee, of each state through which the waste will be transported.

(2) Advance notification is required only if [when]:

(a) The nuclear waste is required to be in Type B packaging for transportation;

(b) The nuclear waste is being transported to, through, or across state boundaries to a disposal site or to a collection point for transport to a disposal site;

(c) The quantity of licensed material in a single package exceeds:

1. 5,000 curies of special form radionuclides;

2. 5,000 curies of uncompressed gases of argon-41, krypton-85m, krypton-87, xenon-131m, or xenon-135;

3. 50,000 curies of argon-37, or of uncompressed gases of krypton-85 or xenon-133, or of hydrogen-3 as a gas, as luminous paint, or absorbed on solid material;

4. Twenty (20) curies of other nonspecial form radionuclides for which A_2 is less than or equal to four (4) curies; or

5. 200 curies of to the nonspecial form radionuclides for which A_2 is greater than four (4) curies.

(3) Each advance notification shall contain the following information:

(a) The name, address, and telephone number of the shipper, carrier, and receiver of the shipment;

(b) A description of the nuclear waste contained in the shipment as required by the administrative regulations of the U.S. Department of Transportation, 49 CFR 172.202 and 172.203(d);

(c) The point of origin of the shipment and the seven (7) day period during which departure of the shipment is estimated to occur;

(d) The seven (7) day period during which arrival of the shipment at state boundaries is estimated to occur;

(e) The destination of the shipment, and the seven (7) day period during which arrival of the shipment is estimated to occur; and

(f) A point of contact with a telephone number for current shipment information.

(4) The notification shall be made in writing to the office of each appropriate governor or governor's designee and to the cabinet. A notification delivered by mail must be postmarked at least seven (7) days before the beginning of the seven (7) day period during which departure of the shipment is estimated to occur. A notification delivered by messenger must reach the office of the governor, or governor's designee, at least four (4) days before the beginning of the seven (7) day period during which departure of the shipment is estimated to occur. A copy of the notification shall be retained by the licensee for one (1) year.

(5) The licensee shall notify each appropriate governor, or governor's designee, and the

cabinet of [any] changes to schedule information provided pursuant to subsection (1) of this section. The [Such] notification shall be by telephone to a responsible individual in the office of the governor, or governor's designee, of the appropriate state or states. The licensee shall maintain for one (1) year a record of the name of the individual contacted.

(6) Each licensee who cancels a nuclear waste shipment, for which advance notification has been sent, shall send a cancellation notice to the governor, or governor's designee, of each appropriate state and to the cabinet. A copy of the notice shall be retained by the licensee for one (1) year.

Section 19. Quality Assurance Requirements. (1) Each licensee shall establish, maintain, and execute a quality assurance program to verify, by procedures such as checking, auditing, and inspection, that deficiencies, deviations, and defective material and equipment relating to the shipment of packages containing radioactive materials, are promptly identified and corrected. Prior to the use of any package for the shipment of radioactive material, each licensee shall obtain cabinet approval of its quality assurance program.

(2) Each licensee shall document the quality assurance program by written procedures or instructions and shall carry out the program in accordance with those procedures throughout the period during which packaging is used. The licensee shall identify the material and components to be covered by the quality assurance program.

(3) The licensee shall maintain sufficient written records to demonstrate compliance with the quality assurance program. Records pertaining to the use of a package for shipment of radioactive material shall [must] be retained for a period of two (2) years after shipment.

Section 20. Determination of A_1 and A_2. The following procedures are to be followed to make a determination of A_1 and A_2 values:

(1) Single radionuclides.

(a) For a single radionuclide of known identity, the values of A_1 and A_2 are taken from Section 21 of this administrative regulation if listed there. The values A_1 and A_2 in Section 21 of this administrative regulation are also applicable for radionuclides contained in (,n) or (,n) neutron sources.

(b) For a [any] single radionuclide whose identity is known but which is not listed in Section 21 of this administrative regulation, the values of A_1 and A_2 are determined according to the following procedure:

1. If the radionuclide emits only one (1) type of radiation, A_1 is determined according to the rules in subparagraphs of this paragraph. For radionuclides emitting different finds of radiation, A_1 is the most restrictive value of those determined for each kind of radiation. However, in both cases, A_1 is restricted to a maximum of 1000 curies. If a parent nuclide decays into a shorter lived daughter with a half-life not greater than ten (10) days, A_1 is calculated for both the parent and the daughter, and the more limiting of the two (2) values is assigned to the parent nuclide.

a. For gamma emitters, A_1 is determined by the expression:

$$A_1 = \frac{9 \text{ curies}}{r}$$

where r is the gamma ray constant, corresponding to the dose in R/h at one (1) meter per curie; the number nine (9) results from the choice of one (1) rem/h at a distance of three (3) meters as the reference dose equivalent rate.

b. For x-ray emitters, A_1 is determined by the atomic number of the nuclide:

for z less than or equal to 55---A_1 = 1000Ci

for z greater than 55---A_1 = 200Ci

where z is the atomic number of the nuclide.

c. For beta emitters, A_1 is determined by the maximum beta energy (E_{max}) according to Section 22 of this administrative regulation;

d. For alpha emitters, A_1 is determined by the expression:

$$A_1 = 1000\ A_3$$

where A_3 is the value listed in Section 23 of this administrative regulation.

2. A_2 is the more restrictive of the following two (2) values:

a. The corresponding A_1; and

b. The value A_3 obtained from Section 23 of this administrative regulation.

(c) For a [any] single radionuclide whose identity is unknown, the value of A_1 is taken to be two (2) curies and the value of A_2 is taken to be 0.002 curie. However, if the atomic number of the radionuclide is known to be less than 82, the value of A_1 is taken to be ten (10) curies and the value of A_2 is taken to be four-tenths (0.4) curie.

(2) Mixtures of radionuclides, including radioactive decay chains:

(a) For mixed fission products the following activity limits may be assumed if a detailed analysis of the mixture is not carried out:

$$A_1 = 10 \text{ Ci}$$
$$A_2 = 0.4 \text{ Ci}$$

(b) A single radioactive decay chain is considered to be a single radionuclide if [when] the radionuclides are present in their naturally occurring proportions and no daughter nuclide has a half-life either longer than ten (10) days or longer than that of the parent nuclide. The activity to be taken into account and the A_1 and A_2 value[s,] from Table I to be supplied are those corresponding to the parent nuclide of that chain. When calculating A_1 or A_2 values, radiation emitted by daughters must be considered. However, in the case of radioactive decay chains in which any daughter nuclide has a half-life either longer than ten (10) days or greater than that of the parent nuclide, the parent and daughter nuclides are considered to be mixtures of different nuclides.

(c) In the case of a mixture of difference radionuclides, where the identify and activity of each radionuclide are known, the permissible activity of each radionuclide R_1, $R_2 \ldots R_n$ is such that $F_1 + F_2 + \ldots F_n$ is greater than unity, where

$$F_1 = \frac{\text{Total activity of } R_1}{A_i(R_1)}$$

$$F_2 = \frac{\text{Total activity of } R_2}{A_i(R_2)}$$

$$F_n = \frac{\text{Total activity of } R_n}{A_i(R_n)}$$

A_i (R_1, $R_2..R_n$) is the value of A_1 or A_2 as appropriate for the nuclide R_1, $R^2...R_n$.

(d) If [When] the identity of each radionuclide is known but the individual activities of some of the radionuclides are not known, the formula given in paragraph (c) of this subsection is applied to establish the values of A_1 or A_2 as appropriate. All the radionuclides whose individual activities are not known (their total activity will, however, be known) are classed in a single group and the most restrictive value of A_1 and A_2 applicable to any one (1) is used as the value of A_1 or A_2 in the denominator of the fraction.

(e) If [Where] the identity of each radionuclide is known but the individual activity of none of the radionuclides is known, the most restrictive value of A_1 or A_2 applicable to any one (1) of the radionuclides present is adopted as the applicable value.

(f) If [When] the identity of none of the nuclides is known, the value of A_1 is taken to be two (2) curies and the value of A_2 is taken to be 0.002 curie. However, if alpha emitters are known to be absent, the value of A_2 is taken to be four-tenths (0.4) curie.

Section 21. Table. The A_1 and A_2 values for radionuclides are as follows (see footnotes at end of table):

Symbol of radionuclide	Element and atomic number	A_1(Ci)	A_2(Ci)	Specific Activity (Ci/g)
^{227}Ac	Actinum (89)	1000	0.003	7.2×10^{1}
^{228}Ac		10	4	2.2×10^{6}
^{105}Ag	Silver (47)	40	40	3.1×10^{4}
^{110m}Ag		7	7	4.7×10^{3}
^{111}Ag		100	20	1.6×10^{5}
^{241}Am	Americium (95)	8	0.008	3.2
^{243}Am		8	0.008	1.9×10^{-1}
^{37}Ar (Compressed or uncompressed)*	Argon (18)	1000	1000	1.0×10^{-5}
^{41}Ar (uncompressed)*		20	20	4.3×10^{7}
^{41}Ar (compressed)*		1	1	4.3×10^{7}
^{73}As	Arsenic (33)	1000	400	2.4×10^{4}
^{74}As		20	20	1.0×10^{5}
^{76}As		10	10	1.6×10^{6}
^{77}As		300	20	1.1×10^{6}
^{211}At	Astatine (85)	200	7	2.1×10^{6}
^{193}Au	Gold (79)	200	200	9.3×10^{5}
^{196}Au		30	30	1.2×10^{5}
^{198}Au		40	20	2.5×10^{5}
^{199}Au		200	25	2.1×10^{5}
^{131}Ba	Barium (56)	40	40	8.7×10^{4}
^{133}Ba		40	10	4.0×10^{2}
^{140}Ba		20	20	7.3×10^{4}
^{7}Be	Beryllium (4)	300	300	3.5×10^{5}
^{206}Bi	Bismuth (83)	5	5	9.9×10^{4}
^{207}Bi		10	10	2.2×10^{2}
^{210}Bi(RaE)		100	4	1.2×10^{5}
^{212}Bi		6	6	1.5×10^{7}
^{249}Bk	Berkelium (97)	1000	1	1.8×10^{3}
^{77}Br	Bromine (35)	70	25	7.1×10^{5}
^{82}Br		6	6	1.1×10^{6}
^{11}C	Carbon (6)	20	20	8.4×10^{8}
^{14}C		1000	60	4×6
^{45}Ca	Calcium (20)	1000	25	1.9×10^{4}
^{47}Ca		20	20	5.9×10^{5}
^{109}Cd	Cadmium (48)	1000	70	2.6×10^{3}
^{115m}Cd		30	30	2.6×10^{4}
^{115}Cd		80	20	5.1×10^{5}
^{139}Ce	Cerium (58)	100	100	6.5×10^{3}
^{141}Ce		300	25	2.8×10^{4}
^{143}Ce		60	20	6.6×10^{5}
^{144}Ce		10	7	3.2×10^{3}
^{249}Cf	Californium (98)	2	0.002	3×1
^{250}Cf		7	0.007	1.3×10^{2}
^{252}Cf		2	0.009	6.5×10^{2}
^{36}Cl	Chlorine (17)	300	10	3.2×10^{-2}
^{38}Cl		10	10	1.3×10^{8}
^{242}Cm	Curium (96)	200	0.2	3.3×10^{3}
^{243}Cm		9	0.009	4.2×10^{1}
^{244}Cm		10	0.01	8.2×10^{1}
^{245}Cm		6	0.006	1.0×10^{-1}
^{246}Cm		6	0.006	3.6×10^{-1}
^{56}Co	Cobalt (27)	5	5	3.0×10^{4}
^{57}Co		90	90	8.5×10^{3}

^{58m}Co			1000	1000	5.9×10^{6}
^{58}Co			20	20	3.1×10^{4}
^{60}Co			7	7	1.1×10^{3}
^{51}Cr		Chromium (24)	600	600	9.2×10^{4}
^{129}Cs		Cesium (55)	40	40	7.6×10^{5}
^{131}Cs			1000	1000	1.0×10^{5}
^{134m}Cs			1000	10	7.4×10^{6}
^{134}Cs			10	10	1.2×10^{3}
^{135}Cs			1000	25	8.8×10^{-4}
^{136}Cs			7	7	7.4×10^{4}
^{137}Cs			30	10	9.8×10^{1}
^{64}Cu		Copper (29)	80	25	3.8×10^{6}
^{67}Cu			200	25	7.9×10^{5}
^{165m}Dy		Dysprosium (66)	100	20	8.2×10^{6}
^{166}Dy			1000	200	2.3×10^{5}
^{169}Er		Erbium (68)	1000	25	8.2×10^{4}
^{171}Er			50	20	2.4×10^{6}
^{152m}Eu		Europium (63)	30	30	2.2×10^{6}
^{152}Eu			20	10	1.9×10^{2}
^{154}Eu			10	5	1.5×10^{2}
^{155}Eu			400	60	1.4×10^{3}
^{18}F		Fluorine (9)	20	20	9.3×10^{7}
^{52}Fe		Iron (26)	5	5	7.3×10^{6}
^{55}Fe			1000	1000	2.2×10^{3}
^{59}Fe			10	10	4.9×10^{4}
^{67}Ga		Gallium (31)	100	100	6.0×10^{5}
^{68}Ga			20	20	4.0×10^{7}
^{72}Ga			7	7	3.1×10^{6}
^{153}Gd		Gadolinium (64)	200	100	3.6×10^{3}
^{159}Gd			300	20	1.1×10^{6}
^{68}Ge		Germanium (32)	20	10	7.0×10^{3}
^{71}Ge			1000	1000	1.6×10^{5}
^{3}H		Hydrogen (1) see T–Tritium			
^{181}Hf		Hafnium (72)	30	25	1.6×10^{4}
^{197m}Hg		Mercury (80)	200	200	6.6×10^{5}
^{197}Hg			200	200	2.5×10^{5}
^{203}Hg			80	25	1.4×10^{4}
^{166}Ho		Holmium (67)	30	30	6.9×10^{5}
^{123}I		Iodine (53)	50	50	1.9×10^{6}
^{125}I			1000	70	1.7×10^{4}
^{126}I			40	10	7.8×10^{4}
^{129}I			1000	2	1.6×10^{-4}
^{131}I			40	10	1.2×10^{5}
^{132}I			7	7	1.1×10^{7}
^{133}I			30	10	1.1×10^{6}
^{134}I			8	8	2.7×10^{7}
^{135}I			10	10	3.5×10^{6}
^{111}In		Indium (49)	30	25	4.2×10^{5}
^{113m}In			60	60	1.6×10^{7}
^{114m}In			30	20	2.3×10^{4}
^{115m}In			100	20	6.1×10^{6}
^{190}Ir		Iridium (77)	10	10	6.2×10^{4}
^{192}Ir			20	10	9.1×10^{3}
^{194}Ir			10	10	8.5×10^{5}
^{42}K		Potassium (19)	10	10	6.0×10^{6}
^{43}K			20	10	3.3×10^{6}
^{85m}Kr	(uncompressed)*	Krypton (36)	100	100	8.4×10^{6}
^{85m}Kr	(compressed)*		3	3	8.4×10^{6}
^{85}Kr	(uncompressed)*		1000	1000	4.0×10^{2}
^{85}Kr	(compressed)*		5	5	4.0×10^{2}
^{87}Kr	(uncompressed)*		20	20	2.8×10^{7}
^{87}Kr	(compressed)*		0.6	0.6	2.8×10^{7}
^{140}La		Lanthanum (57)	30	30	5.6×10^{5}
^{177}Lu		Lutetium (71)	300	25	1.1×10^{5}
MFP		Mixed fission products	10	0.4	———
^{28}Mg		Magnesium (12)	6	6	5.2×10^{6}
^{52}Mn		Manganese (25)	5	5	4.4×10^{5}
^{54}Mn			20	20	8.3×10^{3}
^{56}Mn			5	5	2.2×10^{7}
^{99}Mo		Molybdenum (42)	100	20	4.7×10^{5}
^{13}N		Nitrogen (7)	20	10	1.5×10^{9}
^{22}Na		Sodium (11)	8	8	6.3×10^{3}
^{24}Na			5	5	8.7×10^{6}
^{93m}Nb		Niobium (41)	1000	200	1.1×10^{3}
^{95}Nb			20	20	3.9×10^{4}

^{97}Nb		20	20	2.6×10^{7}
^{147}Nd	Neodymium (60)	100	20	8.0×10^{4}
^{149}Nd		30	20	1.1×10^{7}
^{59}Ni	Nickel (28)	1000	900	8.1×10^{-2}
^{63}Ni		1000	100	4.6×10^{1}
^{65}Ni		10	10	1.9×10^{7}
^{237}Np	Neptunium (93)	5	0.005	6.9×10^{-4}
^{239}Np		200	25	2.3×10^{5}
^{185}Os	Osmium (76)	20	20	7.3×10^{3}
^{191}Os		600	200	4.6×10^{4}
^{191m}Os		200	200	1.2×10^{6}
^{193}Os		100	20	5.3×10^{5}
^{32}P	Phosphorus (15)	30	30	2.9×10^{5}
^{230}Pa	Protactinum (91)	20	0.8	3.2×10^{4}
^{231}Pa		2	0.002	4.5×10^{-2}
^{233}Pa		100	100	2.1×10^{4}
^{201}Pb	Lead (82)	20	20	1.7×10^{6}
^{210}Pb		100	0.2	8.8×10
^{212}Pb		6	5	1.4×10^{6}
^{103}Pd	Palladium (46)	1000	700	7.5×10^{4}
^{109}Pd		100	20	2.1×10^{6}
^{147}Pm	Promethium (61)	1000	25	9.4×10^{2}
^{149}Pm		100	20	4.2×10^{5}
^{210}Po	Polonium (84)	200	0.2	4.5×10^{3}
^{142}Pr	Praseodymium (59)	10	10	1.2×10^{4}
^{143}Pr		300	20	6.6×10^{4}
^{191}Pt	Platinum (78)	100	100	2.3×10^{5}
^{193m}Pt		200	200	2.0×10^{5}
^{197m}Pt		300	20	1.2×10^{7}
^{197}Pt		300	20	8.8×10^{5}
^{238}Pu	Plutonium (94)	3	0.003	1.7×10^{1}
^{239}Pu		2	0.002	6.2×10^{-2}
^{240}Pu		2	0.002	2.3×10^{-1}
^{241}Pu		1000	0.1	1.1×10^{2}
^{242}Pu		3	0.003	3.9×10^{-3}
^{223}Ra	Radium (88)	50	0.2	5.0×10^{4}
^{224}Ra		6	0.5	1.6×10^{5}
^{226}Ra		10	0.05	1.0
^{228}Ra		10	0.05	2.3×10^{2}
^{81}Rb	Rubidium (37)	30	25	8.2×10^{6}
^{86}Rb		30	30	8.1×10^{4}
^{87}Rb		Unlimited	Unlimited	6.6×10^{-8}
Rb (Natural)		Unlimited	Unlimited	1.8×10^{-8}
^{186}Re	Rhenium (75)	100	20	1.9×10^{5}
^{187}Re		Unlimited	Unlimited	3.8×10^{-8}
^{188}Re		10	10	1.0×10^{6}
Re (Natural)		Unlimited	Unlimited	2.4×10^{-8}
^{103m}Rh	Rhodium (45)	1000	1000	3.2×10^{7}
^{105}Rh		200	25	8.2×10^{5}
^{222}Rn	Radon (86)	10	2	1.5×10^{5}
^{97}Ru	Ruthenium (44)	80	80	5.5×10^{5}
^{103}Ru		30	25	3.2×10^{4}
^{105}Ru		20	20	6.6×10^{6}
^{106}Ru		10	7	3.4×10^{3}
^{35}S	Sulphur (16)	1000	60	4.3×10^{4}
^{122}Sb	Antimony (51)	30	30	3.9×10^{5}
^{124}Sb		5	5	1.8×10^{4}
^{125}Sb		40	25	1.4×10^{3}
^{46}Sc	Scandium (21)	8	8	3.4×10^{4}
^{47}Sc		200	20	8.2×10^{5}
^{48}Sc		5	5	1.5×10^{6}
^{75}Se	Selenium (34)	40	40	1.4×10^{4}
^{31}Si	Silicon (14)	100	20	3.9×10^{7}
^{147}Sm	Samarium (62)	Unlimited	Unlimited	2.0×10^{-8}
^{151}Sm		1000	90	2.6×10^{1}
^{153}Sm		300	20	4.4×10^{5}
^{113}Sn	Tin (50)	60	60	1.0×10^{4}
^{119m}Sn		100	100	4.4×10^{3}
^{125}Sn		10	10	1.1×10^{5}
^{85m}Sr	Strontium (38)	80	80	3.2×10^{7}
^{85}Sr		30	30	2.4×10^{4}
^{87m}Sr		50	50	1.2×10^{7}
^{89}Sr		100	10	2.9×10^{4}
^{90}Sr		10	0.4	1.5×10^{2}
^{91}Sr		10	10	3.6×10^{6}

^{92}Sr		10	10	1.3×10^{7}
T (uncompressed)*	Tritium (1)	1000	1000	9.7×10^{3}
T (compressed)*		1000	1000	9.7×10^{3}
T (activated luminous paint)		1000	1000	9.7×10^{3}
T (adsorbed on solid carrier		1000	1000	9.7×10^{3}
T (tritiated water)		20	20	9.7×10^{3}
T (other forms)		20	20	6.2×10^{3}
^{182}Ta	Tantalum (73)	20	10	1.1×10^{4}
^{160}Tb	Terbium (65)	1000	1000	3.8×10^{7}
^{96m}Tc	Technetium (43)	6	6	3.2×10^{5}
^{96}Tc		1000	200	1.5×10^{4}
^{97m}Tc		1000	400	1.4×10^{-3}
^{97}Tc		100	100	5.2×10^{6}
^{99m}Tc		1000	25	1.7×10^{-2}
^{99}Tc		1000	100	1.8×10^{4}
^{125m}Te	Tellurium (52)	300	20	4.0×10^{4}
^{127m}Te		300	20	2.6×10^{6}
^{127}Te		30	10	2.5×10^{4}
^{129m}Te		100	20	2.0×10^{7}
^{129}Te		10	10	8.0×10^{5}
^{131m}Te		7	7	3.1×10^{5}
^{132}Te		200	0.2	3.2×10^{4}
^{227}Th	Thorium (90)	6	0.008	8.3×10^{2}
^{228}Th		3	0.003	1.9×10^{-2}
^{230}Th		1000	25	5.3×10^{5}
^{231}Th		Unlimited	Unlimited	1.1×10^{-7}
^{232}Th		10	10	2.3×10^{4}
^{234}Th		Unlimited	Unlimited	2.2×10^{-7}
Th (Natural)		---	---	---
Th (irradiated)**		20	20	5.8×10^{5}
^{200}Tl	Thallium (81)	200	200	2.2×10^{5}
^{201}Tl		40	40	5.4×10^{4}
^{202}Tl		300	10	4.3×10^{2}
^{224}Tl		300	10	6.0×10^{3}
^{170}Tm	Thulium (69)	1000	100	1.1×10^{3}
^{171}Tm		100	0.1	2.7×10^{4}
^{230}U	Uranium (92)	30	0.03	2.1×10
^{232}U		100	0.1	9.5×10^{-3}
^{233}U		100	0.1	6.2×10^{-3}
^{234}U		100	0.2	2.1×10^{-6}
^{235}U		200	0.2	6.3×10^{-5}
^{236}U		Unlimited	Unlimited	3.3×10^{-7}
^{238}U		Unlimited	Unlimited	(See Section 24)
U (natural)		Unlimited	Unlimited	(See Section 24)
U (enriched) less than 20%		100	0.1	(See Section 24)
U (enriched) 20% or greater		Unlimited	Unlimited	(See Section 24)
U (depleted)		---	---	---
U (irradiated)***		6	6	1.7×10^{5}
^{48}V	Vanadium (23)	200	100	5.0×10^{3}
^{181}W	Tungsten (74)	1000	25	9.7×10^{-3}
^{185}W		40	20	7.0×10^{5}
^{187}W		70	70	2.8×10^{4}
^{127}Xe (uncompressed)*	Xenon (54)	5	5	2.8×10^{4}
^{127}Xe (compressed)*		10	10	1.0×10^{5}
^{131m}Xe (compressed)*		100	100	1.0×10^{5}
^{131m}Xe (uncompressed)*		1000	1000	1.9×10^{5}
^{133}Xe (uncompressed)*		5	5	1.9×10^{5}
^{133}Xe (compressed)*		70	70	2.5×10^{5}
^{135}Xe (uncompressed)*		2	2	2.5×10^{5}
^{135}Xe (compressed)*		20	20	4.5×10^{1}
^{87}Y	Yttrium (39)	10	10	2.5×10^{5}
^{90}Y		30	30	4.1×10^{7}
^{91m}Y		30	30	2.5×10^{4}
^{91}Y		10	10	9.5×10^{6}
^{92}Y		10	10	3.2×10^{6}
^{93}Y		80	80	2.3×10^{5}
^{169}Yb	Ytterbium (70)	400	25	1.8×10^{5}
^{175}Yb		30	30	8.0×10^{3}
^{65}Zn	Zinc (30)	40	40	3.3×10^{6}
^{69m}Zn		300	20	5.3×10^{7}
^{69}Zn				

^{93}Zr	Zirconium (40)	1000	200	3.5×10^{-3}
^{95}Zr		20	20	2.1×10^{4}
^{97}Zr		20	20	2.0×10^{6}

*For the purpose of this section, compressed gas means at a pressure which exceeds the ambient atmospheric pressure at the location where the containment system was closed.

**The values of A_1 and A_2 must be calculated in accordance with the procedure specified in Section 20(2)(c) of this administrative regulation, taking into account the activity of the fission products and of the uranium-233 in addition to that of the thorium.

***The values of A_1 and A_2 must be calculated in accordance with the procedure specified in Section 20(2)(c) of this administrative regulation, taking into account the activity of the fission products and plutonium isotopes in addition to that of the uranium.

Section 22. Table. The following table is to be used for the:

RELATIONSHIP BETWEEN A_1 AND E_{max} FOR BETA EMITTERS

E_{max}(MeV)	A_1(Ci)
less than 0.5	1000
0.5 – less than 1.0	300
1.0 – less than 1.5	100
1.5 – less than 2.0	30
greater than or equal to 2.0	10

Section 23. Table. The following is to be used for the:

RELATIONSHIP BETWEEN A_3 AND THE ATOMIC NUMBER OF THE RADIONUCLIDE

	A_3		
Atomic Number	Half-life less than 1000 days	Half-life 1000 days to 10^6 years	Half-life greater than 10^6 years
1 to 81	3 Ci	0.5 Ci	3 Ci
82 and above	.002 Ci	.002 Ci	3 Ci

Section 24. Table. The following table is to be used for the:

ACTIVITY-MASS RELATIONSHIPS FOR URANIUM/THORIUM

Thorium and Uranium enrichment* wt% ^{235}U present	Specific Activity Ci/g	g/Ci
0.45	5.0×10^{-7}	2.0×10^{6}
0.72 (natural)	7.06×10^{-7}	1.42×10^{6}
1.0	7.6×10^{-7}	1.3×10^{6}
1.5	1.0×10^{-6}	1.0×10^{6}
5.0	2.7×10^{-6}	3.7×10^{5}
10.0	4.8×10^{-6}	2.1×10^{5}
20.0	1.0×10^{-5}	1.0×10^{5}
35.0	2.0×10^{-5}	5.0×10^{4}
50.0	2.5×10^{-5}	4.0×10^{4}
90.0	5.8×10^{-5}	1.7×10^{4}
93.0	7.0×10^{-5}	1.4×10^{4}
95.0	9.1×10^{-5}	1.1×10^{4}
Natural Thorium	2.2×10^{-7}	4.6×10^{6}

*The figures for uranium include representative values for the activity of the uranium-234 which is concentrated during the enrichment process. The activity for thorium includes the equilibrium concentration of thorium-228.

C. HERNANDEZ, M.D., Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: September 27, 1991
FILED WITH LRC: October 11, 1991 at 3 p.m.

PUBLIC HEARING: A public hearing on this regulation will be held on November 21, 1991, at 9 a.m. in the Department for Employment Services Conference Room, 2nd Floor, CHR Building, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office by November 16, 1991: Ryan Halloran, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: John A. Volpe

(1) Type and number of entities affected: 380 radioactive material licensees are affected by this regulation.

(a) Direct and indirect costs or savings to those affected: There are no direct or indirect costs or savings to radioactive material licensees.

1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: There is no 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 and local revenues is anticipated.

(4) Assessment of alternative methods; reasons why alternatives were rejected: This regulation must be identical to that of the U.S. Nuclear Regulatory Commission and other states. No alternative is available.

(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: There is no conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict.

(6) Any additional information or comments:

TIERING: Was tiering applied? Yes. Tiering was applied because different types of licensees are regulated based on their transportation of radioactive material.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Section 274 of the Atomic Energy Act of 1954, as amended and 10 CFR.
2. State compliance standards. This administrative regulation provides requirements for the transportation of radioactive material.
3. Minimum or uniform standards contained in the federal mandate. Federal and state requirements are identical.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The requirements/responsibilities are identical to those of the U.S. Nuclear Regulatory Commission.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Federal and state standards are identical.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 100:080. Exempt quantities.

RELATES TO: KRS 211.842 to 211.852, 211.990(4)
STATUTORY AUTHORITY: KRS 194.050, 211.090, 211.844
NECESSITY AND FUNCTION: The Cabinet for Human Resources is authorized [empowered] by KRS 211.844 to provide by administrative regulation for the registration and licensing of the possession or use of [any] sources of ionizing or electronic product radiation and to regulate the handling and disposal of radioactive waste. [The purpose of] This administrative regulation [is to] provides a list of quantities of specific radionuclides which are exempted from the requirements of these administrative regulations.

Section 1. Applicability. This administrative regulation exempts certain quantities of radionuclides from the requirements of the cabinet's radiation administrative regulations.

Section 2. Table. Except as provided in other applicable provisions of these administrative regulations, a [any] person is exempt [from these regulations,] to the extent that the [such] person receives, possesses, uses, transfers, owns or acquires products or materials containing radioactive material in individual quantities not in excess of those listed in the following table:

Radioactive Material	Micro-curies	Radioactive Material	Micro-curies
Antimony-122	100	Osmium-185	10
Antimony-124	10	Osmium-191m	100
Antimony-125	10	Osmium-191	100
Arsenic-73	100	Osmium-193	100
Arsenic-74	10	Palladium-103	100
Arsenic-76	10	Palladium-109	100
Arsenic-77	100	Phosphorous-32	10
Barium-131	10	Platinum-191	100
Barium-133	10	Platinum-193m	100
Barium-140	10	Platinum-193	100
Bismuth-210	1	Platinum-197m	100
Bromine-82	10	Platinum-197	100
Cadmium-109	10	Polonium-210	0.1
Cadmium-115m	10	Potassium-42	10
Cadmium-115	100	Potassium-43	10
Calcium-45	10	Praseodymium-142	100
Calcium-47	10	Praseodymium-143	100
Carbon-14	100	Promethium-147	10
Cerium-141	100	Promethium-149	10
Cerium-143	100	Rhenium-186	100
Cerium-144	1	Rhenium-188	100
Cesium-129	100	Rhodium-103m	100
Cesium-131	1,000	Rhodium-105	100
Cesium-134m	100	Rubidium-81	10
Cesium-134	1	Rubidium-86	10
Cesium-135	10	Rubidium-87	10
Cesium-136	10	Ruthenium-97	100
Cesium-137	10	Ruthenium-103	10
Chlorine-36	10	Ruthenium-105	10
Chlorine-38	10	Ruthenium-106	1
Chromium-51	1,000	Samarium-151	10
Cobalt-57	100	Samarium-153	100
Cobalt-58m	10	Scandium-46	10
Cobalt-58	10	Scandium-47	100
Cobalt-60	1	Scandium-48	10
Copper-64	100	Selenium-75	10
Dysprosium-165	10	Silicon-31	100
Dysprosium-166	100	Silver-105	10
Erbium-169	100	Silver-110m	1
Erbium-171	100	Silver-111	100
Europium-152 (9.2h)	100	Sodium-22	10
Europium-152 (13 yr.)	1	Sodium-24	10
Europium-154	1	Strontium-85	10
Europium-155	10	Strontium-89	1
Fluorine-18	1,000	Strontium-90	0.1
Gadolinium-153	10	Strontium-91	10
Gadolinium-159	100	Strontium-92	10
Gallium-67	100	Sulfur-35	100
Gallium-72	10	Tantalium-182	10
Germanium-68	10	Technetium-96	10
Germanium-71	100	Technetium-97m	100
Gold-195	10	Technetium-97	100
Gold-198	100	Technetium-99m	100
Gold-199	100	Technetium-99	10
Hafnium-181	10	Tellurium-125m	10
Holmium-166	100	Tellurium-127m	10
Hydrogen-3	1,000	Tellurium-127	100
Indium-111	100	Tellurium-129m	10
Indium-113m	100	Tellurium-129	100
Indium-114m	10	Tellurium-131m	10
Indium-115m	100	Tellurium-132	10
Indium-115	10	Terbium-160	10
Iodine-123	100	Thallium-200	100
Iodine-125	1	Thallium-201	100
Iodine-126	1	Thallium-202	100
Iodine-129	0.1	Thallium-204	10
Iodine-131	1	Thulium-170	10
Iodine-132	10	Thulium-171	10
Iodine-133	1	Tin-113	10
Iodine-134	10	Tin-125	10
Iodine-135	10	Tungsten-181	10
Iridium-192	10	Tungsten-185	10
Iridium-194	100	Tungsten-187	100
Iron-52	10	Vandium-48	10
Iron-55	100	Xenon-131m	1,000
Iron-59	10	Xenon-133	100
Krypton-85	100	Xenon-135	100
Krypton-87	10	Ytterbium-175	100
Lanthanum-140	10	Yttrium-87	10
Lutetium-177	100	Ytrium-88	10
		Yttrium-90	10
		Yttrium-91	10

Manganese-52	10	Yttrium-92	100
Manganese-54	10	Yttrium-93	100
Manganese-56	10	Zinc-65	10
Mercury-197m	100	Zinc-69m	100
Mercury-197	100	Zinc-69	1,000
Mercury-203	10	Zirconium-93	10
Molybdenum-99	100	Zirconium-95	10
Neodymium-147	100	Zirconium-97	10
Neodymium-149	100	A [Any] radioactive	
Nickel-59	100	material not	
Nickel-63	10	listed above	
Nickel-65	100	other than	
Niobium-93m	10	alpha emitting	
Niobium-95	10	radioactive	
Niobium-97	10	material	0.1

C. HERNANDEZ, M.D., Commissioner
HARRY J. COWHERD, M.D., Secretary
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REGULATORY IMPACT ANALYSIS

Agency Contact Person: John A. Volpe
(1) Type and number of entities affected: 380 radioactive material licensees are affected by this regulation.
(a) Direct and indirect costs or savings to those affected: There are no direct or indirect costs or savings to radioactive material licensees.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: There is no 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 and local revenues is anticipated.
(4) Assessment of alternative methods; reasons why alternatives were rejected: This regulation must be identical to that of the U.S. Nuclear Regulatory Commission and other states. No alternative is available.
(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: There is no conflict.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict.
(6) Any additional information or comments:
TIERING: Was tiering applied? Yes. Tiering was applied because different types of licensees are regulated based on their use of radioactive material.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Section 274 of the Atomic Energy Act of 1954, as amended and 10 CFR.
2. State compliance standards. This administrative regulation provides a list of quantities of specific radionuclides which are exempted.
3. Minimum or uniform standards contained in the federal mandate. Federal and state requirements are identical.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The requirements/responsibilities are identical to those of the U.S. Nuclear Regulatory Commission.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Federal and state standards are identical.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 100:085. Exempt concentrations.

RELATES TO: KRS 211.842 to 211.852, 211.990(4)
STATUTORY AUTHORITY: KRS 194.050, 211.090, 211.844
NECESSITY AND FUNCTION: The Cabinet for Human Resources is authorized [empowered] by KRS 211.844 to provide by administrative regulation for the registration and licensing of the possession or use of [any] sources of ionizing or electronic product radiation and to regulate the handling and disposal of radioactive waste. [The purpose of] This administrative regulation [is to] provides a list of concentrations for specific radionuclides which are exempted from the requirements of these administrative regulations.

Section 1. Applicability. This administrative regulation exempts certain concentrations of radionuclides from the requirements of the cabinet's radiation administrative regulations.

Section 2. Table. (1) In the following table values are given in Column I only for those materials normally used as gases. Values given in Column II are equivalent values for microcuries per gram if [when] applicable to solids.
(2) Except as provided in other applicable provisions of these administrative regulations, a [any] person is exempt [from these regulations,] to the extent that the [such] person receives, possesses, uses, transfers, owns or acquires products or materials containing radioactive material in concentrations not in excess of those listed in

the following table:

Exempt Concentrations

Element (atomic number)	Isotopes	Column I Gas concentration uCi/ml	Column II Liquid and Solid concentration uCi/ml
Antimony (51)	Sb-122		$3x10^{-4}$
	Sb-124		$2x10^{-4}$
	Sb-125		$1x10^{-3}$
Argon (18)	Ar-37	$1x10^{-3}$	
	Ar-41	$4x10^{-7}$	
Arsenic (33)	As-73		$5x10^{-3}$
	As-74		$5x10^{-4}$
	As-76		$2x10^{-4}$
	As-77		$8x10^{-4}$
Barium (56)	Ba-131		$2x10^{-3}$
	Ba-140		$3x10^{-4}$
Beryllium (4)	Be-7		$2x10^{-2}$
Bismuth (83)	Bi-206		$4x10^{-4}$
Bromine (35)	Br-82	$4x10^{-7}$	$3x10^{-3}$
Cadmium (48)	Cd-109		$2x10^{-3}$
	Cd-115m		$3x10^{-4}$
	Cd-115		$3x10^{-4}$
Calcium (20)	Ca-45		$9x10^{-5}$
	Ca-47		$5x10^{-4}$
Carbon (6)	C-14	$1x10^{-6}$	$8x10^{-3}$
Cevium (58)	Ce-141		$9x10^{-4}$
	Ce-143		$4x10^{-4}$
	Ce-144		$1x10^{-4}$
Cesium (55)	Cs-131		$2x10^{-2}$
	Cs-134m		$6x10^{-2}$
	Cs-134		$9x10^{-5}$
Chlorine (17)	Cl-38	$9x10^{-7}$	$4x10^{-3}$
Chromium (24)	Cr-51		$2x10^{-2}$
Cobalt (27)	Co-57		$5x10^{-3}$
	Co-58		$1x10^{-3}$
	Co-60		$5x10^{-4}$
Copper (29)	Cu-64		$3x10^{-3}$
Dysprosium (66)	Dy-165		$4x10^{-3}$
	Dy-166		$4x10^{-4}$
Erbium (68)	Er-169		$9x10^{-4}$
	Er-171		$1x10^{-3}$
Europium (63)	Eu-152 (9.2 h)		$6x10^{-4}$
	Eu-155		$2x10^{-3}$
Fluorine (9)	F-18	$2x10^{-6}$	$8x10^{-3}$
Gadolinium (64)	Gd-153		$2x10^{-3}$
	Gd-159		$8x10^{-4}$
Gallium (31)	Ga-72		$4x10^{-4}$
Germanium (32)	Ge-71		$2x10^{-2}$
Gold (79)	Au-196		$2x10^{-3}$
	Au-198		$5x10^{-4}$
	Au-199		$2x10^{-2}$
Hafnium (72)	Hf-181		$7x10^{-4}$
Hydrogen (1)	H-3	$5x10^{-6}$	$3x10^{-2}$
Indium (49)	In-113m		$1x10^{-2}$
	In-114m		$2x10^{-4}$
Iodine (53)	I-126	$3x10^{-9}$	$2x10^{-5}$
	I-131	$3x10^{-9}$	$2x10^{-5}$
	I-132	$8x10^{-8}$	$6x10^{-4}$
	I-133	$1x10^{-8}$	$7x10^{-5}$
	I-134	$2x10^{-7}$	$1x10^{-3}$
Iridium (77)	Ir-190		$2x10^{-3}$
	Ir-192		$4x10^{-3}$
	Ir-194		$3x10^{-4}$
Iron (26)	Fe-55		$8x10^{-3}$
	Fe-59		$6x10^{-4}$
Krypton (36)	Kr-85m		$1x10^{-6}$
	Kr-85		$3x10^{-6}$
Lanthanum (57)	La-140		$2x10^{-4}$
Lead (82)	Pb-203		$4x10^{-3}$
Lutetium (71)	Lu-177		$1x10^{-3}$
Manganese (25)	Mn-52		$3x10^{-4}$
	Mn-54		$1x10^{-3}$
	Mn-56		$1x10^{-3}$
Mercury (80)	Hg-197m		$2x10^{-3}$
	Hg-197		$3x10^{-3}$
	Hg-203		$2x10^{-4}$
Molybdenum (42)	Mo-99		$2x10^{-3}$
Neodymium (60)	Nd-147	$6x10^{-4}$	
	Nd-149	$3x10^{-3}$	
Nickel (28)	Ni-65		$1x10^{-3}$
Niobium (Columbium) (41)	Nb-95		$1x10^{-3}$
	Nb-97		$9x10^{-3}$
Osmium (76)	Os-185		$7x10^{-4}$
	Os-191m		$3x10^{-2}$
	Os-191		$2x10^{-3}$
	Os-193		$6x10^{-4}$
Palladium (46)	Pd-103		$3x10^{-3}$
	Pd-109		$9x10^{-4}$
Phosphorus (15)	P-32		$2x10^{-4}$
Platinum (78)	Pt-191		$1x10^{-3}$
	Pt-193m		$1x10^{-2}$
	Pt-197m		$1x10^{-2}$
	Pt-197		$1x10^{-3}$
Potassium (19)	K-42		$3x10^{-3}$
Praseodymium (59)	Pr-142		$3x10^{-4}$
	Pr-143		$5x10^{-4}$
Promethium (61)	Pm-147		$2x10^{-3}$
	Pm 149		$4x10^{-4}$
Rhenium (75)	Re-183		$6x10^{-3}$
	Re-186		$9x10^{-4}$
	Re-188		$6x10^{-4}$
Rhodium (45)	Rh-103m		$1x10^{-1}$
	Rh-105		$1x10^{-3}$
Rubidium (37)	Rb-86		$7x10^{-4}$
Ruthenium (44)	Ru-97		$4x10^{-3}$
	Ru-103		$8x10^{-4}$
	Ru-105		$1x10^{-3}$
	Ru-106		$1x10^{-4}$
Samarium (62)	Sm-153		$8x10^{-4}$
Scandium (21)	Sc-46		$4x10^{-4}$
	Sc-47		$9x10^{-4}$
	Sc-48		$3x10^{-4}$
Selenium (34)	Se-75		$3x10^{-3}$
Silicon (14)	Si-31		$9x10^{-3}$
Silver (47)	Ag-105		$1x10^{-3}$
	Ag-110m		$3x10^{-4}$
	Ag-111		$4x10^{-4}$
Sodium (11)	Na-24		$2x10^{-3}$
Strontium (38)	Sr-85		$1x10^{-3}$
	Sr-89		$1x10^{-4}$
	Sr-91		$7x10^{-4}$
	Sr-92		$7x10^{-4}$
Sulfur (16)	S-35	$9x10^{-8}$	$6x10^{-4}$
Tantalum (73)	Ta-182		$4x10^{-4}$
Technetium (43)	Tc-96m		$1x10^{-1}$
	Tc-96		$1x10^{-3}$
Tellurium (52)	Te-125m		$2x10^{-3}$
	Te-127m		$6x10^{-4}$
	Te-127		$3x10^{-3}$
	Te-129m		$3x10^{-4}$
	Te-131m		$6x10^{-4}$
	Te-132		$3x10^{-4}$
Terbium (65)	Tb-160		$4x10^{-4}$
Thallium (81)	Tl-200		$4x10^{-3}$
	Tl-201		$3x10^{-3}$
	Tl-202		$1x10^{-3}$
	Tl-204		$1x10^{-3}$
Thulium (69)	Tm-170		$5x10^{-4}$
	Tm-171		$5x10^{-3}$
Tin (50)	Sn-113		$9x10^{-4}$
	Sn-125		$2x10^{-4}$

Tungsten (Wolfram) (74)	W-181		$4x10^{-3}$
	W-187		$7x10^{-4}$
Vanadium (23)	V-48		$3x10^{-4}$
Xenon (54)	Xe-131m		$4x10^{-6}$
	Xe-133		$3x10^{-6}$
	Xe-135		$1x10^{-6}$
Yttebium (70)	Yb-175		$1x10^{-3}$
Yttrium (39)	Y-90		2.10^{-4}
	Y-91m		$3x10^{-2}$
	Y-91		$3x10^{-4}$
	Y-92		$6x10^{-4}$
	Y-93		$3x10^{-4}$
Zinc (30)	Zn-65		$1x10^{-3}$
	Zn-69m		$7x10^{-4}$
	Zn-69		$2x10^{-2}$
Zirconium (40)	Zr-95		$6x10^{-4}$
	Zr-97		$2x10^{-4}$
Beta or gamma emitting radioactive material not listed above with half-life less than 3 years.		$1x10^{-10}$	$1x10^{-6}$

Section 3. Special Cases. The following applies to the combination of nuclides:

(1) In expressing the concentrations in Section 2 of this administrative regulation, the activity stated is that of the parent nuclide and takes into account the daughters; and

(2) For purposes of 902 KAR 100:045, Section 3, if [where] there is involved a combination of nuclides, the limit for the combination shall [should] be derived by determining for each nuclide in the product, the ratio between the radioactivity concentration present in the product and the exempt radioactivity concentration established in Section 2 of this administrative regulation for the specific nuclide if [when] not in combination. The sum of such ratios may not exceed "1" (i.e., "unity").

C. HERNANDEZ, M.D., Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: September 27, 1991
FILED WITH LRC: October 11, 1991 at 3 p.m.

PUBLIC HEARING: A public hearing on this regulation will be held on November 21, 1991, at 9 a.m. in the Department for Employment Services Conference Room, 2nd Floor, CHR Building, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office by November 16, 1991: Ryan Halloran, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: John A. Volpe

(1) Type and number of entities affected: 380 radioactive material licensees are affected by this regulation.

(a) Direct and indirect costs or savings to those affected: There are no direct or indirect costs or savings to radioactive material licensees.

1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing cost. (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 and local revenues is anticipated.

(4) Assessment of alternative methods; reasons why alternatives were rejected: This regulation must be identical to that of the U.S. Nuclear Regulatory Commission and other states. No alternative is available.

(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: There is no conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict.

(6) Any additional information or comments:

TIERING: Was tiering applied? Yes. Tiering was applied because different types of licensees are regulated based on their use of radioactive material.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Section 274 of the Atomic Energy Act of 1954, as amended and 10 CFR.

2. State compliance standards. This administrative regulation provides a list of concentrations for specific radionuclides which are exempt.

3. Minimum or uniform standards contained in the federal mandate. Federal and state requirements are identical.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The requirements/responsibilities are identical to those of the U.S. Nuclear Regulatory Commission.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Federal and state standards are identical.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 100:090. Broad license limits.

RELATES TO: KRS 211.842 to 211.852, 211.990(4)

STATUTORY AUTHORITY: KRS 194.050, 211.090, 211.844

NECESSITY AND FUNCTION: The Cabinet for Human Resources is authorized [empowered] by KRS 211.844 to provide by administrative regulation for the registration and licensing of the possession or use of [any] sources of ionizing or electronic product radiation and to regulate

the handling and disposal of radioactive waste. [The purpose of] This regulation shall [is to] provide a list of quantities of radioactive material which can be licensed under a "Type B" or "Type C" specific license of broad scope.

Section 1. Applicability. This administrative regulation shall apply [applies] to [all] persons who have been approved to use radioactive material under a "Type B" or "Type C" specific license of broad scope.

Section 2. Table. The following lists provide the quantity limits for the issuance of a "Type B" or "Type C" specific license under broad scope as provided in the cabinet's administrative regulation relating to the issuance of specific licenses:

LIMITS FOR BROAD LICENSES

Radioactive Material	Col. I curies	Col. II curies
Antimony-122	1	0.01
Antimony-124	1	0.01
Antimony-125	1	0.01
Arsenic-73	10	0.1
Arsenic-74	1	0.01
Arsenic-76	1	0.01
Arsenic-77	10	0.1
Barium-131	10	0.1
Barium-140	1	0.01
Beryllium-7	10	0.1
Bismuth-210	0.1	0.001
Bromine-82	10	0.1
Cadmium-109	1	0.01
Cadmium-115m	1	0.01
Cadmium-115	10	0.1
Calcium-45	1	0.01
Calcium-47	10	0.1
Carbon-14	100	1.
Cerium-141	10	0.1
Cerium-143	10	0.1
Cerium-144	0.1	0.001
Cesium-131	100	1.
Cesium-134m	100	1.
Cesium-134	0.1	0.001
Cesium-135	1	0.01
Cesium-136	10	0.1
Cesium-137	0.1	0.001
Chlorine-36	1	0.01
Chlorine-38	100	1.
Chromium-51	100	1.
Cobalt-57	10	0.1
Cobalt-58m	100	1.
Cobalt-58	1	0.01
Cobalt-60	0.1	0.001
Copper-64	10	0.1
Dysprosium-165	100	1.
Dysprosium-166	10	0.1
Erbium-169	10	0.1
Erbium-171	10	0.1
Europium-152 (9.2h)	10	0.1
Europium-152 (13 yr.)	0.1	0.001
Europium-154	0.1	0.001
Europium-155	1	0.01
Fluorine-18	100	1.
Gadolinium-153	1	0.01
Gadolinium-159	10	0.1
Gallium-72	10	0.1
Germanium-71	100	1.
Gold-198	10	0.1
Gold-199	10	0.1
Hafnium-181	1	0.01
Holmium-166	10	0.1
Hydrogen-3	100	1.
Indium-113m	100	1.
Indium-114m	1	0.01
Indium-115m	100	1.
Indium-115	1	0.01
Iodine-125	0.1	0.001
Iodine-126	0.1	0.001
Iodine-129	0.1	0.001
Iodine-131	0.1	0.001
Iodine-132	10	0.1
Iodine-133	1	0.01
Iodine-134	10	0.1
Iodine-135	1	0.01
Iridium-192	1	0.01
Iridium-194	10	0.1
Iron-55	10	0.1
Iron-59	1	0.01
Krypton-85	100	1.
Krypton-87	10	0.1
Lanthanum-140	1	0.01
Lutetium-177	10	0.1
Manganese-52	1	0.01
Manganese-54	1	0.01
Manganese-56	10	0.1
Mercury-197m	10	0.1
Mercury-197	10	0.1
Mercury-203	1	0.01
Molybdenum-99	10	0.1
Neodymium-147	10	0.1
Neodymium-149	10	0.1
Nickel-59	10	0.1
Nickel-63	1	0.01
Nickel-65	10	0.1
Niobium-93m	1	0.01
Niobium-95	1	0.01
Niobium-97	100	1.
Osmium-185	1	0.01
Osmium-191m	100	1.
Osmium-191	10	0.1
Osmium-193	10	0.1
Palladium-103	10	0.1
Palladium-109	10	0.1
Phosphorous-32	1	0 .01
Platinum-191	10	0.1
Platinum-193m	100	1.
Platinum-193	10	0.1
Platinum-197m	100	1.
Platinum-197	10	0.1
Polonium-210	0.01	0.0001
Potassium-42	1	0.01
Praseodymium-142	10	0.1
Praseodymium-143	10	0.1
Promethium-147	1	0.01
Promethium-149	10	0.1
Radium-226	0.01	0.0001
Rhenium-186	10	0.1
Rhenium-188	10	0.1
Rhodium-103m	1,000	10.
Rhodium-105	10	0.1
Rubidium-86	1	0.01
Rubidium-87	1	0.01
Ruthenium-97	100	1.
Ruthenium-103	1	0.01
Ruthenium-105	10	0.1
Ruthenium-106	0.1	0.001
Samarium-151	1	0.01
Samarium-153	10	0.1
Scandium-46	1	0.01
Scandium-47	10	0.1
Scandium-48	1	0.01
Selenium-75	1	0.01
Silicon-31	10	0.1
Silver-105	1	0.01
Silver-110m	0.1	0.001

Silver-111	10	0.1
Sodium-22	0.1	0.001
Sodium-24	1	0.01
Strontium-85m	1,000	10.
Strontium-85	1	0.01
Strontium-89	1	0.01
Strontium-90	0.01	0.0001
Strontium-91	10	0.1
Strontium-92	10	0.1
Sulfur-35	10	0.1
Tantalum-182	1	0.01
Technetium-96	10	0.1
Technetium-97m	10	0.1
Technetium-97	10	0.1
Technetium-99m	100	1.
Technetium-99	1	0.01
Tellurium-125m	1	0.01
Tellurium-127m	1	0.01
Tellurium-127	10	0.1
Tellurium-129m	1	0.01
Tellurium-129	100	1.
Tellurium-131m	10	0.1
Tellurium-132	1	0.01
Terbium-160	1	0.01
Thallium-200	10	0.1
Thallium-201	10	0.1
Thallium-202	10	0.1
Thallium-204	1	0.01
Thulium-170	1	0.01
Thulium-171	1	0.01
Tin-113	1	0.01
Tin-125	1	0.01
Tungsten-181	1	0.01
Tungsten-185	1	0.01
Tungsten-187	10	0.1
Vanadium-48	1	0.01
Xenon-131m	1,000	10.
Xenon-133	100	1.
Xenon-135	100	1.
Ytterbium-175	10	0.1
Yttrium-90	1	0.01
Yttrium-91	1	0.01
Yttrium-92	10	0.1
Yttrium-93	1	0.01
Zinc-65	1	0.01
Zinc-69m	10	0.1
Zinc-69	100	1.
Zirconium-93	1	0.01
Zirconium-95	1	0.01
Zirconium-97	1	0.01
A [Any] radioactive material other than source material, special nuclear material, or alpha emitting radioactive material not listed above.	0.1	0.001

C. HERNANDEZ, M.D., Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 11, 1991
FILED WITH LRC: October 15, 1991 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation will be held on November 21, 1991, at 9 a.m. in the Department for Employment Services 2nd Floor Conference Room, CHR Building, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office by November 16, 1991: Ryan Halloran, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: John A. Volpe
(1) Type and number of entities affected: 5 radioactive material licensees are affected by this regulation.
(a) Direct and indirect costs or savings to those affected: There are no direct or indirect costs or savings to radioactive material licensees.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: There is no 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: This regulation must be identical to that of the U.S. Nuclear Regulatory Commission and other states. No alternative is available.
(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: There is no conflict.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict.
(6) Any additional information or comments:
TIERING: Was tiering applied? No. This regulation requires uniformity for all broad scope licensees.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Section 274 of the Atomic Energy Act of 1954, as amended and 10 CFR.
2. State compliance standards. This administrative regulation specifies the broad scope limits for broad scope licensees licensed under the Cabinet for Human Resources' radiation administrative regulations.
3. Minimum or uniform standards contained in the federal mandate. Federal and state requirements are identical.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The requirements/responsibilities are identical to those of the U.S. Nuclear Regulatory Commission.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Federal and state standards are identical.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 100:105. X-rays; general.

RELATES TO: KRS 211.842 to 211.852, 211.990(4)
STATUTORY AUTHORITY: KRS 194.050, 211.090, 211.844
NECESSITY AND FUNCTION: The Cabinet for Human Resources is authorized [empowered] by KRS 211.844 to provide by administrative regulation for the registration and licensing of the possession or use of a [any] source of ionizing or electronic product radiation and the handling and disposal of radioactive waste. The purpose of this administrative regulation is to provide general requirements for the possession, use, and operation of x-ray systems.

Section 1. Applicability. This administrative regulation shall apply [applies] to [all] x-ray systems and [to all] persons, equipment, and materials used in connection with the possession, use, or operation of these [such] systems. [All] X-ray systems shall comply with the requirements of this administrative regulation and with [any] other administrative regulations pertinent to the particular system employed.

Section 2. Administrative Control. (1) No person shall make, sell, lease, transfer, lend, or install x-ray systems or the accessories used in connection with the [such] systems unless the [such] accessories and systems, if [when] properly placed in operation and properly used, [will] meet the requirements of these administrative regulations. These provisions include, but are not limited to, the delivery of cones or collimators, filters, adequate timers, and fluoroscopic shutters, if [where] applicable.
(2) The registrant shall be responsible for directing the operation of the x-ray systems [which] he has registered with the cabinet. In the operation of the x-ray system, the registrant or his agent shall ensure that the following requirements are met:
(a) An x-ray system which does not meet the provisions of these administrative regulations shall not be operated unless a specific exemption in writing has been granted by the cabinet. If [In the event] the registrant advises an agent of the cabinet that he no longer uses an x-ray system, the cabinet may inactivate the [such] system. Inactivated x-ray systems may be reactivated only by the cabinet or with its written permission. Inactivation of an x-ray system may be accomplished by one (1) [any] of the following means:
1. An inactivation seal(s), numbers and instructions approved by the cabinet, may be placed on an x-ray system so as to prevent energizing [of] the system. X-ray systems so sealed as inactive shall not be utilized and the seal or attached instructions shall not be removed without the express authorization of the cabinet.
2. The cabinet may approve the removal of portions of the x-ray system so as to render the system inoperative or so as to allow only those portions of the system to remain operative which are in compliance with these administrative regulations. X-ray systems or portions of x-ray systems having been so inactivated shall not be operated or be made operative by reinstallation of the removed portions of the system without the express authorization of the cabinet. X-ray systems so inactivated shall be clearly labeled showing the limitations of the x-ray system. The [Such] labels shall not be removed without the express authorization of the cabinet.
(b) Individuals operating x-ray systems shall be adequately instructed in safe operating procedures and shall be competent in the safe use of the system.
(c) Written safety procedures and rules for the particular x-ray system shall be posted in a conspicuous place beside each x-ray system's control panel and a copy of these administrative regulations shall be made available in each general work area.
(d) The following exposures are prohibited:
1. Exposure of an individual to the useful beam for training or demonstration purposes; and
2. Exposure of individuals for the purpose of mass screenings, except if [when] authorized by a licensed practitioner of the healing arts within the scope of his professional license.
(e) If [In the event that] a patient or film is [must be] provided with auxiliary support during a radiation exposure, the registrant shall:
1. Provide mechanical holding devices to be used if [when] the technique permits;
2. Provide written safety procedures, as required by this administrative regulation, which shall indicate the requirements for selecting a person to hold a patient or film and the procedure which the holder [of such] shall follow;
3. Provide the human holder with protection from radiation exposure as required by these administrative regulations; and
4. Ensure that no person is used routinely to hold film or patients.
(f) If [In the event that] protective clothing is worn on portions of the body and a monitoring device(s) are required, at least one (1) [such] monitoring device shall be utilized as follows:
1. If [When] an apron is worn, the monitoring device shall be worn at the neck area outside of the apron; and
2. If more than one (1) device is used and a record is made of the data, each dose shall be identified with the area where the device was worn on the body.
(g) A personnel monitoring device shall not be exposed to deceptively indicate a dose delivered to an individual.
(h) The registrant shall maintain the following information for each x-ray system for inspection by the cabinet [a record for each x-ray system. Such record shall include but to be limited to the following]:
1. Maximum rating of technique factors;
2. Tube rating charts and cooling curves; and
3. Records of [all] surveys, calibrations, maintenance and modifications performed on the x-ray system along with the names of persons who performed the service; and [.]
4. For equipment registered after the effective date of these administrative regulations, aluminum equivalent filtration of the useful beam, including routine variations.
(i) Each installation shall be provided with [such] primary barriers and secondary barriers as are necessary to ensure compliance with these administrative regulations. This requirement shall be deemed to be met, if the thickness of

[such] barriers are equivalent to those as computed in accordance with the National Council of Radiation Protection Report No. 49, "Structural Shielding Design and Evaluation for Medical Use of X-rays and Gamma Rays of Energies up to 10 MeV"; and

1. Doors that are an integral part of primary and secondary barriers shall be closed during x-ray procedures; and

2. Doors in Section subparagraph 1 of this paragraph "CLOSE DOOR DURING X-RAY PROCEDURES".

(j) If [In the event that] a darkroom is used in connection with an x-ray system the following requirements shall apply:

1. The darkroom shall be constructed so that film being processed, handled, or stored is [will be] exposed only to light which has passed through a safe light filter; and

2. Adequate safety lighting shall be provided in each darkroom so [such] that the radiance and spectral emissions of the safelight, bulb and filter combination shall not fog (the film) above the base fog level if [when] exposed for one (1) minute at a distance of 120 centimeters from the lamp(s). Film manufacturer's recommendations for a safelight and its placement shall be adjudged to meet this criterion.

(k) Automatic processors and other closed processing systems shall meet the following requirements:

1. Preventive maintenance shall be performed on the unit, except for extended periods of nonuse, on a frequency basis which is not less than that schedule recommended by the manufacturer. If [In the event that] no schedule is available from the manufacturer, a maintenance schedule shall be established which preserves [will preserve] good film quality; and

2. After a full cleansing of the processor, a film shall be exposed to a density of approximately one (1), with one-half (1/2) of the film protected from the exposure. The [Such] film shall be developed, [and then] kept near the unit and at least one (1) test film daily (exposed under techniques identical with those used for the original test film) shall be compared with the original test film to evaluate the adequacy of the unit's developing capability and base fog level.

(l) Manual processing systems shall meet the following requirements:

1. A device shall be available which indicates [will indicate] the actual temperature of the developer in degrees Fahrenheit or Celsius;

2. The amount of time that the film remains in the developer solution shall be controlled. At the end of a preset time interval, the timing mechanism used for controlling the development time shall provide a visible or audible signal;

3. A time-temperature technique consistent with the film or developer manufacturer's requirements shall be used; and

4. A temperature control system shall be available to maintain the temperature of the developing solution within the range specified by the manufacturer. A means shall be provided to control the temperature of the fixer and the rinse water to within five (5) degrees Fahrenheit of the temperature of the developer solution. Exceptions to the requirements of this subparagraph may be authorized by the cabinet on the basis of a written request providing details of the developing procedure to be used, methods of controlling developing conditions, and an adequate justification for the [such] exception.

C. HERNANDEZ, M.D., Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 3, 1991
FILED WITH LRC: October 11, 1991 at 3 p.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 21, 1991, at 9 a.m. in the Department for Employment Services second floor conference room, Cabinet for Human Resources Building. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 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: John A. Volpe

(1) Type and number of entities affected: 3500 radiation producing machine registrants.

(a) Direct and indirect costs or savings to those affected: There will be no costs or savings associated with amendment to this regulation.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: The amendment to this regulation will require documentation of one additional piece of information by registrants.

(2) Effects on the promulgating administrative body: The amendment to this regulation will add minimally to surveillance activities.

(a) Direct and indirect costs or savings: The amendment to this regulation will not impact costs or savings.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: The amendment to this regulation will have a minimum effect on reporting and paperwork.

(3) Assessment of anticipated effect on state and local revenues: The amendment to this regulation will have no impact on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The amendment to this regulation was made to maintain conformity with the U.S. Food and Drug Administration's suggested state regulations there are no alternatives.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: The amendment to this regulation does not conflict, overlap or duplicate any statute, administrative regulation or government policy.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? Yes. This regulation is tiered by specifying different

requirements for different types of operations and different dates of registration equipment.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. While not mandated state radiation control programs conform to the suggested state regulations promulgated by the Conference of Radiation Control Program Directors and the U.S. Food and Drug Administration.
2. State compliance standards. The amendment to this administrative regulation will maintain compliance standards equivalent to the suggested state regulations.
3. Minimum or uniform standards contained in the federal mandate. The suggested state regulations require a minimum amount of information be maintained on each radiation producing machine.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The amendment to this administrative regulation will be identical to the suggested state regulation requirement.
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 administrative regulation amendment affects local government possessing radiation producing machines.
3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation relates to health services, or in a few instances, airport boards or authorities, that utilize radiation producing machines.
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 administrative regulation requires local government possessing radiation producing machines to maintain documentation of one additional bit of information on each machine. There will be no monetary impact.

CABINET FOR HUMAN RESOURCE
Department for Health Services
(Proposed Amendment)

902 KAR 100:110. Registration of x-ray.

RELATES TO: KRS 211.842 to 211.852, 211.990(4)
STATUTORY AUTHORITY: KRS 194.050, 211.090, 211.844

NECESSITY AND FUNCTION: The Cabinet for Human Resources is authorized [empowered] by KRS 211.844 to regulate the possession or use of [any] sources of ionizing or electronic product radiation and the handling and disposal of radioactive waste. The purpose of this administrative regulation is to provide for the registration of radiation producing machines and vendors in Kentucky.

Section 1. Applicability. This administrative regulation shall apply [applies] to [all] radiation producing machines received, possessed, used, or transferred in the Commonwealth of Kentucky. The provisions of this administrative regulation are in addition to [all] other applicable radiation administrative regulations.

Section 2. Preregistration. The person proposing to operate a radiation producing machine or accelerator except those specifically exempted in Section 5 of this administrative regulation shall preregister with the cabinet prior to acquisition of the machine. Preregistration under this section shall contain the following information and other information as may be required:
(1) Name and address of the person having administrative control and responsibility for the proposed facility.
(2) Address where the machine is to be located and used except that a central headquarters address may be given for a mobile x-ray to be used at various temporary field locations.
(3) A designation of the general category of proposed use (dental, medical, industrial, veterinary, or other.)
(4) Plans and specifications for the proposed facility and an evaluation by a qualified expert as required by 902 KAR 100:160.

Section 3. Registration. (1) The preregistrant shall notify the cabinet within ten (10) days of the acquisition of a radiation producing machine or accelerator. Registration under this section requires the following information and other information as may be required:
(a) A change which renders the information required in Section 2 of this administrative regulation no longer accurate.
(b) A description of the type, model, serial number of the radiation machine and its rated capacity in peak kilovolts and milliamperes.
(c) Date of initial operation of the radiation producing machine or accelerator.
(d) Vendor registration number, name, address and telephone number.

[Section 2. Registration. (1) The owner or person having possession of any radiation producing machine or accelerator except those specifically exempted in Section 4 of this regulation shall register such within ten (10) days after acquisition. Registration under this section shall be on forms furnished by the cabinet and shall contain the following information and such other information as may be required:]
[(a) Name and address of the owner or person having administrative control and responsibility for use.]
[(b) Address where the machine is located and used, except that a central headquarters address may be given for a mobile machine used at

various temporary field locations.]

[(c) A description of the type, model, serial number of the radiation machine and its rated capacity in peak kilovolts and milliamperes.]

[(d) A designation of the general category of use (dental, medical, industrial, veterinary, research, or other).]

[(e) Date of application and signature of registrant.]

(2) The registrant shall notify the cabinet within ten (10) days of a [any] change which increases the rating of the machine or of a [any] change which renders the information required in subsection (1) of this section no longer accurate. A change of ownership or possession of the machine shall terminate the registration.

(3) Each registrant, or his estate, if deceased, who permanently discontinues the use of or transfers radiation machines at an installation shall notify the cabinet in writing within thirty (30) days of this [such] action. If [In the event of] a transfer occurs, the notification shall include the name and address of the transferee.

(4) No person in an [any] advertisement shall refer to the fact that a radiation machine is registered with the cabinet, and no person shall state or imply that an [any] activity under the [such] registration has been approved by the cabinet.

(5) The registrant shall be subject to [all] applicable requirements of these administrative regulations.

(6) If a [Whenever any] radiation machine is to be brought into this state, the person proposing to bring the [such] machine into the state shall give written notice to the cabinet at least two (2) days before the [such] machine enters the state. The notice shall include the type of radiation machine; the name of the individual in charge; the nature, duration, and scope of use; and the exact location where the radiation machine is to be used. If for a specific case the two (2) day period imposes [would impose] an undue hardship on the person, he may, upon application to the cabinet, obtain permission to proceed sooner. In addition, the out-of-state person shall [must]:

(a) Comply with [all] applicable administrative regulations of the cabinet; and

(b) Supply the cabinet with [such] other information as the cabinet may reasonably request.

(7) No radiation producing machines shall be operated without a valid registration as stipulated in these administrative regulations.

Section 4. [3.] Vendor Obligation. (1) The distributor, retailer or other agent who sells, leases, transfers, lends, or installs radiation producing machines shall apply for registration of these services with the cabinet within thirty (30) days following the effective date of these administrative regulations or, thereafter, prior to furnishing or offering to furnish these services. Registration under this section shall contain the following information and other information as may be required:

(a) Name and address of the person having responsibility for the business' operations.

(b) Name and address of the business' operation if different from paragraph (a) of this subsection.

(c) Designation of the categories of equipment in which the business deals (dental, medical, industrial or other).

(d) Date of application and signature.

(2) Vendor registration certificates shall expire on the last day of the month, one (1) year after the date of issuance.

(3) Vendor registration renewals shall be submitted to the cabinet within forty-five (45) days of the renewal notification date.

(4) The vendor shall notify the cabinet within thirty (30) days of a change which would render the information contained in the application for registration no longer accurate. A change of ownership of the business shall terminate the registration.

(5) Vendor services shall not be rendered without a valid registration as stipulated in these administrative regulations.

(6) Vendor services shall only be rendered at a preregistered or registered facility.

(7) No vendor in an advertisement shall refer to the fact that his business is registered with the cabinet and no vendor shall state or imply that an activity under his registration has been approved by the cabinet.

(8) The vendor shall be subject to applicable requirements of these administrative regulations.

(9) The vendor shall notify the cabinet within fifteen (15) [thirty (30)] days after the end of each month [calendar quarter] of:

(a) The names and addresses of persons who have received these machines; [and]

(b) The manufacturer, model, and serial number of each machine transferred; [and]

(c) The date which the machine(s) were sold, leased, transferred, or loaned; and

(d) The preregistration or registration number of persons who have received these machines.

(10) [(2)] No vendor or person shall make, sell, lease, transfer, lend or install x-ray equipment or the supplies used in connection with the [such] equipment unless the [such] supplies and equipment, if [when] placed in operation and used, shall [will] meet the requirements of these administrative regulations.

Section 5. [4.] Exemptions. (1) No person shall be required to register due to the ownership or possession of the following:

(a) Electronic equipment that produces radiation incidental to its operation for other purposes provided the dose equivalent rate averaged over an area of ten (10) square centimeters does not exceed five-tenths (0.5) mrem per hour at five (5) cm from an [any] accessible surface of the [such] equipment. The production, testing, or factory servicing of such equipment shall not be exempt.

(b) Radiation producing machines while in transit or storage incident thereto.

(2) Domestic television receivers are exempt from the requirements of this administrative regulation.

(3) No registrant, or his estate, shall be required to comply with the provisions of Section 4 of this administrative regulation except Section 4(10) of this administrative regulation if the radiation producing machines had been previously obtained for his sole use.

Section 6. [5.] Radiation Safety Officer. (1) The registrant or his duly authorized representative shall designate a radiation safety officer or may personally assume the radiation safety responsibility.

(2) The person responsible for radiation safety shall:

(a) Be qualified by training and experience to assume the responsibilities of appraising himself of all hazards and precautions involved in handling the radiation machine(s) for which he is responsible.

(b) Give instructions concerning hazards and safety practices to persons who may be occupationally exposed to radiation.

(c) Provide reasonable assurance that other provisions as required by these administrative regulations are carried out.

C. HERNANDEZ, M.D., Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 3, 1991
FILED WITH LRC: October 11, 1991 at 3 p.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 21, 1991, at 9 a.m. in the Department for Employment Services second floor conference room, Cabinet for Human Resources Building. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 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: John A. Volpe

(1) Type and number of entities affected: 3000 radiation producing machine registrants and approximately 25 vendors of x-ray equipment.

(a) Direct and indirect costs or savings to those affected: The amendment to this administrative regulation will not result in direct or indirect costs or savings to the registrants or vendors.

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: New registration and reporting requirements will be required of x-ray vendors conducting business in Kentucky.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: Slightly increased costs will be incurred by the Radiation Control Branch.

1. First year: First year costs will be approximately $500 for minor computer programming.

2. Continuing costs or savings: Annual computer program maintenance costs will be approximately $100.

3. Additional factors increasing or decreasing costs: There are no additional factors that will increase or decrease costs.

(b) Reporting and paperwork requirements: New registration forms and vendor files will be developed.

(3) Assessment of anticipated effect on state and local revenues: Since no fees are associated with this amendment, there will be no impact on state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Of the various alternative methods, this amendment was the least costly yet achieved the goal of reducing unregistered x-ray facilities to a minimum.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: The amendment to this administrative regulation does not overlap, conflict or duplicate any statute, administrative regulation or 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: The objective of this amendment is to minimize operating unregistered x-ray facilities and increase vendors' accountability for meeting their regulatory obligations.

TIERING: Was tiering applied? Yes. This regulation is tiered by levying different requirements for different categories of registrants.

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 amendment to the administrative regulation will affect local government entities utilizing radiation producing machines.

3. State the aspect or service of local government to which this administrative regulation relates. This amendment to the administrative regulation relates to the registration of x-ray facilities operated by local government agencies.

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 amendment will slightly alter the time frame under which local governments register x-ray facilities from upon installation of an x-ray device to just before installation of the device.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 100:115. Diagnostic x-ray.

RELATES TO: KRS 211.842 to 211.852, 211.990(4)

STATUTORY AUTHORITY: KRS 194.050, 211.090, 211.844

NECESSITY AND FUNCTION: The Cabinet for Human Resources is authorized [empowered] by KRS 211.844 to provide by administrative regulation for the registration and licensing of the possession or use of [any] sources of ionizing or electronic product radiation and the handling and disposal of radioactive waste. The purpose of this administrative regulation is to provide requirements for the possession, use, and operation of [all] diagnostic x-ray systems in relation to the healing arts.

Section 1. Applicability. This administrative regulation shall apply [applies] to [all] diagnostic x-ray systems in relation to the healing arts, [and] to [all] persons, equipment and materials used in connection with the possession, use or operation of the [or such] systems.

Section 2. Warning Label. The control panel containing the main power switch shall bear the following warning statement or an equivalent statement, legible and accessible to view: "WARNING: This x-ray unit may be dangerous to patient and operator unless safe exposure factors and operating instructions are observed."

Section 3. Battery Charge Indicator. On battery-powered x-ray generators, visual means shall be provided on the control panel to indicate whether the battery is in a state of charge adequate for proper operation.

Section 4. Leakage Radiation from the Diagnostic Source Assembly. The leakage radiation from the diagnostic source assembly measured at [a] distances of one (1) meter [in any direction] from the source shall not exceed 100 milliroentgens in one (1) hour[s] if [when] the x-ray tube is operated at its leakage technique factors. Compliance shall be determined by measurements averaged over an area of 100 square centimeters with no linear dimension greater than twenty (20) centimeters.

Section 5. Radiation from Components other than the Diagnostic Source Assembly. The radiation emitted by a component other than the diagnostic source assembly shall not exceed two (2) milliroentgens in one (1) hour at five (5) centimeters from [any] accessible surfaces of the component if [when] it is operated in an assembled x-ray system under [any] conditions for which it was designed. Compliance shall be determined by measurements averaged over an area of 100 square centimeters with no linear dimension greater than twenty (20) centimeters.

Section 6. Beam Quality. (1) The half-value layer (HVL) of the useful beam for a given x-ray tube potential shall not be less than the values shown in the following table:

TABLE OF ACCEPTABLE HALF-VALUE LAYER (HVL)

Design operating range (Kilovolts peak)	Measured potential (Kilovolts peak)	Half-value Layer (Millimeters of aluminum)
Below 50	30	0.3
	40	0.4
	49	0.5
50 to 70	50	1.2
	60	1.3
	70	1.5
Above 70	71	2.1
	80	2.3
	90	2.5
	100	2.7
	110	3.0
	120	3.2
	130	3.5
	140	3.8
	150	4.1

(2) If it is necessary to determine the half-value layer at an exposure tube potential which is not listed in the table above, linear interpolation or extrapolation may be made;

(3) The above HVL criteria is [will be] considered to have been met if it can be demonstrated that the aluminum equivalent of the total filtration in the primary beam is not less than that shown in the following table:

TABLE OF FILTRATION REQUIRED VS. OPERATING VOLTAGE

Operating Voltage (kVp)	Total Filtration (inherent plus added) (millimeters aluminum equivalent)
Below 50	0.5
50 – 70	1.5
Above 70	2.5

(4) X-ray tubes with beryllium windows shall have a minimum of five-tenths (0.5) mm aluminum equivalent filtration permanently mounted in the useful beam;

(5) For capacitor energy storage equipment, compliance shall be determined with the maximum quantity of charge per exposure; and

(6) The required minimal aluminum equivalent filtration shall include the filtration contributed by [all] materials which are always present between the focal spot of the tube and the patient (e.g., a tabletop if [when] the tube is mounted "under the table" and inherent filtration of the tube).

Section 7. Filtration Controls. For x-ray systems which have variable kVp and variable filtration for the useful beam, a device shall link the kVp selector with the filter(s) which [will] prevents an exposure unless the minimum required amount of filtration is in the useful beam for the given kVp which has been selected.

Section 8. Mechanical Support of the Tube Head. The tube housing assembly supports shall be adjusted so [such] that the tube housing assembly [will] remains stable during an exposure unless the tube housing movement is a designed function of the x-ray system.

Section 9. Technique and Production Indicators. (1) The technique factors to be used during an exposure shall be indicated before the exposure begins. If automatic exposure controls are used, the technique factors which are set prior to the exposure shall be indicated.

(2) The requirement of technique indicators may be met by permanent markings on equipment having fixed technique factors. Indication of technique factors shall be visible from the operator's position except in the case of spot films made by the fluoroscopist.

(3) A means shall be provided which [will] gives positive indication of the production of x-rays if [whenever] the x-ray tube is energized.

(4) On machines certified under the federal performance standard; and

(a) A visual indication of the production of x-rays and an audible signal indicating the exposure is terminated shall be provided; and

(b) Deviation of technique factors from indicated values shall not exceed the limits specified for that system by its manufacturer.

Section 10. Timers. [All] Timers shall meet the following requirements:

(1) A means shall be provided to automatically terminate the exposure at a preset time interval, preset product of current and time, preset number of pulses, or a preset radiation exposure of the image receptor;

(2) Automatic termination of the exposure shall cause automatic resetting of the timer to its initial setting or to zero, except for dental panoramic systems. The timer shall not be capable of making an exposure if [when] the timer is set to a zero or off position if either is provided;

(3) If [When] four (4) timer tests are performed at identical timer settings, the average time period (Tave) shall be greater than five (5) times the maximum period (Tmax) minus the minimum period (Tmin), (Tave) greater than five (5) (Tmax minus Tmin).

Section 11. Exposure Switch. The exposure switch shall be of the dead man type.

Section 12. Exposure Reproducibility. The exposure produced shall be reproducible so that if [when all] technique factors are held constant, the coefficient of variation shall not exceed one-tenth (0.1). This requirement shall be deemed to have been met if, [when] four (4) exposures at identical technique factors are made, the value of the average exposure (Eave) is greater than five (5) times the maximum exposure (Emax) minus the minimum exposure (Emin), (Eave) greater than five (5) (Emax minus Emin). If [When] the diagnostic x-ray system is certified, the estimated coefficient of variation of radiation exposures shall be no greater than 0.05 for [any] specific combination of selected technique factors.

Section 13. Technique Chart. In the vicinity of each x-ray system's control panel a chart shall be provided which specifies for [all] examinations which are performed by that system a list of information for each projection within that examination. The [Such] chart shall include but not be limited to the following:

(1) The patient's anatomical size versus technique factors to be utilized;

(2) The type and size of the film or film-screen combination to be used;

(3) The type and focal distance of the grid to be used, if used [any];

(4) The source to image receptor distance to be used; and

(5) The type and location of gonadal shielding to be used, if used [any].

Section 14. Personnel in X-ray Room. Except for patients who cannot be moved out of the room, only staff and ancillary personnel required for the medical procedure or training shall be in the room during the radiographic exposure. The [Such] patients and personnel shall be protected as follows:

(1) Other than the patient being examined, [all] individuals in the x-ray room shall be positioned so [such] that no part of the body not protected by five-tenths (0.5) mm lead equivalent, is [will be] struck by the useful beam.

(2) Staff and ancillary personnel shall be protected from direct scatter radiation by protective aprons or whole body protective barriers of not less than 0.25 mm lead equivalent;

(3) Patients who cannot be removed from the room shall be protected from the direct scatter radiation by whole body protective barriers of not less than 0.25 mm lead equivalent or shall be so positioned that the nearest portion of the body is at least two (2) meters from both the tube head and the nearest edge of the image receptor; and

(4) If [When] a portion of the body of [any] staff or ancillary personnel is potentially subjected to stray radiation which [could] results in that individual receiving one-quarter (1/4) of the maximum permissible dose as defined in these administrative regulations, additional protective devices may be required by the cabinet.

Section 15. Examination Information. Each facility shall maintain written records of each examination. The [Such] records shall include but not be limited to the following:

(1) Appropriate patient identification data, including [such as] name, social security number, age and sex;

(2) Date of examination;

(3) A description of the examination or treatment given by routine or local title as denoted on the technique chart;

(4) [Any] Deviation from standard procedure or technique, including [all] repeat exposures, as denoted in the technique chart;

(5) The x-ray system used, if [when] there is more than one (1) system per facility;

(6) the name of the person who performed the exam; [and]

(7) the name of the individual who ordered the exam; and

(8) The name of the human holder.

Section 16. Image Interpretation. Each image (film, film set, etc.) shall be interpreted by a licensed practitioner, and a permanent record shall be made of the interpretation of the total examination.

Section 17. Gonadal Shielding. Gonadal shielding of not less than 0.25 millimeter lead equivalent shall be used for patients who have not passed the reproductive age during radiographic procedures in which the gonads are in the [primary] beam except for cases in which this would interfere with the diagnostic procedure.

Section 18. Procedures and Ancillary Equipment. Procedures and ancillary equipment designed to minimize patient and personnel exposure commensurate with the needed diagnostic information shall be utilized. The [Such] procedures and equipment shall include but not be limited to the following:

(1) The speed of the film or film and screen combination shall be the fastest consistent with the diagnostic objective of the examination; [and]

(2) Portable and mobile equipment shall be used only for examinations if [where] it is impractical to transfer the patient to a stationary radiographic installation; and [.]

(3) Radiation exposure to the patient shall be the minimum exposure required to produce images of good diagnostic quality.

Section 19. Multiple Tubes. If [Where] two (2) or more radiographic tubes are controlled by one (1) exposure switch, the tube or tubes which have been selected shall be clearly indicated prior to initiation of the exposure. This indication shall be both on the x-ray control panel and at or near the tube housing assembly which has been selected.

C. HERNANDEZ, M.D., Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 3, 1991
FILED WITH LRC: October 11, 1991 at 3 p.m.
PUBLIC HEARING: A public hearing on this regulation will be held on November 21, 1991, at 9 a.m. in the Department for Employment Services Conference Room, 2nd Floor, CHR Building, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office by November 16, 1991: Ryan Halloran, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: John A. Volpe
(1) Type and number of entities affected: Approximately 2900 registrants utilizing medical diagnostic x-ray equipment.
(a) Direct and indirect costs or savings to those affected: There are no direct or indirect costs associated with this amendment to the administrative regulation.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: There are no additional reporting or paperwork requirements due to this amendment to the administrative regulation.
(2) Effects on the promulgating administrative body: This amendment to the administrative regulation will require departmental personnel to include an additional item during a radiation safety inspection.
(a) Direct and indirect costs or savings: There will be no direct or indirect costs or savings associated with this amendment.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: A slight modification to the department's inspection form will be required by this amendment to the regulation.
(3) Assessment of anticipated effect on state and local revenues:
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were available since this amendment maintains compatability with the U.S. Food and Drug Administration's suggested state regulations.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflict, overlap or duplication with any state regulation or 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: This amendment maintains conformity with the U.S. Food and Drug Administration's suggested state regulations.
TIERING: Was tiering applied? Yes. This regulation is tiered by establishing different requirements for diagnostic x-ray equipment based upon its operating characteristics and its date of manufacture.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. While not federally mandated state radiation control programs conform to the suggested state regulations promulgated by the Conference of Radiation Control Program Directors and the U.S. Food and Drug Administration.
2. State compliance standards. The amendment to this regulation will maintain compliance standards equivalent to the suggested state regulations.
3. Minimum or uniform standards contained in the federal mandate. The suggested state regulations establish minimum operating requirements for x-ray used in relation to the healing arts.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This amendment to this administrative regulation will be identical to the suggested state regulation requirement.
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 amendment will affect only a part of local government.
3. State the aspect or service of local government to which this administrative regulation relates. This amendment relates to local government entities utilizing medical diagnostic x-ray.
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 amendment will levy a minor additional requirement regarding operational requirements for medical diagnostic x-ray operated by local government.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 100:120. General diagnostic radiography [Special x-ray].

RELATES TO: KRS 211.842 to 211.852, 211.990(4)
STATUTORY AUTHORITY: KRS 194.050, 211.090, 211.844
NECESSITY AND FUNCTION: The Cabinet for Human Resources is authorized [empowered] by KRS 211.844 to provide by administrative regulation for the registration and licensing of the possession or use of [any] sources of ionizing or electronic product radiation and the handling and disposal of radioactive waste. The purpose of this administrative regulation is to provide special requirements for the possession, use, and operation of [all] radiographic x-ray systems used in relation to the healing arts, except systems used for dental intra-oral or veterinary radiography.

Section 1. Applicability. This administrative regulation shall apply [applies] to [all] radiographic x-ray systems used in relation to the healing arts, except dental intra-oral, fluoroscopic, [or] veterinary radiographic, or computed tomography and to [all] persons, equipment and materials used in connection with the possession, use or operation of the [such] systems.

Section 2. Permanent Structural Shielding. Permanent structural shielding and protective barriers shall be used as necessary to insure that no person other than the patient receives a dose equivalent in excess of the limits specified in these regulations.

Section 3. Beam Limitation. The useful beam shall be limited to the area of clinical interest [(1) Primary beam shall be restricted by cones, shutters, diaphragms, or adjustable collimators to an area no greater than the area of clinical interest and in no case shall the dimensions of the x-ray field exceed the dimensions of the image receptor except] as follows:

(1) General purpose stationary and mobile x-ray systems.

(a) A means shall be provided for stepless adjustment of the size of the x-ray field. The minimum field size at an SID of 100 centimeters shall be equal to or less than five (5) by five (5) centimeters;

(b) [(a)] No [All] dimension[s] of the x-ray field, measured in the plane of the image receptor, shall [not] exceed the corresponding dimension[s] of the image receptor by more than two (2) [three (3)] percent of the source to image receptor distance (SID) measured if [when] the plane of the image receptor is perpendicular to the primary ray of the x-ray field; and

(c) A method shall be provided for visually defining the perimeter of the x-ray field. The total misalignment of the edges of the visually defined field with the respective edges of the x-ray field along either the length or width of the visually defined field shall not exceed two (2) percent of the distance from the source to the center of the visually defined field when the surface upon which it appears is perpendicular to the axis of the x-ray beam.

(d) The cabinet may grant an exemption as provided by 902 KAR 100:015 Section 7(1) on noncertified x-ray to the requirements of paragraphs (a) and (c) of this subsection for equipment registered prior to the effective date of this administrative regulation.

(2) In addition to the requirements of subsection (1) of this section, stationary general purpose x-ray systems, both certified and noncertified, shall meet the following requirements:

(a) A method shall be provided to indicate if the axis of the x-ray beam is perpendicular to the plane of the image receptor, to align the center of the x-ray field with respect to the center of the image receptor to within two (2) percent of the SID and to indicate the SID to within two (2) percent.

(b) The beam limiting device shall indicate numerically the field size in the plane of the image receptor to which it is adjusted; and

(c) Indication of field size dimensions and SID's shall be specified in inches or centimeters, so that aperture adjustments result in x-ray field dimensions in the plane of the image receptor which correspond to those indicated by the beam limiting device to within two (2) percent of the SID if the beam axis is indicated to be perpendicular to the plane of the image receptor.

(3) Radiographic equipment designed for only one (1) image receptor size at a fixed SID shall be provided with means to limit the field at the plane of the image receptor to dimensions no greater than those of the image receptor, and to align the center of the x-ray field with the center of the image receptor to within two (2) percent of the SID, or shall be provided with means to both size and align the x-ray field so that the x-ray field at the plane of the image receptor does not extend beyond any edge of the image receptor.

(4) Radiographic systems designed only for mammography and general purpose radiographic systems, if special attachments for mammography are in service, shall be provided with means to limit the useful beam so that the x-ray field at the plane of the image receptor does not extend beyond any edge of the image receptor at any designated SID except the edge of the image receptor designed to be adjacent to the chest wall where the x-ray field may not extend beyond this edge by more than two (2) percent of the SID. This requirement can be met with a system which performs as prescribed in subsection (5)(c) of this section. If the beam-limiting device and image receptor support device are designed to be used to immobilize the breast during a mammographic procedure and the SID may vary, the SID indication specified in subsection (5)(c) of this section shall be the maximum SID for which the beam limiting device or aperture is designed. In addition, each image receptor support intended for installation on a system designed only for mammography shall have clear and permanent markings to indicate the maximum image receptor size for which it is designed.

(5) For x-ray systems other than those described in subsections (1), (2), (3), (4) and (5) of this section:

(a) Means shall be provided to limit the x-ray field in the plane of the image receptor so that the field does not exceed each dimension of the image receptor by more than two (2) percent of the SID if the axis of the x-ray beam is