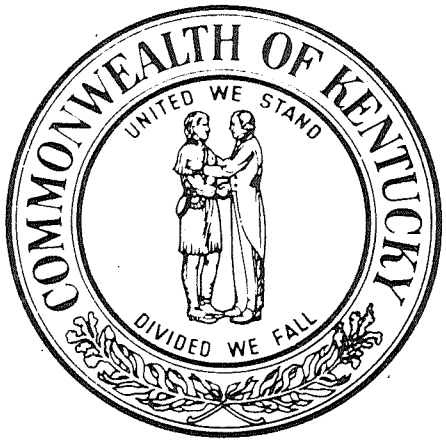
Administrative Register of Kentucky

LEGISLATIVE RESEARCH COMMISSION
FRANKFORT, KENTUCKY

VOLUME 18, NUMBER 6
SUNDAY, DECEMBER 1, 1991



Administrative Regulation Review Subcommittee, Dec. Agenda.....1793
Regulation Review Procedure.....1797

Emergency Regulations Now In Effect:
Natural Resources and Environmental Protection Cabinet.....1798
Corrections.....1813
Human Resources.....1816

As Amended:
Board of Examiners of Social Work.....1838
Agriculture.....1840
Natural Resources and Environmental Protection Cabinet.....1841
Education.....1882
Housing, Buildings and Construction.....1883
Human Resources.....1888

Amended After Hearing:
Finance and Administration Cabinet.....1894
Transportation.....1897
Public Service Commission.....1897
Human Resources.....1900

Proposed Amendments Received through November 15, 1991:
Crime Victims Compensation Board.....1910
Board of Pharmacy.....1911
Natural Resources & Environmental Protection.....1912
Corrections.....1927
Education.....1936
Registry of Election Finance.....1940
Labor Cabinet.....1944
Public Service Commission.....1953
State Racing Commission.....1977
Human Resources.....2025

Proposed Regulations Received Through November 15, 1991:
Higher Education Assistance Authority.....2069
Board of Claims.....2070
Agriculture.....2070
Transportation.....2072
Western Kentucky University.....2072
Human Resources.....2077

Nov. Minutes of the Administrative Regulation Review Subcommittee.....2094
Other Committee Reports.....2103

CUMULATIVE SUPPLEMENT
Locator Index - Effective Dates.....F2
KRS Index.....F12
Subject Index.....F21

MEETING NOTICE: The next meeting of the Administrative Regulation Review Subcommittee is **tentatively** scheduled on December 6 and 9, 1991. See **tentative** agenda on pages 1793-1797 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 - December 6, 1991
10 a.m. in Room 327, Capitol

AUDITOR OF PUBLIC ACCOUNTS

Audits

45 KAR 1:030. Audits of Sheriff's tax settlements.
45 KAR 1:040. Audits of county fee officials.
45 KAR 1:050. Audits of fiscal courts. (Repeals 45 KAR 1:020.)

DEPARTMENT FOR MILITARY AFFAIRS
Division of Disaster and Emergency Services

Disaster and Emergency Services

106 KAR 1:081. Kentucky emergency response commission fee system requirements.
106 KAR 1:091. Kentucky emergency response commission fee account grant requirements for local emergency planning committees.
106 KAR 1:101. Kentucky emergency response commission fee account grant requirements for state agencies.
106 KAR 1:111. Kentucky emergency response commission fee account grant review committee.
106 KAR 1:121. Kentucky emergency response commission fee account grant distribution formula.
106 KAR 1:131. Kentucky emergency response commission civil penalty assessment and hearings procedure.

DEPARTMENT FOR LOCAL GOVERNMENT

Uniform Financial Information Report

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

FINANCE AND ADMINISTRATION CABINET

State Owned Buildings and Grounds

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

Purchasing

200 KAR 5:050. Central purchasing for political subdivisions.
200 KAR 5:076. Small and small minority business set asides. (Repeals 200 KAR 5:075.)
200 KAR 5:301. Delegation of purchasing authority.
200 KAR 5:304. Application to be placed on source list.
200 KAR 5:305. Performance bonds; forms; payments.
200 KAR 5:306. Competitive sealed bidding.
200 KAR 5:307. Competitively negotiated contracts.
200 KAR 5:309. Noncompetitive negotiations.
200 KAR 5:310. Multiple contracts.
200 KAR 5:311. Contract modifications.
200 KAR 5:312. Termination of contracts.
200 KAR 5:313. General and special conditions for bidding.
200 KAR 5:315. Disciplinary action for failure to perform.
200 KAR 5:317. Cost principles.
200 KAR 5:330 & E. Purchase of goods, supplies, equipment, materials and printing with minimum recycled content. (Amended After Hearing)

Property

200 KAR 6:011. Repeal of Finance and Administration Cabinet regulations. (Repeals 200 KAR 5:300, 5:303, 5:308, 5:314, 5:316, 6:010 and 13:010).
200 KAR 6:015. Real property inventories.
200 KAR 6:040. Flood plain management.

Engineering

200 KAR 7:010. Substitution of securities for retainage.

Personnel

200 KAR 12:020. Unemployment insurance payments.

GENERAL GOVERNMENT CABINET

Board of Examiners and Registration of Landscape Architects.

201 KAR 10:080. Continuing education

Board of Veterinary Examiners

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

Board of Physical Therapy

201 KAR 22:053. Code of ethical standards and standards of practice for physical therapists and physical therapist's assistants.

TOURISM CABINET
Department of Fish and Wildlife Resources

Game

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

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

Water Quality

401 KAR 5:031. Surface water standards.

Department for Surface Mining Reclamation and Enforcement

Permits

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)

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 16:200. Revegetation. (Amended After Hearing) (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 18:200. Revegetation. (Amended After Hearing) (Deferred from October)
Special Performance Standards
405 KAR 20:010. Coal exploration. (Deferred from October)

CORRECTION CABINET

Office of the Secretary
501 KAR 6:050. Luther Luckett Correctional Complex.
501 KAR 6:130. Western Kentucky Correctional Complex.
501 KAR 6:150 & E. Eastern Kentucky Correctional Complex.

TRANSPORTATION CABINET

Department of Vehicle Regulation

Division of Motor Carriers
601 KAR 1:116. Restricted taxicab certificate. (Amended After Hearing)

EDUCATION AND HUMANITIES CABINET

Department of Education

Office of Learning Programs Development

Health and Physical Education Programs
704 KAR 4:020. Comprehensive school health. (Amended After Hearing)

WORKFORCE DEVELOPMENT CABINET

Department for Adult and Technical Education

Personnel System for Certified and Equivalent Employees.
780 KAR 3:020. Compensation plan.

PUBLIC PROTECTION AND REGULATION CABINET

Public Service Commission

Utilities
807 KAR 5:023. Control of drug use in gas operations. (Amended After Hearing)

State Racing Commission

Thoroughbred Racing Rules
810 KAR 1:003. Licensing.
810 KAR 1:012. Horses.

Department of Housing, Buildings and Construction

Kentucky Building Code
815 KAR 7:070. Requirements for certification of Kentucky Building Code inspectors.
Mobile Homes and Recreational Vehicles
815 KAR 25:010. Mobile homes.

CABINET FOR HUMAN RESOURCES

Department for Social Services

Administration
900 KAR 1:040. Guardianship responsibilities.
900 KAR 1:060. Protection of human subjects.

Office of Inspector General

Long-Term Care
900 KAR 2:050 & E. Transfer and discharge rights.
900 KAR 2:060 & E. Hearings concerning transfer and discharge rights.

Department for Health Services

Maternal and Child Health
902 KAR 4:010. Lay-midwifery.
902 KAR 4:090. Lead poisoning prevention.
Sanitation
902 KAR 10:010. Public restrooms.
902 KAR 10:110. Issuance of onsite sewage disposal system permits.
902 KAR 10:140. On-site sewage disposal system installer certification program standard. (Deferred from September)
Emergency Medical Technicians
902 KAR 13:010. Definitions.
902 KAR 13:020. Applicant's requirements; priority for training.
902 KAR 13:040. Exemptions.
902 KAR 13:070. Instructors and trainers.
902 KAR 13:090. Disciplinary actions.
902 KAR 13:101. Repeal of 902 KAR 13:100.
902 KAR 13:110. EMT-first responder training, examination, and certification.
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) (Amended After Hearing) (Deferred from November)
902 KAR 20:117. Health care ground transportation services. (Repeals 902 KAR 20:115 and 20:120.) (Amended After Hearing)
902 KAR 20:200. Tuberculosis testing in long-term care facilities.
902 KAR 20:340. Withholding of withdrawl of life-prolonging treatment from patients of health care facilities.

Division of Local Health

Food and Cosmetics
902 KAR 45:140. Retail food program evaluation and standardization procedures.

Hazardous Substances
902 KAR 47:050. Ban of paint, coatings, and certain consumer products containing lead.
902 KAR 47:060. Safety of toys and children's products.
902 KAR 47:070. Standards for flammable fabrics and flammable fabric products.

Milk and Milk Products
902 KAR 50:010. Definitions for milk and milk products.
902 KAR 50:030. Farm manufacturing requirements.
902 KAR 50:050. Manufacturing plant requirements.
902 KAR 50:070. Standards of identity for milk and milk products.
902 KAR 50:090. Milk adulteration.
902 KAR 50:100. Grade A milk sanitation ratings.
902 KAR 50:110. Grade A milk and milk products standards.

Controlled Substances
902 KAR 55:040. Exempt over the counter preparations.
902 KAR 55:045. Exempt prescription preparations.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
TENTATIVE AGENDA – December 9, 1991
11 a.m. in Room 327, Capitol

CABINET FOR HUMAN RESOURCES
Department for Health Services

Radiology
902 KAR 100:005. General applicability.
902 KAR 100:010. Definitions.
902 KAR 100:012. Fee schedule.
902 KAR 100:015. General requirements.
902 KAR 100:022. Licensing requirements for land disposal of radioactive waste.
902 KAR 100:025. Concentrations above natural background for air and water.
902 KAR 100:030. Posting and disposal requirements.
902 KAR 100:035. Receiving radioactive material and special form tests.
902 KAR 100:045. Exemptions.
902 KAR 100:052. Broad scope licenses.
902 KAR 100:058. Specific licenses to manufacture, assemble, repair, or distribute products.
902 KAR 100:060. Leak testing.
902 KAR 100:065. Reciprocal recognition.
902 KAR 100:070. Transportation of radioactive material.
902 KAR 100:080. Exempt quantities.
902 KAR 100:085. Exempt concentrations.
902 KAR 100:090. Broad license limits.
902 KAR 100:105. X-rays; general.
902 KAR 100:110. Registration of x-ray.
902 KAR 100:115. Diagnostic x-ray.
902 KAR 100:120. General diagnostic radiography.
902 KAR 100:125. Fluoroscopic x-ray except for computed tomography x-ray systems.
902 KAR 100:130. Dental.
902 KAR 100:136. Theraputic systems below one (1) MeV.
902 KAR 100:137. Theraputic systems above one (1) MeV.
902 KAR 100:140. Veterinarians.
902 KAR 100:145. Cabinet systems.
902 KAR 100:150. Microscopic analytic x-ray.
902 KAR 100:155. Particle accelerator.
902 KAR 100:160. Plan review.
902 KAR 100:165. Notices, reports and instructions to employees.
902 KAR 100:170. Proceedings.

Radiation Operators Certification
902 KAR 105:010. Definitions.
902 KAR 105:020. General requirements.
902 KAR 105:030. Teaching institution's curricula.
902 KAR 105:040. Medical, osteopathic or chiropractic supervision.
902 KAR 105:060. Podiatrist supervision.
902 KAR 105:070. Violation and enforcements.

Department for Social Insurance

Public Assistance
904 KAR 2:110 & E.Refugee assistance.

Department for Social Services
Division of Family Services

Child Welfare

905 KAR 1:010. Application for permission to place or receive child.
905 KAR 1:150. "Baby Doe" regulation.
905 KAR 1:170. Child abuse self-help groups.
905 KAR 1:210. Alternative to detentions court resource home.

Day Care

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

Block Grants

905 KAR 3:030. Matching requirements.

Children's Residential Services

905 KAR 7:060. Children's residential facilities capacities.
905 KAR 7:091. Repeal of 905 KAR 7:090.
905 KAR 7:100. Resident liaison responsibilities.

Aging Services

905 KAR 8:160. Adult day and Alzheimer's respite program.
905 KAR 8:170. Supportive services for the elderly.
905 KAR 8:180. Homecare program for the elderly. (Repeals 905 KAR 8:020, 8:110, 8:120 and 8:130.)
905 KAR 8:190. Nutrition program for the elderly. (Repeals 905 KAR 8:030.)
905 KAR 8:200. Senior community service employment program.
905 KAR 8:220. General administration, programs for the elderly. (Repeals 905 KAR 8:010, 8:040, 8:050, 8:060 and 8:080.)

Office of Inspector General

Office of Inspector General

906 KAR 1:010. Policies and procedures.
906 KAR 1:021. Repeal of 906 KAR 1:020.
906 KAR 1:030. Hearings concerning employment agencies.
906 KAR 1:090. Post-audit procedures of programs and vendors of services with whom the Cabinet for Human Resources has contracted.

Department for Medicaid Services

Medicaid Services

907 KAR 1:002. Definitions.
907 KAR 1:007. Documentation of medical assistance services.
907 KAR 1:032. Dual licensed pediatric facility services.
907 KAR 1:033. Payments for dual licensed pediatric facility services.
907 KAR 1:035. Payments for screening services.
907 KAR 1:037. Hospital furnished nursing facility services.
907 KAR 1:038. Hearing and vision services.
907 KAR 1:048. Family planning services.
907 KAR 1:049. Payments for family planning services.
907 KAR 1:074. Claims processing.
907 KAR 1:075. Hearings and appeals for the mentally retarded.
907 KAR 1:084. Payment for medical assistance services furnished out of state.
907 KAR 1:100. Nurse-midwife services.
907 KAR 1:110. Recoupment of overpayments.
907 KAR 1:120. Health insuring organization and prepaid health plan services.
907 KAR 1:130. Payments for health insuring organizations and prepaid health plan services.
907 KAR 1:140. Alternative home and community based services for the mentally retarded (AIS/MR).
907 KAR 1:160. Home and community based services.
907 KAR 1:180. Alternative birth center services.
907 KAR 1:190. Payments for alternative birth center services.
907 KAR 1:200. Nurse anesthetists' services.
907 KAR 1:220. Terms and conditions of provider participation; provider appeals.
907 KAR 1:260. Coordination of benefits between the Medicaid program and the crime victims compensation board.
907 KAR 1:270. Podiatry services.
907 KAR 1:300. Withholding the federal share of payments to recover Medicare or Medicaid overpayments.
907 KAR 1:320. Kentucky patient access and care system KenPAC.
907 KAR 1:540 & E. Eligibility requirements for the hospital indigent care assurance program (HICAP). (Amended After Hearing)

Department for Mental Health and Mental Retardation

Substance Abuse

908 KAR 1:020. Licensing procedures.
908 KAR 1:030. Organization and administration.
908 KAR 1:040. Personnel policies.
908 KAR 1:050. Quality assurance.
908 KAR 1:060. Client's rights.
908 KAR 1;080. General program operations.
908 KAR 1:090. Detoxification.
908 KAR 1:100. Residential treatment.
908 KAR 1:110. Residential transitional treatment.
908 KAR 1:120. Outpatient treatment.
908 KAR 1:130. Intensive outpatient treatment.

908 KAR 1:140. Education.
908 KAR 1:150. Definitions for drug abuse treatment and education (DATE) centers.
908 KAR 1:160. Licensing procedures.
908 KAR 1:170. Organization and administration.
908 KAR 1:180. Personnel policies.
908 KAR 1:190. Quality assurance.
908 KAR 1:200. Client's rights.
908 KAR 1:220. General program operations.
908 KAR 1:230. Residential rehabilitation centers.
908 KAR 1:240. Non-residential day care centers.
908 KAR 1:250. Educational information centers.
908 KAR 1:260. Communication centers.
908 KAR 1:300 & E. Chemical dependency program evaluation.

Institutional Care

908 KAR 3:010. Patient's rights.
908 KAR 3:030. Convalescent patient status.
908 KAR 3:060. "Means test" pursuant to the "Patient Liability Act of 1978."

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
405 KAR 8:010E

This emergency administrative regulation incorporates by reference new application forms required in the permitting of surface coal mining and reclamation operations under KRS Chapter 350. The new forms have been restructured and revised primarily to be consistent with the requirements for identifying ownership and control relationships as provided in amendments to 405 KAR 7:020, 8:010, 8:030 and 8:040 that took effect as emergency regulations on January 29, 1991 and were replaced by ordinary regulations on May 22, 1991. This emergency regulation also contains amendments that were included in a proposed amendment to 405 KAR 8:010 that was filed with the Legislative Research Commission on July 15, 1991, on which public comments were received and a statement of consideration and amended regulation were filed on September 13, 1991. That proposed amended regulation is being withdrawn. The most significant of these amendments create a new category of permit revisions called "operator change revisions" and revise the requirements for incidental boundary revisions.

It is necessary to promulgate this emergency administrative regulation because the current application forms are inadequate to obtain the information required by federal and Kentucky law and regulations, and because of this cabinet's obligations arising out of a federal court settlement agreement in Save Our Cumberland Mountains, Inc., et al. v. William P. Clark, et al., D.D.C. No. 81-2134 ("Amended Order"), commonly called the "SOCM Settlement Agreement." That agreement requires the federal Office of Surface Mining Reclamation and Enforcement (OSMRE) to enter into memorandums of agreement (MOU) under which the states will assist OSMRE in carrying out full implementation of the "permit blocking" provisions of Section 510(c) of the 1977 federal Surface Mining Control and Reclamation Act (SMCRA). Kentucky entered into such a MOU with OSMRE effective on April 16, 1991, with some provisions deferred until July 1, 1991. It calls for Kentucky to make permitting and other decisions based on information that will not be available unless these forms are used. The cabinet has made these forms available, has extensively advised the regulated industry regarding the information required by these forms, and has widely notified the regulated industry and the general public that the new forms will be required for all applications submitted beginning November 1, 1991. In reliance on that date, potential applicants have begun preparing applications using these forms.

This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on October 30, 1991.

WALLACE G. WILKINSON, Governor
JOHN F. NICHOLS, JR., Secretary

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement

405 KAR 8:010E. General provisions for permits.

RELATES TO: KRS 350.020, 350.055, 350.060, 350.070, 350.085, 350.090, 350.130, 350.135, 350.450, 350.465, 27 CFR 55.206, 55.218, 55.219, 55.220, 30 CFR 77.1301(c), 30 CFR Parts 730-733, 735, 773-775, 777, 778.17, 917, 16 USC 470 et seq., 661 et seq., 66A, 703 et seq., 1513 et seq., 30 USC 1253, 1255-1261, 1263-1266, 1272

STATUTORY AUTHORITY: KRS Chapter 13A, 350.020, 350.028, 350.060, 350.135, 350.450, 350.465, 30 CFR Parts 730-733, 735, 773-775, 777, 778.17, 917, 16 USC 470 et seq., 661 et seq., 66A, 703 et seq., 1513 et seq., 30 USC 1253, 1255-1261, 1263-1266, 1272

EFFECTIVE: November 1, 1991

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations pertaining to permits for surface coal mining and reclamation operations. This regulation provides for permits to conduct these operations. The regulation specifies when permits are required, application deadlines, requirements for applications for permanent program permits, fees, verification of applications, public notice requirements, submission of comments on permit applications, the right to file objections, informal conferences, review of the permit applications, criteria for application approval or denial and relevant actions, term of the permits, conditions of permits, review of outstanding permits, revisions of permits, amendments, [and] renewals, transfers, assignments, and sales of permit rights, administrative and judicial review, and procedures relating to improvidently issued permits.

Section 1. Applicability. Excluding coal exploration operations, this regulation shall apply to all applications, all actions regarding permits, and all surface coal mining and reclamation operations.

Section 2. General Requirements. (1) Permanent program permits required. No person shall engage in surface coal mining and reclamation operations unless that person has first obtained a valid permanent program permit under this chapter for the area to be affected by the operations.

(2) General filing requirements for permanent program permit applications.

(a) Each person who intends to engage in surface coal mining and reclamation operations shall file a complete and accurate application for a permanent program permit which shall comply fully with all applicable requirements of KRS Chapter 350 and 405 KAR Chapters 7 through 24, and shall not begin the operations until the permit has been granted.

(b) Renewal of valid permanent program permits. An application for renewal of a permit under Section 21 of this regulation shall be

filed with the cabinet at least 120 days before the expiration of the permit.

(c) Revision of permanent program permits. A permittee may, at any time, apply for a revision of a permit, but shall not vary from the requirements of the permit until the revision has been approved by the cabinet. The term of a permit shall remain unchanged by a revision.

(d) Succession to rights granted under prior permanent program permits. An application for the transfer, sale, or assignment of rights granted under a permit may be submitted at any time. The actual transfer, sale, or assignment of permit rights, however, may not take place until written permission has been granted by the cabinet.

(e) Amendment of permanent program permits. A permittee may, at any time, apply for an amendment to a permit under Section 23 of this regulation, but shall not begin surface coal mining and reclamation operations on the areas until the amendment has been approved by the cabinet. The term of a permit shall remain unchanged by an amendment.

(3) Compliance with permits. Any person engaging in surface coal mining and reclamation operations under a permit issued pursuant to KRS Chapter 350 shall comply with the terms and conditions of the permit, including the plans and other documents submitted as part of the application and approved by the cabinet, and the applicable requirements of KRS Chapter 350 and 405 KAR.

Section 3. Coordination of Review of Permit Applications. (1) For the purposes of avoiding duplication, the cabinet shall coordinate the review and issuance of permits for surface coal mining and reclamation operations with:

(a) Any other federal or Kentucky permit process applicable to the proposed operations, as required by Section 503 of SMCRA; and

(b) Applicable requirements of the Endangered Species Act of 1973, as amended (16 USC 1531 et seq.); the Fish and Wildlife Coordination Act, as amended (16 USC 661 et seq.); the Migratory Bird Treaty Act of 1918, as amended (16 USC 703 et seq.); the National Historic Preservation Act of 1966, as amended (16 USC 470 et seq.); and the Bald Eagle Protection Act, as amended (16 USC 668a), as required by 30 CFR 773.12.

(2) This coordination shall be accomplished by providing the appropriate agencies with an opportunity to comment on permit applications as set forth in Section 8(6) and (7) of this regulation and, if necessary, by any other measures the cabinet may deem appropriate.

Section 4. Preliminary Requirements. A person desiring a permit shall submit to the cabinet a preliminary application of the form and content prescribed by the cabinet. The preliminary application shall contain pertinent information, including a map at a scale of one (1) inch equals 400 or 500 feet, marked to show the proposed permit area and adjacent areas; and the areas of land to be affected, including, but not limited to, locations of the coal seam[(s)] or seams to be mined, access roads, haul roads, spoil or coal waste disposal areas, and sedimentation ponds. Areas so delineated on the map shall be physically marked at the site in a manner prescribed by the cabinet. Personnel of the cabinet shall conduct, within fifteen (15) working days after the filing of the preliminary application, an on-site investigation of the area with the person or his or her representatives and representatives of appropriate local, state or federal agencies, after which the person may submit a permit application.

Section 5. General Format and Content of Applications. (1)(a) Applications for permits to conduct surface coal mining and reclamation operations shall be filed in the number, form and content required by the cabinet, including a copy to be filed for public inspection under Section 8(8) of this regulation.

(b) The application shall be on forms provided by the cabinet, and originals and copies of the application shall be prepared, assembled and submitted in the number, form and manner prescribed by the cabinet with attachments, plans, maps, certifications, drawings, calculations or other documentation or relevant information as the cabinet may require.

(c) The following forms, which are required to be submitted by applicants, are hereby incorporated by reference:

1. Preliminary Application, MPA-00;

2. Permittee Information for a Mining Permit, MPA-01;

3. Operator Information for a Mining Permit, MPA-02;

4. Technical Information for a Mining Permit, MPA-03;

5. Surface Owner's Affidavit: Lands Historically Used for Cropland, MPA-03-20.1.B;

6. Disinterested Third Party Affidavid: Lands Historically Used for Cropland, MPA-03-20.1.C;

7. Application to Revise a Mining Plan, MPA-04;

8. Update of Permittee or Operator Information, MPA-05;

9. Change of Corporate Owners, Officers or Directors, MPA-06;

10. Application to Transfer a Mining Permit, MPA-07;

11. Revision Application to Change Operator, MPA-08;

12. Application for Renewal of a Mining Permit, MPA-09;

13. Application for a Coal Marketing Deferment, MPA-10; and

14. Minor Field Revision Application Form, SME 80, revised 9/91.

(d) These forms may be reviewed or obtained at the Department for Surface Mining Reclamation and Enforcement, #2 Hudson Hollow, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(e) [(c)] The application shall be complete with respect to all information required by 405 KAR and include, at a minimum: for surface mining activities, all the applicable information required under 405 KAR 8:030; for underground mining activities, all the information required under 405 KAR 8:040; and, for special types of surface coal mining and reclamation operations, all the information required under 405 KAR 8:050. No application shall be determined to be administratively complete unless all design plans for the permit area are in detailed form.

(2) Information set forth in the application shall be current, presented clearly and concisely, and supported by appropriate references to technical and other written material available to the cabinet.

(3) The collection and analysis of all

technical data submitted in the application shall be planned by or conducted under the direction of a professional qualified in the subject to be analyzed and shall be accompanied by:

(a) Names of persons or organizations which collected and analyzed the data;

(b) Dates of the collection and analyses; and

(c) Descriptions of methodology used to collect and analyze the data.

(4) The application shall state the name, address and position of officials of each private or academic research organization or governmental agency who provided information which has been made a part of the application regarding land uses, soils, geology, vegetation, fish and wildlife, water quantity and quality, air quality, and archaeological, cultural, and historic features.

(5)(a) The applicant shall designate in the permit application either himself or some other person who will serve as agent for service of notices and orders. The designation shall identify the person by full name and complete mailing address, and if a natural person, the person's Social Security number. The person shall continue as agent for service of process until a written revision of the permit has been made to designate another person as agent.

(b) The applicant may designate persons authorized by the applicant to submit modifications to the application to the cabinet. If the designation has not been made in the application, or in separate correspondence, the cabinet shall accept modifications only from the applicant.

(6) General requirements for maps and plans.

(a) If any of the information marked on the preliminary map required under Section 4 of this regulation has changed, the application shall contain an updated USGS seven and one-half (7 1/2) minute topographic map marked as required in Section 4 of this regulation.

(b) Maps submitted with applications shall be presented in a consolidated format, to the extent possible, and shall include the types of information set forth on topographic maps of the U.S. Geological Survey of the 1:24,000 scale series. Maps of the permit area and adjacent areas shall be at a scale of 400 or 500 feet to the inch, inclusive; and the scale shall be clearly shown on the map. However, <u>if</u> [when] the cabinet determines that a map scale larger than 400 feet to the inch is required to adequately show mine site details, a map of larger scale shall be provided by the applicant. The map required by 405 KAR 8:030, Section 23(1)(a) or 405 KAR 8:040, Section 23(1)(a), regarding additional areas on which permits will be sought, shall be a USGS seven and one-half (7 1/2) minute (1:24,000) topographic map.

(c) <u>If</u> [Where] a map or drawing is required to be certified by a qualified registered professional engineer, the map or drawing shall bear the seal and signature of the engineer as required by KRS Chapter 322, and shall be certified in accordance with 405 KAR 7:040, Section 10.

(d) All engineering design plans submitted with applications shall be prepared by or under the direction of a qualified registered professional engineer and shall bear the engineer's seal, signature, and certification as required by KRS Chapter 322 and 405 KAR 7:040, Section 10.

(e) Maps and plans submitted with the application shall clearly identify all previously mined areas as defined at 405 KAR 16:190, Section 7(2)(c) or 405 KAR 18:190, Section 5(2)(c).

(7) Referenced materials. If used in the application, referenced materials shall either be provided to the cabinet by the applicant or be readily available to the cabinet. If provided, relevant portions of referenced published materials shall be presented briefly and concisely in the application by photocopying or abstracting and with explicit citations.

Section 6. Application and Acreage Fees. (1) Each application for a surface coal mining and reclamation permit shall be accompanied by a fee determined by the cabinet. The fee may be less than, but shall not exceed the actual or anticipated cost of reviewing, administering and enforcing the permit.

(2) The applicant shall submit an application fee of $375 for each application, plus an additional seventy-five (75) for each acre or fraction thereof of the area of land to be affected by the operation. If the cabinet approves an incremental bonding plan submitted by the applicant, the acreage fees may be paid individually as the bond for each increment is submitted. However, no acreage fees shall be required for surface areas overlying underground or auger workings which will not be affected by surface operations and facilities.

(3) The fee shall accompany the application in the form of a cashier's check or money order payable to the Kentucky State Treasurer. No permit application shall be processed unless the application fee has been paid.

Section 7. Verification of Application. Applications for permits; revisions; amendments; renewals; or transfers, sales, or assignments of permit rights shall be verified under oath, before a notary public, by the applicant or his authorized representative, that the information contained in the application is true and correct to the best of the official's information and belief.

Section 8. Public Notice of Filing of Permit Applications. (1) An applicant for a permit, major revision, amendment, or renewal of a permit shall place an advertisement in the newspaper of largest bona fide circulation, according to the definition in KRS 424.110 to 424.120, in the county where the proposed surface coal mining and reclamation operations are to be located.

(2)(a) The first advertisement shall be published on or after the date the application is submitted to the cabinet. The applicant may elect to begin publication on or after the date the applicant receives the notification from the cabinet under Section 13(2) of this regulation that the application has been deemed administratively complete and ready for technical review. The advertisement shall be published at least once each week for four (4) consecutive weeks, with the final consecutive weekly advertisement being published after the applicant's receipt of written notice from the cabinet that the application has been deemed administratively complete and ready for technical review.

(b) The final consecutive weekly advertisement

shall clearly state that it is the final advertisement, and that written objections to the application may be submitted to the cabinet until thirty (30) days after the date of the final advertisement.

(3) Within fifteen (15) days of the final date of publication of the advertisement, the applicant shall submit to the cabinet proof of publication of the required final four (4) consecutive weekly notices, satisfactory to the cabinet, which may consist of an affidavit from the publishing newspaper certifying the dates, place and content of the advertisements.

(4) The advertisement shall be entitled "Notice of Intention to Mine" and shall be of a form specified by the cabinet.

(5) The advertisement shall contain, at a minimum, the following information:

(a) The name and business address of the applicant; and

(b) A map or description which shall:

1. Clearly show or describe towns, rivers, streams, and other bodies of water, local landmarks, and any other information, including routes, streets, or roads and accurate distance measurements, necessary to allow local residents to readily identify the proposed permit area;

2. Clearly show or describe the exact location and boundaries of the proposed permit area;

3. State the name of the U.S. Geological Survey seven and one-half (7 1/2) minute quadrangle map(s) which contains the area shown or described; and

4. If a map is used, show the north arrow and map scale.

(c) The location where a copy of the application is available for public inspection under subsection (8) of this section;

(d) The name and address of the cabinet to which written comments, objections, or requests for permit conferences on the application may be submitted under Sections 9, 10, and 11 of this regulation;

(e) If an applicant seeks a permit to mine within 100 feet of the outside right-of-way of a public road or to relocate or close a public road; except when [where] public notice and hearing have been previously provided for this particular part of road in accordance with 405 KAR 24:040, Section 2(6)[(a) and (b)]; a concise statement describing the public road, the particular part to be relocated or closed, and the approximate timing and duration of the relocation or closing;

(f) If the application includes a request for an experimental practice under 405 KAR 7:060, a statement indicating that an experimental practice is requested and identifying the regulatory requirement for which a variance is requested; and

(g) The application number.

(6) Within five (5) working days after the application for a permit, major revision, amendment, or renewal of a permit has been determined to be administratively complete, the cabinet shall issue written notification of:

(a) The applicant's intention to conduct surface coal mining and reclamation operations on a particularly described tract of land;

(b) The application number;

(c) Where a copy of the application may be inspected; and

(d) Where comments on the application may be submitted under Section 9 of this regulation.

(7) The written notifications required by subsection (6) of this section shall be sent to:

(a) Local government agencies with jurisdiction over or an interest in the area of the proposed operations, including, but not limited to, planning agencies and sewage and water treatment authorities and water companies, either providing sewage or water services to users in the area of the proposed operations or having water sources or collection, treatment, or distribution facilities located in these areas; and

(b) All federal and Kentucky governmental agencies which have the authority to issue permits and licenses applicable to the proposed surface coal mining and reclamation operation and which are a part of the permit coordination process required by Section 3 of this regulation; and

(c) Those agencies with an interest in the particular proposed operation including, but not limited to:

1. The USDA Soil Conservation Service State Conservationist;

2. The local U.S. Army Corps of Engineers district engineer;

3. The National Park Service;

4. Kentucky and federal fish and wildlife agencies; and

5. The state historic preservation officer.

(8) In accordance with Section 12 of this regulation, the cabinet shall, upon receipt of the application, make the application available for public inspection and copying during all normal working hours at the appropriate regional office of the cabinet where the mining has been proposed, and shall provide reasonable assistance to the public in the inspection and copying of the application.

Section 9. Submission of Comments or Objections by Public Agencies. (1) Written comments or objections on applications for permits, major revisions, amendments, and renewals of permits may be submitted to the cabinet by the public agencies to whom notification has been provided under Section 8(6) and (7) of this regulation with respect to the effects of the proposed mining operations on the environment within their area of responsibility.

(2) These comments or objections shall be submitted to the cabinet in the manner prescribed by the cabinet, and shall be submitted within thirty (30) calendar days after the date of the written notification by the cabinet pursuant to Section 8(6) and (7) of this regulation.

(3) The cabinet shall immediately file a copy of all comments or objections at the appropriate regional office of the cabinet for public inspection under Section 8(8) of this regulation. A copy shall also be transmitted to the applicant.

Section 10. Right to File Written Objections. (1) Any person whose interests are or may be adversely affected or an officer or head of any federal, state, or local government agency or authority to be notified under Section 8 of this regulation shall have the right to file written objections to an application for a permit, major revision, amendment, or renewal of a permit with the cabinet, within thirty (30) days after the last publication of the newspaper notice required by Section 8(1) of this regulation.

(2) The cabinet shall, immediately upon receipt of any written objections:

(a) Transmit a copy of the objections to the applicant; and

(b) File a copy at the appropriate regional office of the cabinet for public inspection under Section 8(8) of this regulation.

Section 11. Permit Conferences. (1) Procedure for requests. Any person whose interests are or may be adversely affected by the decision on the application, or the officer or head of any federal, state or local government agency or authority to be notified under Section 8 of this regulation may, in writing, request that the cabinet hold an informal conference on any application for a permit, major revision, amendment, or renewal of a permit. The request shall:

(a) Briefly summarize the issues to be raised by the requester at the conference;

(b) State whether the requester desires to have the conference conducted in the locality of the proposed mining operations; and

(c) Be filed with the cabinet not later than thirty (30) days after the last publication of the newspaper advertisement placed by the applicant under Section 8(1) of this regulation.

(2) Except as provided in subsection (3) of this section, if a permit conference has been requested in accordance with subsection (1) of this section, the cabinet shall hold a conference within twenty (20) working days after the last date to request a conference under subsection (1)(c) of this section. The conference shall be conducted according to the following:

(a) If requested under subsection (1)(b) of this section, the conference shall be held in the locality of the proposed mining.

(b) The date, time, and location of the conference shall be sent to the applicant and parties requesting the conference and advertised once by the cabinet in the newspaper of largest bona fide circulation, according to the definition in KRS 424.110 to 424.120, in the county where the proposed surface coal mining and reclamation operations are to be located, at least two (2) weeks prior to the scheduled conference.

(c) If requested, in writing, by a conference requester in a reasonable time prior to the conference, the cabinet may arrange with the applicant to grant parties to the conference access to the permit area and, to the extent that the applicant has the right to grant access, to the adjacent areas prior to the established date of the conference for the purpose of gathering information relevant to the conference.

(d) The requirements of 405 KAR 7:090 shall not apply to the conduct of the conference. The conference shall be conducted by a representative of the cabinet, who may accept oral or written statements and any other relevant information from any party to the conference. An electronic or stenographic record shall be made of the conference proceedings, unless waived by all the parties. The record shall be maintained and shall be accessible to the parties of the conference until final release of the applicant's performance bond or other equivalent guarantee pursuant to 405 KAR Chapter 10.

(3) If all parties requesting the conference stipulate agreement before the requested conference and withdraw their requests, the conference need not be held.

(4) Permit conferences held in accordance with this section may be used by the cabinet as the public hearing required under 405 KAR 24:040, Section 2(6) on proposed relocation and closure of public roads.

Section 12. Public Availability of Information in Permit Applications on File with the Cabinet. (1) General availability.

(a) The cabinet shall make an application for a permit, [major or minor] revision, amendment, or renewal of a permit <u>or an application for transfer, assignment, or sale of permit rights</u> available for the public to inspect and copy by placing a full copy of the application at the regional office for the area in which mining shall occur. The application will be made available by the cabinet for public inspection and copying, at reasonable times, in accordance with Kentucky open records statutes, KRS 61.870 to 61.884. This copy need not include confidential information exempt from disclosure under subsections (2) and (3) of this section.

(b) The application required by paragraph (a) of this subsection shall be placed at the appropriate regional office no later than the first date of newspaper advertisement of the application.

(c) The applicant shall be responsible for placing all changes in the copy of the application retained at the regional office when the changes are submitted to the Division of Permits.

(2) Information pertaining to coal seams, test borings, core samples, or soil samples in applications shall be made available for inspection and copying to any person with an interest which is or may be adversely affected.

(3) Confidentiality. The cabinet shall provide for procedures to ensure the confidentiality of qualified confidential information. Confidential information shall be clearly identified by the applicant and submitted separately from the remainder of the application. <u>If</u> [Where] a dispute arises concerning the disclosure or nondisclosure of confidential information, the cabinet shall provide notice and convene a hearing in accordance with 405 KAR 7:090. Confidential information shall be limited to the following:

(a) Information that pertains only to the analysis of the chemical and physical properties of the coal to be mined, except information on components of the coal which are potentially toxic in the environment;

(b) Information on the nature and location of archaeological resources on public land and Indian land as required under the Archaeological Resources Protection Act of 1979.

Section 13. Department Review of Applications for Permits, Revisions, Amendments, and Renewals. (1) General.

(a) The cabinet shall review the application for a permit, revision, amendment, or renewal; written comments and objections submitted; and records of any permit conference held on the application and make a written decision, within the time frames listed in Section 16(1) of this regulation, concerning approval of, requiring modification of, or concerning rejection of the application.

(b) An applicant for a permit, revision, or amendment shall have the burden of establishing that the application is in compliance with all requirements of KRS Chapter 350 and 405 KAR Chapters 7 through 24.

(2)(a) Administrative completeness determination. Within ten (10) working days of initial receipt of the application the cabinet shall provide written notification to the applicant as to the administrative completeness of the application. If the application is determined to be incomplete, the cabinet shall notify the applicant within ten (10) working days after initial receipt of the application by certified mail, return receipt requested, or by registered mail, of the deficiencies which render the application incomplete. The applicant may submit supplemental information to correct the identified deficiencies for a period of ten (10) working days after the applicant's receipt of the initial notice of incompleteness. If, after ten (10) working days, the cabinet determines that the application is still incomplete, the cabinet shall return the incomplete application to the applicant with written notification of the reasons for the determination.

(b) A determination by the cabinet that the application is administratively complete means that the application contains the major elements required by KRS Chapter 350 and 405 KAR Chapters 7 through 24 which are necessary to allow meaningful review of the application by the cabinet. An application shall not be deemed administratively complete if one (1) or more major elements are found to be absent from the application, which, by virtue of their absence, would require that the permit be denied. A determination that an application is administratively complete shall not mean that the application is complete in every detail, nor shall it mean that any aspect of the application is technically sufficient or approvable.

(3) Processing of the administratively complete application. Within the time periods set forth in Section 16 of this regulation, the cabinet shall either:

(a) Notify the applicant of the cabinet's decision to issue or deny the application; or

(b) Notify the applicant in writing, by certified mail, return receipt requested, or by registered mail, promptly upon discovery of deficiencies in the application and allow the application to be temporarily withdrawn for the purpose of correcting the deficiencies. Temporary withdrawal periods shall not be counted against the time available to the cabinet for consideration of the application.

(4) Review of violations.

(a) Based on available information concerning failure-to-abate cessation orders issued by OSM, Kentucky, or any other state; unabated imminent harm cessation orders issued by OSM, Kentucky, or any other state; delinquent civil penalties assessed pursuant to SMCRA, federal regulations enacted pursuant to SMCRA, KRS Chapter 350 and regulations adopted pursuant thereto, or any other state's laws or regulations under SMCRA; bond forfeitures by OSM, Kentucky, or any other state where violations upon which the forfeitures were based have not been corrected; delinquent abandoned mine reclamation fees; and unabated violations of federal, Kentucky, and any other state's laws, rules and regulations pertaining to air or water environmental protection incurred in connection with any surface coal mining operation, the cabinet shall not issue the permit if any surface coal mining reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant is currently in violation of SMCRA, federal regulations enacted pursuant to SMCRA, KRS Chapter 350 and regulations adopted pursuant thereto, any other state's laws or regulations under SMCRA, or any other law, rule, or regulation referred to in this subsection. In the absence of a failure-to-abate cessation order, the cabinet may presume that a notice of violation issued by OSM, Kentucky, or any other state pursuant to its laws and regulations under SMCRA has been or is being corrected to the satisfaction of the agency with jurisdiction over the violation, except when [where] evidence to the contrary is set forth in the permit application, or when [where] the violation is for nonpayment of abandoned mine reclamation fees or civil penalties. If a current violation exists, the cabinet shall require the applicant or person who owns or controls the applicant, before issuance of the permit, to either:

1. Submit to the cabinet proof that the current violation has been or is in the process of being corrected to the satisfaction of the agency that has jurisdiction over the violation; or

2. Establish for the cabinet that the applicant, or any person owned or controlled by either the applicant or any person who owns or controls the applicant, has filed and is presently pursuing, in good faith, a direct administrative or judicial appeal to contest the validity of the current violation. If the initial judicial review authority affirms the violation, then the applicant shall within thirty (30) days of the judicial action submit proof required under subparagraph 1 of this paragraph.

(b) Any permit that is issued on the basis of proof submitted under paragraph (a)1 of this subsection that a violation is in the process of being corrected, or pending the outcome of an appeal described in paragraph (a)2 of this subsection, shall be conditionally issued.

(c) If the cabinet makes a finding that the applicant, anyone who owns or controls the applicant, or the operator specified in the application, controls or has controlled surface coal mining and reclamation operations with a demonstrated pattern of willful violations of KRS Chapter 350 and regulations adopted pursuant thereto of such nature and duration, and with resulting irreparable damage to the environment as to indicate an intent not to comply with those laws or regulations, no permit shall be issued. Before such a finding becomes final, the applicant or operator shall be afforded an opportunity for an adjudicatory hearing on the determination as provided for in 405 KAR 7:090, Section 5(1)(a).

(5) Final compliance review. After an application is approved, but before the permit is issued, the cabinet shall reconsider its decision to approve the application, based on the compliance review required by subsection (4)(a) of this section in light of any new information submitted under 405 KAR 8:030, Sections 2(11) and 3(4), or 405 KAR 8:040, Sections 2(11) and 3(4).

Section 14. Criteria for Application Approval or Denial. No application for a permit, revision (as applicable), or amendment of a permit shall be approved unless the application affirmatively demonstrates and the cabinet finds, in writing, on the basis of information set forth in the application or from information otherwise available, which has been documented in the approval, that:

(1) The permit application is complete and accurate and in compliance with all requirements of KRS Chapter 350 and 405 KAR Chapters 7 through 24.

(2) The applicant has demonstrated that surface coal mining and reclamation operations, as required by KRS Chapter 350 and 405 KAR Chapters 7 through 24 can be feasibly accomplished under the mining and reclamation plan contained in the application.

(3) The assessment of the probable cumulative impacts of all anticipated coal mining in the cumulative impact area on the hydrologic balance has been made by the cabinet and the operations proposed under the application have been designed to prevent material damage to the hydrologic balance outside the proposed permit area.

(4) The proposed permit area is:

(a) Not included within an area designated unsuitable for surface coal mining operations under 405 KAR 24:030;

(b) Not within an area under study for designation as unsuitable for surface coal mining operations in an administrative proceeding begun under 405 KAR 24:030, unless the applicant demonstrates that, before January 4, 1977, he or she made substantial legal and financial commitments in relation to the operation for which he or she is applying for a permit;

(c) Not on any lands subject to the prohibitions or limitations of 405 KAR 24:040, Section 2(1), (2) or (3);

(d) Not within 100 feet of the outside right-of-way line of any public road, except as provided for in 405 KAR 24:040, Section 2(6); and

(e) Not within 300 feet from any occupied dwelling, except as provided for in 405 KAR 24:040, Section 2(5).

(5)(a) The proposed operations will not adversely affect any publicly-owned parks or any places included on the National Register of Historic Places, except as provided for in 405 KAR 24:040, Section 2(4); and

(b) The cabinet has taken into account the effect of the proposed operations on properties listed and eligible for listing on the National Register of Historic Places. This finding may be supported in part by inclusion of appropriate permit conditions or changes in the mining and reclamation plan to protect historic resources, or a documented decision that the cabinet has determined that no additional protection measures are necessary.

(6) For operations involving the surface mining of coal where the private mineral estate to be mined has been severed from the private surface estate, the applicant has submitted to the cabinet the documentation required under 405 KAR 8:030, Section 4(2) or 405 KAR 8:040, Section 4(2).

(7) With regard to current violations, the applicant has either:

(a) Submitted the proof required by Section 13(4)(a) of this regulation; or

(b) Made the demonstration required by Section 13(4)(b) of this regulation.

(8) The applicant has paid all reclamation fees from previous and existing operations as required by 30 CFR 870, or has entered into a payment schedule approved by OSM. If the applicant has entered into a payment schedule approved by OSM, a permit may be issued only if it includes a condition that the permittee comply with the approved payment schedule.

(9) The applicant or the operator, if other than the applicant, does not control and has not controlled mining operations with a demonstrated pattern of willful violations of SMCRA or KRS Chapter 350 of such a nature and duration and with such resulting ["]irreparable damage to the environment[" (as defined in 405 KAR 7:020)] as to indicate an intent not to comply with SMCRA or KRS Chapter 350.

(10) The applicant has demonstrated that any existing structure will comply with 405 KAR 8:030, Section 25 and 405 KAR 8:040, Section 25, and the applicable performance standards of KAR 405 KAR Chapters 16 and 18.

(11) The applicant has, if applicable, satisfied the requirements for approval of a long-term, intensive agricultural postmining land use.

(12) The applicant can reasonably be expected to submit the performance bond or other equivalent guarantee required under 405 KAR Chapter 10 prior to the issuance of the permit.

(13) The applicant has, with respect to prime farmland obtained either a negative determination or satisfied the requirements of 405 KAR 8:050, Section 3.

(14) The applicant has satisfied the applicable requirements of 405 KAR 8:050 regarding special categories of mining.

(15) The cabinet has made all specific approvals required under 405 KAR Chapters 16 through 20.

(16) The cabinet has found that the activities would not affect the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitats as determined under the Endangered Species Act of 1973 (16 USC 1531 et seq.).

(17) The applicant has not forfeited any bond under KRS Chapter 350. When the applicant has forfeited a bond, the permit may be issued if the land for which the bond was forfeited has been satisfactorily reclaimed without cost to the state or the operator or person has paid a sum that the cabinet finds is adequate to reclaim the land.

(18) The applicant has not had a permit revoked, suspended or terminated under KRS Chapter 350. If the applicant has had a permit revoked, suspended or terminated, another permit may be issued, or a suspended permit may be reinstated, only if the applicant has complied with all of the requirements of KRS Chapter 350 or submitted proof satisfactory to the cabinet that the violation has been corrected or is in the process of being corrected, in respect to all permits issued to him or her.

(19) The operation will not constitute a hazard to or do physical damage to a dwelling house, public building, school, church, cemetery, commercial or institutional building, public road, stream, lake, or other public property.

(20) The surface coal mining operation will

not adversely affect a wild river established pursuant to KRS Chapter 146 or a state park unless adequate screening and other measures as approved by the cabinet have been incorporated into the permit application and the surface coal mining operation has been jointly approved by all affected agencies as set forth under 405 KAR 24:040.

(21) For a proposed remining operation where the applicant intends to reclaim in accordance with the requirements of 405 KAR 16:190, Section 7 or 405 KAR 18:190, Section 5, the applicant has demonstrated, to the satisfaction of the cabinet, that the site of the operation will be a previously mined area as defined in those sections.

Section 15. Criteria for Application Approval or Denial Regarding Existing Structures. No application for a permit, revision, or amendment which proposes to use an existing structure in connection with or to facilitate the proposed surface coal mining and reclamation operation shall be approved, unless the applicant demonstrates and the cabinet finds, in writing, on the basis of information set forth in the complete and accurate application, that the provisions of 405 KAR 7:040, Section 4, have been met.

Section 16. Application Approval or Denial Actions. (1) The cabinet shall take action on applications within the following time periods as appropriate:

(a)1. Except as provided for in paragraph (b) of this subsection, for a complete and accurate application submitted under Section 2(2)(a), (b), (d), and (e) of this regulation, a decision shall be made by the cabinet to approve, require modification of, or deny the application within sixty-five (65) working days after the notice of administrative completeness under Section 13(2) of this regulation, except that periods of temporary withdrawal under Section 13(3)(b) of this regulation shall not be counted against the sixty-five (65) working-day period available to the cabinet.

2. Except as provided in paragraph (b) of this subsection, for a complete and accurate application submitted under Section 2(2)(c) of this regulation of a major revision as provided in Section 20 of this regulation, a decision shall be made by the cabinet to approve, require modification of, or deny the application within forty-five (45) working days after the notice of administrative completeness under Section 13(2) of this regulation, except that periods of temporary withdrawal under Section 13(3)(b) of this regulation shall not be counted against the forty-five (45) working-day period available to the cabinet.

3. For a complete and accurate application submitted under Section 2(2)(c) of this regulation for a minor revision as provided in Section 20 of this regulation, a decision shall be made by the cabinet to approve, require modification of, or deny the application within fifteen (15) working days after the notice of administrative completeness under Section 13(2) of this regulation, except that periods of temporary withdrawal under Section 13(3)(b) of this regulation shall not be counted against the fifteen (15) working-day period available to the cabinet.

(b) If the notice, hearing and conference procedures mandated by KRS Chapter 350 and 405 KAR prevent a decision from being made within the time periods specified in paragraph (a) of this subsection, the cabinet shall have additional time to issue its decision, but not to exceed twenty (20) days from the completion of the notice, hearing and conference procedures.

(2) The cabinet shall issue written notification of the decision to approve, modify, or deny the application, in whole or part, to the following persons and entities:

(a) The applicant;

(b) Each person who files comments or objections to the permit application;

(c) Each party to an informal permit conference, if held;

(d) The county judge-executive of the county, and the chief executive officer of any municipality, in which the permit area lies. This notice shall be sent within ten (10) days after the issuance of the permit and shall include a description of the location of the permit area; and

(e) The field office director of the Office of Surface Mining Reclamation and Enforcement.

(3) If the application has been denied, the notification required in subsection (2) of this section, for the applicant, any person filing objections to the permit and parties to an informal conference, shall include specific reasons for the denial.

(4) If the cabinet decides to approve the application, it shall require that the applicant file the performance bond before the permit is issued, in accordance with 405 KAR Chapter 10.

(5) The cabinet shall publish a summary of its decision in the newspaper of largest bona fide circulation, according to the definition in KRS 424.110 to 424.120, in the county where the proposed surface coal mining and reclamation operations are to be located.

Section 17. Term of Permit. (1) Each permit shall be issued for a fixed term not to exceed five (5) years. A longer fixed permit term may be granted at the discretion of the cabinet only if:

(a) The application is complete and accurate for the specified longer term; and

(b) The applicant shows that a specified longer term is reasonably needed to allow the applicant to obtain necessary financing for equipment and for the opening of the operation with the need confirmed, in writing, by the applicant's proposed source for the financing.

(2)(a) A permit shall terminate, if the permittee has not begun the surface coal mining and reclamation operation covered by the permit within three (3) years of the issuance of the permit.

(b) The cabinet may grant reasonable extensions of the time for commencement of these operations, upon receipt of a written statement showing that the extensions of time are necessary, if:

1. Litigation precludes the commencement or threatens substantial economic loss to the permittee; or

2. There are conditions beyond the control and without the fault or negligence of the permittee.

(c) With respect to coal to be mined for use in a synthetic fuel facility or specified major electric generating facility, the permittee shall be deemed to have commenced surface mining operations when construction of the synthetic

fuel or generating facility is initiated.

(d) Extensions of time granted by the cabinet under this subsection shall be specifically set forth in the permit and notice of the extension shall be made to the public.

(3) Permits may be suspended, revoked, or modified by the cabinet, in accordance with Section 19 of this regulation; Section 3 of 405 KAR 7:060; Sections 4, 6, and 7 of 405 KAR 8:050; and 405 KAR Chapter 12.

Section 18. Conditions of Permits. Actions by an applicant, permittee, or operator to submit an application to the cabinet, to accept a permit issued by the cabinet, or to begin operations pursuant to a permit issued by the cabinet, shall be deemed to constitute knowledge and acceptance of the conditions set forth in this section, which shall be applicable to each permit issued by the cabinet pursuant to this chapter whether or not the conditions have been set forth in the permit.

(1) General.

(a) The permittee shall comply fully with all terms and conditions of the permit and all applicable performance standards of KRS Chapter 350 and 405 KAR Chapters 7 through 24; and

(b) Except to the extent that the cabinet otherwise directs in the permit that specific actions be taken, the permittee shall conduct all surface coal mining and reclamation operations as described in the approved application; and

(c) The permittee shall conduct surface coal mining and reclamation operations only on those lands specifically designated as the permit area on the maps submitted under 405 KAR 8:030 or 405 KAR 8:040 and authorized for the term of the permit; and which are subject to the performance bond in effect pursuant to 405 KAR Chapter 10.

(2) Right of entry.

(a) Without advance notice, unreasonable delay, or a search warrant, and upon presentation of appropriate credentials, the permittee shall allow authorized representatives of the Secretary of the Interior and the cabinet to:

1. Have the rights of entry provided for in 405 KAR 12:010, Section 3; and

2. Be accompanied by private persons for the purpose of conducting a federal inspection when the inspection is in response to an alleged violation reported to the cabinet by the private person.

(b) The permittee shall allow the authorized representatives of the cabinet to be accompanied by private persons for the purpose of conducting an inspection pursuant to 405 KAR 12:030.

(3) Environment, public health, and safety.

(a) The permittee shall take all possible steps to minimize any adverse impact to the environment or public health and safety resulting from failure to comply with any term or condition of the permit, including, but not limited to:

1. Any accelerated or additional monitoring necessary to determine the nature and extent of failure to comply and the results of the failure to comply;

2. Immediate implementation of measures necessary to comply; and

3. Warning, as soon as possible after learning of the failure to comply, any person whose health and safety is in imminent danger due to the failure to comply.

(b) The permittee shall dispose of solids, sludge, filter backwash, or pollutants removed in the course of treatment or control of waters or emissions to the air in the manner required by 405 KAR Chapters 16 through 20, and which prevents violation of any other applicable Kentucky or federal law.

(c) The permittee shall conduct its operations:

1. In accordance with any measures specified in the permit as necessary to prevent significant, imminent environmental harm to the health or safety of the public; and

2. Utilizing any methods specified in the permit by the cabinet in approving alternative methods of compliance with the performance standards of KRS Chapter 350 and 405 KAR Chapters 16 through 20, in accordance with KRS Chapter 350 and 405 KAR Chapters 16 through 20.

(4) Reclamation fees. The permittee shall pay all reclamation fees required by 30 CFR 870 for coal produced under the permit for sale, transfer, or use, in the manner required by that subchapter.

(5) Within thirty (30) days after a cessation order is issued by OSM for operations conducted under the permit or after an order for cessation and immediate compliance is issued under 405 KAR 12:020, Section 3 for operations conducted under the permit, except <u>when</u> [where] a stay of the order is granted and remains in effect, the permittee shall either submit to the cabinet the following information, current to the date the order was issued, or notify the cabinet in writing that there has been no change since the immediately preceding submittal of the information:

(a) Any new information needed to correct or update the information previously submitted to the cabinet by the permittee under 405 KAR 8:030, Section 2(3) or 405 KAR 8:040, Section 2(3); or

(b) If not previously submitted, the information required from a permit applicant by 405 KAR 8:030, Section 2(3) or 405 KAR 8:040, Section 2(3).

Section 19. Review of Permits. (1)(a) The cabinet shall review each permit issued under this chapter during the term of the permit. This review shall occur not later than the middle of the permit term and as required by 405 KAR 7:060 and 405 KAR 8:050, Sections 4, 6, and 7. Issued permits shall be reevaluated in accordance with the terms of the permit and the requirements of KRS Chapter 350 and 405 KAR Chapters 7 through 24, including reevaluation of the bond.

(b) For permits of longer than five (5) year terms, a review of the permit shall be no less frequent than the permit midterm or every five (5) years, whichever is more frequent.

(2) After the review required by subsection (1) of this section, or at any time, the cabinet may, by order, require revision or modification of the permit provisions to ensure compliance with KRS Chapter 350 and 405 KAR Chapters 7 through 24.

(3) Copies of the decision of the cabinet shall be sent to the permittee.

(4) Any order of the cabinet requiring revision or modification of permits shall be based upon written findings and shall be subject to the provisions for administrative and judicial review of 405 KAR 7:090.

Section 20. Permit Revisions. (1) General. A revision to a permit shall be obtained:

(a) For changes in the surface coal mining and reclamation operations described in the existing application and approved under the current permit; [.]

(b) If [When] a revision is required by an order issued under Section 19 of this regulation;

(c) In order to continue operation after the cancellation or material reduction of the liability insurance policy, performance bond, or other equivalent guarantee upon which the original permit was issued; or

(d) As otherwise required under 405 KAR Chapters 7 through 24.

(2) Major revision.

(a) Except as provided in subsections (3)(f) and (6) of this section, a revision shall be deemed [is] a major revision if the cabinet determines that the proposed change is of such scope and nature that [the cabinet determines that] public notice is necessary to allow participation in the cabinet's decision by persons who have an interest which may be adversely affected by the proposed change. Major revisions shall include, but shall not be limited to:

1. Changes in the postmining land use;

2. Enlargement or relocation of impoundments so as to increase the safety hazard classification of the impoundment;

3. Variances to approximate original contour requirements;

4. Construction or relocation of roads, where the construction or relocation could adversely affect the interests of persons other than the surface owner;

5. Changes which may adversely affect significant fish and wildlife habitats or endangered species;

6. Proposed experimental practices;

7. Changes which may cause major impacts on the hydrologic balance;

8. Incidental boundary revisions that affect new watersheds; and

9. Incidental boundary revisions that include diversions of perennial streams. [;]

[10. Incidental boundary revisions that include new areas from which coal will be removed, except these revisions shall be limited to ten (10) percent of the permit area acreage or five (5) acres, whichever is less.]

(b) Major revisions shall be subject to all of the requirements of Sections 5; 7 through 12; 13(1), (2), (3); 14(1) through (6), (8), (10) through (16), (19) through (21); 15; 16; 18; and 24 of this regulation; and shall be submitted on forms prescribed by the cabinet. In addition to the requirements of Section 8(5) of this regulation, the advertisement shall contain a statement that the applicant proposes to revise the existing permit and shall contain a description of the proposed change.

(3) Minor revisions.

(a) All revisions which are not determined by the cabinet under subsection (2) of this section to be major revisions, or which are not operator change revisions under subsection (6) of this section, shall be deemed [are] minor revisions. Minor revisions shall be subject to Sections 5; 7; 12; 13(1), (2), (3); 14(1) through (6), (10) through (16), (19) through (21); 15; 16(1) through (4); 18; and 24 of this regulation, except that minor field revisions described in paragraph (d) of this subsection shall not be subject to the administrative completeness determination of Section 13(2) of this regulation, and the time frame for review in Section 16(1)(a)3 of this regulation shall begin at the time of application submittal. Minor revisions shall be submitted on forms prescribed by the cabinet.

(b) If the cabinet determines that a proposed minor revision is actually a major revision during the administrative completeness determination under Section 13 of this regulation, the cabinet shall so inform the applicant and return the application.

(c) The cabinet shall notify, in writing, those persons, if any, that the cabinet determines could have an interest that may be adversely affected by the proposed change. Those persons shall have the right to file written objections to the revision within ten (10) days of the date of the notification.

(d) The following minor revisions shall be deemed minor field revisions which may be reviewed and processed in accordance with this section by the appropriate regional office of the department. However, if the number of persons that potentially could have an interest that may be adversely affected by the proposed change is large enough that public notice by newspaper advertisement rather than individual notice by letter from the cabinet is necessary, the regional administrator shall determine that the proposed revision is a major revision and it shall not be processed under this paragraph.

1. Proposals for minor relocation of underground mine entries if [where]:

a. There are no structures or renewable resource lands (under paragraph (b) of the definition of "renewable resource lands" [(as that term is defined in paragraph (b) of the definition provided in 405 KAR 7:020, Section 1]) overlying the area;

b. There is no proposed change to the permit boundary; and

c. The proposed new location is on the same face-up area and coal seam as originally permitted, is within the same drainage area as the original location, is controlled by the same sedimentation pond, and there will be no additional disturbed acreage within the drainage area of that sedimentation pond.

2. Proposals for retention of concrete platforms and small buildings if [where]:

a. There is no proposed change to the previously approved postmining land use; and

b. The application contains a notarized letter from the surface owner requesting retention of the structure.

3. Proposals to leave roads as permanent, except proposals involving roads to impoundments, excess spoil fills, coal mine waste fills, or air shafts; roads within 100 feet of an intermittent or perennial stream; and roads within areas designated unsuitable for mining under 405 KAR 24:040, Section 2, regardless of whether a previous waiver or approval has been granted. The application shall contain a notarized letter from the surface owner including a request to retain the road and a statement acknowledging that the surface owner understands that the operator has no responsibility for maintenance of the road after the performance bond has been released pursuant to 405 KAR 10:040 for the area in which the road is located.

4. Proposals to increase the diameter of

culverts used as road crossdrains, not including culverts used for stream crossings, if [provided that] the proposed culvert is the same type of pipe as the previously approved culvert.

5. Proposals to install additional culverts used as road crossdrains (not including culverts used for stream crossings), if [provided that] the diameter of the proposed additional culvert is equal to the diameter of the nearest downstream crossdrain and if it is the same type of pipe as the nearest downstream crossdrain.

6. Proposals for minor relocation of on-bench sediment control structures (dugouts only) in order to locate the structures at low spots on the same bench on which they were initially proposed, if [where]:

a. The drainage area to the structure will remain the same as the original design;

b. The proposed location will not cause short-circuiting of the structure; and

c. There is no proposed change to the permit boundary.

7. Proposals to retain diversions of overland flow (not including stream diversions) as permanent facilities if [where]:

a. The application contains a notarized letter from the surface owner including a request to retain the diversion and a statement accepting maintenance responsibilities for the diversions; and

b. The diversions have previously been designed to the standards for permanent diversions.

8. Proposals for relocation of topsoil storage areas if [where]:

a. There is no proposed change to the permit boundary; and

b. The proposed new location was previously permitted as a disturbed area within the same drainage area as the original location, is controlled by the same sedimentation pond, and there will be no additional disturbed acreage within the drainage area of that sedimentation pond.

9. Proposals to substitute plant species if [where]:

a. The proposed species is of the same vegetative type (grass, legume, tree, or shrub) as the original species;

b. The proposed species will serve the equivalent function of the original species with respect to the previously approved: revegetation plan, postmining land use plan, and the fish and wildlife protection and enhancement plan; and

c. The proposed species and its application or planting rate are compatible with the remainder of the previously approved species mixture to be planted.

10. Proposals to utilize hydroseeding for trees instead of planting trees or tree seedlings if [where]:

a. Hydroseeding is an appropriate method for the tree species being established; and

b. No change in tree species is involved unless concurrently approved under subparagraph 9 of this paragraph.

11. Proposals to change the type of mulch to be utilized on the permit area, including a revised rate of application consistent with the different type of mulch proposed.

12. Proposals to retain small depressions in the reclaimed area.

13. Proposals required by the cabinet to increase frequency of air blast monitoring.

14. Proposals required by the cabinet to increase frequency of air pollution monitoring.

15. Proposals to employ more effective fugitive dust controls, and proposals required by the cabinet to employ additional fugitive dust controls.

16. Proposals to add a portable coal crusher if [where]:

a. The crusher and associated conveying equipment are a completely portable, trailer mounted unit;

b. The equipment will be utilized to crush coal only from the permit area on which it is proposed to be located;

c. The operation will not generate coal mine waste;

d. There is no proposed change to the permit boundary; and

e. The equipment will always be located in the mining pit or other location previously permitted as a disturbed area controlled by a previously approved sedimentation pond and there will be no additional disturbed acreage or delayed reclamation within the drainage area of any of the sedimentation ponds.

17. Proposals to change the time periods, or the types or patterns of warning or all-clear signals, when explosives are to be detonated.

18. Proposals to relocate an explosive storage area within the existing permit area in accordance with 27 CFR 55.206, 55.218, 55.219, 55.220, and 30 CFR 77.1301(c).

19. Approval for minor relocation of support facilities such as conveyors, hoppers, and coal stockpiles if [where]:

a. There is no proposed change to the permit boundary; and

b. The proposed new location was previously permitted as a disturbed area within the same drainage area as the original location, is controlled by the same sedimentation pond, and there will be no additional disturbed acreage within the drainage area of that sedimentation pond.

20. Proposals for modifications of shared facilities if [where] that modification has already been approved in a revision for one of the permittees by the Division of Permits and no additional performance bond was required for the initial revision.

21. Proposals to add a hopper to a permitted area if [where]:

a. There is no proposed change to the permit boundary; and

b. The proposed location was previously permitted as a disturbed area controlled by a previously approved sedimentation pond and there will be no additional disturbed acreage or delayed reclamation within the drainage area of that sedimentation pond.

22. Proposals to change the brush disposal plan, not including any proposals to bury brush in the backfill area on steep slopes or in excess spoil fills or coal mine waste fills.

[23. Proposals to cut berms, provided that the cuts will not cause bypassing or short circuiting of on-bench structures or other sedimentation control structures.]

23. [24.] Proposals to change the basis of judging revegetation from reference areas to the technical standards established in 405 KAR Chapters 7 through 24.

24. [25.] Proposals for incidental boundary revisions for minor off-permit disturbances if [where]:

a. The total acreage of the minor off-permit

disturbances is no more than one (1) acre combined per proposal;

b. The cumulative acreage limitation in subsection (5) of this section [established in the definition of "incidental boundary revision" in 405 KAR 7:020] is not exceeded;

c. The area to be permitted does not include any wetlands, prime farmlands, stream buffer zones, federal lands, habitats of unusually high value for fish and wildlife, areas that may contain threatened or endangered species, or areas designated unsuitable for mining under 405 KAR Chapter 24;

d. The off-permit disturbance was not a coal extraction area nor shall any future coal extraction occur on the area;

e. There are no structures such as excess spoil disposal fills, coal mine waste disposal fills or impoundments, or water impoundments involved;

f. The surface owner of the area to be permitted is a surface owner of disturbed area under the existing permit; and

g. An additional performance bond in the amount of $5000 has been filed by the permittee.

h. If deemed necessary for any reason, the regional administrator may decline to review and process any proposal to permit an off-permit disturbance as a minor field revision and instead require that an application be submitted to the Division of Permits.

25. [26.] Except as provided below, proposals to remove sedimentation ponds previously approved as permanent impoundments if [where] the application contains a notarized letter from the surface owner requesting the elimination of the impoundment, the application contains an acceptable plan for removal, and the criteria for sedimentation pond removal have been met. However, proposals to remove sedimentation ponds [in the following situations] shall not be processed as minor field revisions if:

a. [Where] The structure has a hazard classification of B or C;

b. [Where] The impoundment is a developed water resource land use;

c. [Where] The removal or activities associated with the removal of the structure may adversely affect significant fish and wildlife habitats or threatened or endangered species;

d. [Where] The impoundment may be a necessary element in the achievement of the previously approved postmining land use (such as a stock pond for pastureland where no other nearby source of water is available to the livestock); or

e. [Where] The impoundment was originally planned to be left for the purpose, in whole or in part, of enhancing fish and wildlife and related environmental values.

26. [27.] Proposals to approve exemptions from the requirement to pass drainage through sedimentation ponds for disturbed areas that, due to unexpected field conditions, will not drain to an approved sedimentation pond if [where]:

a. There has not been any acid drainage or drainage containing concentrations of total iron or manganese from this or nearby areas of the mine that could result in water quality violations if untreated and none is expected based on overburden analysis;

b. The application contains a justification that it is not feasible to control the drainage by a sedimentation pond;

c. The disturbed area is one (1) acre or less;

d. The application contains a plan to immediately implement alternate sedimentation control measures including, at a minimum, mulching, silt fences, straw bale dikes and establishment of a quick growing temporary vegetative cover;

e. The application contains sufficient plan views and cross sections certified by a registered professional engineer to clearly illustrate the feasibility of the proposal and the location of the alternate control methods (minimum scale one (1) inch equals 100 feet); and

f. The application contains a MRP map certified by a registered professional engineer showing the location of the disturbed area and the drainage area clearly.

(e) Proposed minor revisions which only seek to change the engineering design of impoundments and diversions of overland flow where no change in permit boundary is involved shall not be subject to the administrative completeness determination of Section 13(2) of this regulation; however, the application shall be processed in, and written notice that the application has been determined to be subject to this paragraph and is being forwarded for technical review shall be provided to the applicant within ten (10) working days. The time frame for review in Section 16(1)(a)3 of this regulation shall begin at the time of this notice.

(f) Incidental boundary revisions shall be deemed minor revisions if they:

1. Do not exceed ten (10) percent of the relevant surface or underground acreage in the original or amended permit area;

2. Are contiguous to the current permit area;

3. Are within the same watershed as the current permit area;

4. Are required for an orderly continuation of the mining operation;

5. Involve mining of the same coal seam or seams as in the current permit;

6. Involve only lands for which the hydrologic and geologic data and the probable hydrologic consequences determination in the current permit are applicable;

7. Do not involve properties on which mining is prohibited under KRS 350.085 and 405 KAR 24:040, unless appropriate waivers have been obtained, or which have been designated as unsuitable for mining under 405 KAR 24:030, or any properties eligible for listing on the National Register of Historic Places;

8. Do not involve any of the categories of mining in 405 KAR 7:060 and 405 KAR 8:050 unless the current permit already includes the relevant category;

9. Do not constitute a change in the current method of mining; and

10. Will be reclaimed in conformity with the current reclamation plan.

(4) Any extensions to the area covered by a permit, except for incidental boundary revisions, shall be made by application for a new or amended permit and shall not be approved under this section.

(5) Size limitations for incidental boundary revisions.

(a) For surface mining activities, an incidental boundary revision shall not exceed ten (10) percent of the acreage in the original or amended permit area, and shall not exceed twenty (20) acres.

(b) For underground mining activities and auger mining, incidental boundary revisions for surface operations and incidental boundary revisions for underground workings shall be determined separately.

1. For surface operations, an incidental boundary revision shall not exceed the greater of two (2) acres or ten (10) percent of the acreage of surface operations in the original or amended permit area, and shall not exceed twenty (20) acres.

2. For underground workings, an incidental boundary revision shall not exceed ten (10) percent of the acreage of underground workings in the original or amended permit area, and shall not exceed twenty (20) acres.

(c) Cumulative incidental acreage added by successive incidental boundary revisions shall not exceed the limitations in this subsection. Acreage added by incidental boundary revisions prior to a permit amendment shall not be counted toward cumulative incidental acreage after the amendment.

(6) Operator change revisions.

(a) This subsection shall apply to all operator changes that do not constitute a transfer, assignment or sale of permit rights.

(b) A permittee proposing to change the operator approved in the permit shall submit a complete and accurate application for approval of the change. The application shall be on forms provided by the cabinet.

(c) The application shall include, but shall not be limited to, the information set forth in this paragraph:

1. The permit number, the name and business address of the permittee, the telephone number of the permittee, and the identifying number assigned to the permittee by the cabinet;

2. The name, business address and telephone number of the operator approved in the permit, and the identifying number, if any, assigned to the approved operator by the cabinet;

3. For the proposed operator and persons related to the proposed operator through ownership or control, the same information as required for applicants and persons related to applicants through ownership or control by Sections 2(1) through (4) and (8) of 405 KAR 8:030 and 405 KAR 8:040, and Sections 2(11) through (13) of those regulations shall also apply; and

4. For the proposed operator and persons related to the proposed operator through ownership or control, the same information as required for applicants and persons related to applicants through ownership or control by Sections 3(1) through (3) of 405 KAR 8:030 and 405 KAR 8:040, except information under Section 3(3) pertaining to abated violations shall not be required, and Section 3(5) of those regulations shall also apply.

(d) The application shall be verified under oath by the permittee and the proposed operator in the manner required under Section 7 of this regulation.

(e) On or after the date the application has been submitted to the cabinet, the application shall be advertised at least once in the newspaper of largest bona fide circulation, according to the definition in KRS 424.110 to 424.120, in the county where the proposed surface coal mining and reclamation operations are to be located. The advertisement shall be entitled "Notice of Intention to Mine" and shall be of a form specified by the cabinet. The advertisement shall include, at a minimum, the permit number, the geographic location of the permit area, the name and business address of the permittee, a statement that the permittee proposes to change the operator approved in the permit, the names and business addresses of the currently approved operator and the proposed operator, the cabinet address to which written comments may be sent under paragraph (g) of this subsection and the time available for submission of the comments. A copy of the advertisement and proof of publication acceptable to the cabinet shall be filed with the cabinet and made a part of the application not later than fifteen (15) days after the date of publication.

(f) A person whose interests are or may be adversely affected by the cabinet's decision on the proposed operator change, including an officer of a federal, state, or local government agency, may submit written comments on the application to the cabinet within fifteen (15) days after the date of publication of the advertisement.

(g) The cabinet may approve the proposed operator change if it finds, in writing, that the proposed operator:

1. Is eligible to act as an operator under the criteria in Section 13(4) of this regulation; and

2. Meets any other requirements specified by the cabinet in order to ensure compliance with KRS Chapter 350 or 405 KAR Chapters 7 through 24.

(h) The cabinet shall notify in writing the permittee, the proposed operator, and any commenters on the application, of its final decision.

(7) [(5)] Fees. Applications for [major and minor] revisions shall include a basic fee of $375, except that minor field revisions and operator change revisions shall have no basic fee. If the revision application proposes incidental boundary revisions which would increase the acreage in the permit, an additional acreage fee of seventy-five (75) dollars per acre, or fraction thereof, shall be included with the application, except that no acreage fee shall be required for surface areas overlying underground workings which will not be affected by surface operations and facilities.

Section 21. Permit Renewals. (1) General requirements for renewal. Any valid, existing permit issued pursuant to this chapter shall carry with it the right of successive renewal, within the approved boundaries of the existing permit, upon expiration of the term of the permit.

(2) Contents of renewal applications. Applications for renewal of permits shall be submitted within the time prescribed by Section 2(2)(b) of this regulation. Renewal applications shall be in a form and with content as required by the cabinet and in accordance with this section, and shall include at a minimum:

(a) The name and address of the permittee, the term of the renewal requested and the permit number;

(b) A copy of the proposed newspaper notice and proof of publication of same under Section 8 of this regulation;

(c) Evidence that liability insurance under 405 KAR 10:030, Section 4, will be provided by the applicant for the proposed period of renewal;

(d) A renewal fee of $375;

(e) Evidence that the performance bond will

continue in effect for any renewal requested, as well as any additional bond required by the cabinet pursuant to 405 KAR 10:020; and

(f) Any additional revised or updated information which may be required by the cabinet.

(3) Applications for renewal shall be subject to the requirements of Sections 8 through 11, 13 and 16 of this regulation.

(4) An application for renewal shall not include any proposed revisions to the permit. Revisions shall be made by separate application and shall be subject to the requirements of Section 20 of this regulation.

(5) Term of renewal. Any permit renewal shall be for a term not to exceed the period of the original permit established under Section 17 of this regulation.

(6) Approval or denial of renewal applications.

(a) The cabinet shall approve a complete and accurate application for permit renewal, unless it finds, in writing, that:

1. The terms and conditions of the existing permit are not being satisfactorily met;

2. The present surface coal mining and reclamation operations are not in compliance with the environmental protection standards under KRS Chapter 350 and 405 KAR Chapters 7 through 24;

3. The requested renewal substantially jeopardizes the applicant's continuing responsibility to comply with KRS Chapter 350 and 405 KAR Chapters 7 through 24 on existing permit areas;

4. The applicant has not provided evidence that any performance bond required for the operations will continue in effect for the proposed period of renewal, as well as any additional bond the cabinet might require pursuant to 405 KAR Chapter 10;

5. Any additional revised or updated information required by the cabinet has not been provided by the applicant; or

6. The applicant has not provided evidence of having liability insurance in accordance with 405 KAR 10:030, Section 4.

(b) In determining whether to approve or deny a renewal, the burden shall be on the opponents of renewal.

(c) The cabinet shall send copies of its decision to the applicant, any persons who filed objections or comments to the renewal, to any persons who were parties to any informal conference held on the permit renewal and to the field office director of the Office of Surface Mining Reclamation and Enforcement.

(d) Any person having an interest which is or may be adversely affected by the decision of the cabinet shall have the right to administrative and judicial review set forth in Section 24 of this regulation.

Section 22. Transfer, Assignment, or Sale of Permit Rights. (1) General. No transfer, assignment, or sale of the rights granted under any permit issued pursuant to 405 KAR shall be made without the prior written approval of the cabinet, in accordance with this section.

(2) Application requirements. An applicant (successor) for approval of the transfer, assignment, or sale of permit rights shall:

(a) Provide a complete and accurate application, on forms provided by the cabinet, for the approval of the proposed transfer, assignment, or sale. The application shall be signed by both the existing holder of permit rights and the applicant for succession. Additionally, the following information shall be provided:

1. The name and address of the existing permittee and the permit number;

2. A brief description of the proposed action requiring approval;

3. The legal, financial, compliance, and related information required by 405 KAR 8:030, Sections 2 through 10 and 405 KAR 8:040, Sections 2 through 10; and

4. A processing fee of $375.

(b) Advertise the filing of the application in the newspaper of largest bona fide circulation, according to the definition in KRS 424.110 to 424.120, in the county where the operations are located, indicating the name and address of the applicant, the original permittee, the permit number, the geographic location of the permit, and the address to which written comments may be sent under subsection (3) of this section.

(c) Obtain sufficient performance bond coverage which will ensure reclamation of all lands affected by the permit, including areas previously affected by the existing permittee on the permit being transferred.

(3) Public participation. Any person whose interests are or may be adversely affected by a decision on the transfer, assignment, or sale of permit rights, including an official of any federal, state, or local government agency, may submit written comments on the application to the cabinet within fifteen (15) days of the date of publication of the advertisement.

(4) Criteria for approval. The cabinet may allow a permittee to transfer, assign, or sell permit rights to a successor if it finds, in writing, that the successor:

(a) Is eligible to receive a permit in accordance with the criteria specified in Section 14 of this regulation;

(b) Has submitted a performance bond, in accordance with 405 KAR Chapter 10, which will ensure reclamation of all lands affected by the permit, including areas previously disturbed by the existing permittee on the permit being transferred, and which is at least equivalent to the bond of the existing permittee;

(c) Has submitted proof that liability insurance, as required by 405 KAR 10:030, Section 4, has been obtained; and

(d) Meets any other requirements specified by the cabinet in order to ensure compliance with KRS Chapter 350 or 405 KAR Chapters 7 through 24.

(5) Notice of decision. The cabinet shall notify the original permittee, the successor, any commenters or objectors, and the field office director of the Office of Surface Mining Reclamation and Enforcement of its final decision.

(6) Permit reissuance. After receiving the notice described in subsection (5) of this section, the successor shall immediately provide proof to the cabinet of the consummation of the transfer, assignment, or sale of permit rights. Upon submission of this proof, the cabinet shall reissue the original permit in the name of the successor.

(7) Rights of successor. All rights and liabilities under the original permit shall pass to the successor upon reissuance of the permit, except that the original permittee shall remain liable for any civil penalties resulting from violations occurring prior to the date of reissuance of the permit. The cabinet shall not

approve transfer of a surface coal mining permit to any person who would be ineligible to receive a new permit under KRS 350.130(3).

(8) Requirements for new permits for persons succeeding to rights granted under a permit. A successor in interest who is able to obtain appropriate bond coverage may continue surface coal mining and reclamation operations according to the approved mining and reclamation plan and permit of the original permittee. However, any successor in interest seeking to change the conditions of mining or reclamation operations, or any of the terms or conditions of the original permit shall make application for a new permit, revision, or amendment, as appropriate.

(9) Release of bond liability. The cabinet may release the prior permittee from bond liability on the permit area if the successor in interest has filed a performance bond satisfactory to the cabinet, has received written approval of the cabinet for the transfer, sale or assignment of rights, has submitted proof of execution of the agreement, and has assumed all liability under 405 KAR for reclamation of the areas affected by all prior permittees.

Section 23. Amendments. Except for incidental boundary revisions, no extensions to an area covered by a permit shall be approved under Section 20 (permit revisions) or Section 21 (permit renewals) of this regulation. All such extensions shall be made by application for another permit. However, if the permittee desires to add the new area to his existing permit in order to have existing areas and new areas under one (1) permit, the cabinet may so amend the original permit, but [provided that] the application for the new area shall be subject to all procedures and requirements applicable to applications for original permits under 405 KAR.

Section 24. Administrative and Judicial Review. (1) Following the final decision of the cabinet concerning the application for a permit, revision or renewal thereof, application for transfer, sale, or assignment of rights or concerning an application for coal exploration, the applicant, permittee or any person with an interest which is or may be adversely affected may request a hearing on the reasons for the final decision in accordance with 405 KAR 7:090.

(2) Any applicant or any person with an interest which is or may be adversely affected and who has participated in the administrative proceedings as an objector shall:

(a) Have the right to judicial review as provided in KRS 224.085 if the applicant or person is aggrieved by the decision of the cabinet in an administrative hearing requested pursuant to subsection (1) of this section; or

(b) Have the right to an action in mandamus pursuant to KRS 350.250 if the cabinet fails to act within time limits specified in KRS Chapter 350 or 405 KAR Chapters 7 through 24.

Section 25. Improvidently Issued Permits. (1) Permit review. If the cabinet has reason to believe that it improvidently issued a surface coal mining and reclamation permit, the cabinet shall review the circumstances under which the permit was issued, using the criteria in subsection (2) of this section. If the cabinet finds that the permit was improvidently issued, the cabinet shall comply with subsection (3) of this section.

(2) Review criteria. The cabinet shall find that a surface coal mining and reclamation permit was improvidently issued if:

(a) Under the violation review criteria of the cabinet at the time the permit was issued:

1. The cabinet should not have issued the permit because of an unabated violation or a delinquent penalty or fee; or

2. The permit was issued on the presumption that a notice of violation was in the process of being corrected to the satisfaction of the agency with jurisdiction over the violation, but a cessation order subsequently was issued; and

(b) The violation, penalty, or fee:

1. Remains unabated or delinquent; and

2. Is not the subject of a good faith appeal, or of an abatement plan or payment schedule with which the permittee or other person responsible is complying to the satisfaction of the responsible agency; and

(c) If [Where] the permittee was linked to the violation, penalty, or fee through ownership or control, under the violations review criteria of the regulatory program at the time the permit was issued an ownership or control link between the permittee and the person responsible for the violation, penalty, or fee still exists, or if [where] the link was severed the permittee continues to be responsible for the violation, penalty, or fee.

(3) Remedial measures. If the cabinet, under subsection (2) of this section, finds that because of an unabated violation or a delinquent penalty or fee a permit was improvidently issued, the cabinet shall use one (1) or more of the following remedial measures:

(a) Implement, with the cooperation of the permittee or other person responsible, and of the responsible agency, a plan for abatement of the violation or a schedule for payment of the penalty or fee;

(b) Impose on the permit a condition requiring that in a reasonable period of time the permittee or other person responsible abate the violation or pay the penalty or fee;

(c) Suspend the permit until the violation is abated or the penalty or fee is paid; or

(d) Rescind the permit under subsection (4) of this section.

(4) Rescission procedures. If the cabinet, under subsection (3)(d) of this section, elects to rescind an improvidently issued permit, the cabinet shall serve on the permittee a notice of proposed suspension and rescission which includes the reasons for the finding of the cabinet under subsection (2) of this section and states that:

(a) Automatic suspension and rescission. After a specified period of time not to exceed ninety (90) days the permit automatically will become suspended, and not to exceed ninety (90) days thereafter rescinded, unless within those periods the permittee submits proof, and the cabinet finds, that:

1. The finding of the cabinet under subsection (2) of this section was erroneous;

2. The permittee or other person responsible has abated the violation on which the finding was based, or paid the penalty or fee, to the satisfaction of the responsible agency;

3. The violation, penalty, or fee is the subject of a good faith appeal, or of an abatement plan or payment schedule with which the permittee or other person responsible is

complying to the satisfaction of the responsible agency; or

4. Since the finding was made, the permittee has severed any ownership or control link with the person responsible for, and does not continue to be responsible for, the violation, penalty, or fee;

(b) Cessation of operations. After permit suspension or rescission, the permittee shall cease all surface coal mining and reclamation operations under the permit, except for violation abatement and for reclamation and other environmental protection measures as required by the cabinet; and

(c) Right to request a formal hearing. Any permittee aggrieved by the notice may request a formal hearing under 405 KAR 7:090.

FRANK DICKERSON, Commissioner
JOHN F. NICHOLS, JR., Secretary
APPROVED BY AGENCY: October 30, 1991
FILED WITH LRC: November 1, 1991 at 11 a.m.

STATEMENT OF EMERGENCY
501 KAR 6:020E

In order to continue to operate the Corrections Cabinet in accordance with KRS Chapter 196, the Corrections Cabinet needs to implement this emergency regulation. An ordinary administrative regulation cannot suffice because the effected cabinet policies must be revised immediately as the cabinet has been ordered by the Governor to reduce its budget expenditures because of a statewide financial crisis. KRS 197.180 allows the Secretary of Corrections to expend up to $75, upon discharge, to each inmate. Currently, the policy is mandatory that $50 be given to each inmate upon his discharge from a penal institution. This emergency regulation will allow state institutions to pay each inmate $25 upon release with an expected savings of $100,000 annually. This emergency regulation shall be replaced by the ordinary administrative regulation filed with LRC on November 8, 1991 in accordance with KRS Chapter 13A.

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

CORRECTIONS CABINET

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

RELATES TO: KRS Chapters 196, 197, 439
STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640
EFFECTIVE: November 13, 1991
NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the secretary to adopt, amend or rescind regulations necessary and suitable for the proper administration of the cabinet or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. These regulations are in conformity with those provisions.

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

1.1	Legal Assistance for Corrections Staff
1.2	News Media
1.4	The operation of Contracted Adult Correctional Facilities
1.6	Extraordinary Occurrence Reports
1.9	Institutional Duty Officer
1.11	Population Counts and Reporting Procedures
1.12	Operation of Motor Vehicles by Corrections Cabinet Employees
2.1	Inmate Canteen
2.2	Warden's Fund
2.10	Surplus Property
3.1	Code of Ethics
3.12	Institutional Staff Housing
4.2	Staff Training and Development
4.3	Firearms and Chemical Agents Training
6.1	Open Records Law
7.2	Asbestos Abatement
8.4	Emergency Preparedness
9.1	Use of Force
9.4	Transportation of Inmates to Funerals or Bedside Visits
9.6	Contraband
9.7	Storage, Issue and Use of Weapons Including Chemical Agents
9.8	Search Policy
9.9	Transportation of Inmates
9.10	Security Inspections
9.11	Tool Control
9.18	Informants
9.19	Found Lost or Abandoned Property
10.2	Special Management Inmates
10.3	Safekeepers
10.4	Special Needs Inmates
11.2	Nutritional Adequacy of the Diet for Inmates
11.3	Special Diet Procedures
13.1	Pharmacy Policy and Formulary
13.2	Health Maintenance Services
13.3	Medical Alert System
13.4	Health Program Audits
13.5	Acquired Immune Deficiency Syndrome
13.6	Sex Offender Treatment Program
14.2	Personal Hygiene Items
14.3	Marriage of Inmates
14-04-01	Legal Services Program
14.6	Inmate Grievance Procedures
15.1	Hair and Grooming Standards
15.2	Offenses and Penalties
15.3	Meritorious Good Time
15.5	Restoration of Forfeited Good Time
15.6	Adjustment Procedures and Programs
15-07-01	Inmate Account Restriction [(Added 8/15/91)]
16.1	General Inmate Visiting Procedure
16.2	Inmate Correspondence
16.3	Telephone Calls
16.4	Inmate Packages
17.1	Inmate Personal Property
17.2	Assessment Center Operations
17.3	Controlled Intake of Inmates
18.4	Classification of the Inmate
18.5	Custody/Security Guidelines
18.6	Classification Document

18.7 Transfers
18.8 Guidelines for Transfers Between Institutions
18.9 Out-of-state Transfers
18.10 Preparole Progress Reports
18.11 Kentucky Correctional Psychiatric Center Transfer Procedures
18.12 Referral Procedure for Inmates Adjudicated Guilty But Mentally Ill
18.13 Population Categories
18.15 Protective Custody
19.1 Government Services Projects
19.2 Community Services Projects
20-01-01 Educational Programs [(Added 8/15/91)]
22.1 Privilege Trips
25-01-01 [25.1] Gratuities (Amended 11/8/91)
25.2 Public Official Notification of Release of an Inmate
25.3 Prerelease Program
25.4 Inmate Furloughs
25.6 Community Center Program
25.7 Expedient Release
25.8 Extended Furloughs
25.10 Administrative Release of Inmates
27-01-01 Probation and Parole Procedures
27-02-01 Duties of Probation and Parole Officers
27-03-01 Workload Formula Supervisor/Staff Ratio
27-05-01 Testimony, Court Demeanor and Availability of Legal Services
27-06-01 Availability of Supervision Services
27-06-02 Equal Access to Services
27-07-01 Cooperation with Law Enforcement Agencies
27-08-01 Use of Force
27-09-01 Kentucky Community Resources Directory
27-10-01 Advanced Supervision
27-11-01 Intensive Supervision
27-12-01 Supervision: Case Classification
27-12-02 Risk/Needs Assessment
27-12-03 Initial Interview
27-12-04 Conditions of Regular Supervision/Request for Modification
27-12-05 Releasee's Report
27-12-06 Grievance Procedures for Offenders
27-12-07 Employment, Education/Vocational Referral
27-12-08 Supervision Plan
27-12-09 Casebook
27-12-10 Guidelines for Monitoring Supervision Fee
27-12-11 Guidelines for Monitoring Financial Obligations Ordered by the Releasing Authority
27-12-12 Other Financial Obligations (Not Ordered by Releasing Authority)
27-12-13 Community Service Work
27-12-14 Client Travel Restrictions
27-13-02 Alcohol Detection
27-14-01 Interstate Compact Transfers
27-14-02 Interstate Compact Out-of-state Probation and Parole Violation
27-15-01 Supervision Report; Violations, Unusual Incidents
27-16-01 Search; Seizure; Chain of Custody; Disposal of Evidence
27-17-01 Absconder Procedures
27-18-01 Probation and Parole Issuance of Detainer/Warrant
27-19-01 Preliminary Revocation Hearing
27-20-01 Division of Probation and Parole Controlled Intake Program
27-20-02 Prisoner Intake Notification
27-20-03 Prisoner Status Change
27-21-01 Apprehension and Transportation of Probation and Parole Violators
27-22-01 Fugitive Unit - Apprehensions
27-22-02 Fugitive Unit - Transportation of Fugitives
27-23-01 In-state Transfer
27-24-01 Closing Supervision Report
27-24-02 Reinstatement of Clients to Active Supervision
27-25-01 Application for Final Discharge from Parole
27-26-01 Assistance to Former Clients and Dischargees
27-27-01 Restoration of Civil Rights
27-28-01 Firearms/Explosives: Application for Relief from Disability
27-29-01 Parole Review Dates Modification
28-01-01 Probation and Parole Investigation Reports (Introduction, Definitions, Confidentiality, Timing, and General Comments)
28-01-02 Probation and Parole Investigation Reports (Administrative Responsibilities)
28-01-03 Probation and Parole Investigation Reports (Presentence/Postsentence Investigation Interview Procedure)
28-01-04 Probation and Parole Investigation Reports (Presentence/Postsentence Verification, Composition, Case Material and Submission Schedules)
28-01-05 Probation and Parole Investigation Reports (Computation of Jail Custody Credit)
28-01-06 Probation and Parole Investigation Reports (Misdemeanant Presentence Investigation Reports for the Circuit and District Courts)
28-01-07 Probation and Parole Investigation Reports (Supplemental Postsentence Investigation Report, Case Material, and Submission Schedule)
28-01-08 Probation Parole Investigation Reports (Partial Investigation Reports and Submission Schedule)
28-01-09 Release of Information of Factual Content on Presentence/Postsentence Investigation Reports
28-02-01 Expedient Release Program
28-03-01 Parole Plans/Halfway Houses/Extended Furlough/Sponsorship/Gradual Release
28-04-01 Furlough Verifications
28-05-01 Out-of-state Investigations

JOHN T. WIGGINTON, Secretary
APPROVED BY AGENCY: November 8, 1991
FILED WITH LRC: November 13, 1991 at 11 a.m.

STATEMENT OF EMERGENCY
501 KAR 6:150E

In order to operate the Eastern Kentucky Correctional Complex in accordance with KRS Chapter 196, the Corrections Cabinet needs to implement this emergency regulation. An ordinary administrative regulation cannot suffice because the policy must comply with present operations of the institution in providing access to the courts. Further, there is presently pending a lawsuit contesting this issue and the policy must immediately be changed to support current practice. The change will provide substantial monthly savings in the operation of the legal

aide office, as well as all other photo copying and postage expense. This emergency regulation will be replaced by the ordinary administrative regulation filed with LRC on October 15, 1990 in accordance with KRS Chapter 13A.

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

CORRECTIONS CABINET

501 KAR 6:150E. Eastern Kentucky Correctional Complex.

RELATES TO: KRS Chapters 196, 197, 439
STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640
EFFECTIVE: October 16, 1991
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 16, 1991 at 3 p.m.

STATEMENT OF EMERGENCY
900 KAR 2:050E

This emergency regulation establishes transfer and discharge rights for all residents in long-term care facilities. This regulation, in conjunction with 900 KAR 2:060E, will allow Kentucky to implement provisions of federally mandated changes provided under 42 CFR 483.12. The emergency regulation shall be replaced by an ordinary regulation. An ordinary administrative regulation will be filed with the Regulations Compiler before October 15, 1991.

WALLACE G. WILKINSON, Governor
DONALD G. DIXON, Department Secretary

CABINET FOR HUMAN RESOURCES
Office of Inspector General

900 KAR 2:050E. Transfer and discharge rights.

RELATES TO: KRS 194.030(12)(b)
STATUTORY AUTHORITY: KRS 216.515, 216.525, 216.557, 216.560, 42 CFR 483.12
EFFECTIVE: October 16, 1991
NECESSITY AND FUNCTION: 42 CFR 483.12 requires that the state shall have in effect a fair and impartial decision making process for appeals related to involuntary transfer and discharge. This regulation sets forth guidelines for this process for long-term care facilities as licensed by 902 KAR 20:300 or those long-term care facilities certified in accordance with 42 CFR 483. This regulation sets forth the requirements of the Kentucky Nursing Home Reform Act as it relates to residents' transfer and discharge rights.

Section 1. Definitions. (1) "Discharge" means movement from a facility to a noninstitutional setting when the discharging facility provides notice in accordance with this regulation that it intends to cease to be legally responsible for the care of the resident.

(2) "Facility" means a long-term care facility as defined by KRS 216.510(1) excluding those facilities licensed as family care homes.

(3) "Resident" means a resident of a facility or any legal representative or individual acting on behalf of the resident.

(4) "Transfer" means movement from a specific licensed long-term care facility to another health care facility when the legal responsibility for the care of the resident changes from the transferring facility to the receiving facility. A transfer shall only be effective, and the transferring facility's responsibility for the resident shall end, after the receiving facility accepts legal responsibility for the care of the resident.

(5) "Transfer or discharge rights" means those rights of notification and appeal guaranteed in KRS 216.515 and outlined in this regulation.

Section 2. Transfer and Discharge Rights. (1) Transfer and discharge requirements. The facility must permit each resident to remain in the facility, and not transfer or discharge the resident from the facility unless:

(a) The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility; or

(b) The transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility; or

(c) The safety of individuals in the facility is endangered; or

(d) The health of individuals in the facility would otherwise be endangered; or

(e) The resident has failed, after reasonable and appropriate notice, to pay for (or to have paid under Medicare, Medicaid or state supplementation) a stay at the facility; or

(f) The facility ceases to operate.

(2) Documentation. Before a facility transfers or discharges a resident under any of the circumstances specified in subsection (1)(a) or (e) of this section, the reasons for this transfer or discharge shall be documented in the resident's record. The documentation shall be made by:

(a) The resident's physician when transfer or discharge is necessary under subsection (1)(a) or (b) of this section; and

(b) A physician when transfer or discharge is necessary under subsection (1)(d) of this section.

(3) Notice before transfer. Before a facility transfers or discharges a resident, the facility shall:

(a) Notify the resident and, if known, a family member or legal representative of the resident, in writing, of the transfer or discharge and the reasons;

(b) Record the reasons in the resident's clinical record; and

(c) Include in the notice the items described in subsection (5) of this section.

(4) Timing of the notice.

(a) Except when specified in paragraph (b) of this subsection, the notice of transfer or discharge required under subsection (3) of this section shall be made by the facility at least thirty (30) days before the resident is transferred or discharged.

(b) Notice may be made as soon as practicable before transfer or discharge when:

1. An immediate transfer or discharge is required by the resident's urgent medical needs, under subsection (1)(b) of this section; or

2. The resident's health improves sufficiently to allow a more immediate transfer or discharge, under subsection (1)(a) of this section; or

3. The safety of individuals in the facility would be endangered, under subsection (1)(c) of this section; or

4. The health of individuals in the facility would be endangered, under subsection (1)(d) of this section; or

5. The resident has not resided in the facility for thirty (30) days.

(5) Contents of the notice. The written notice specified in subsection (3) of this section shall include the following:

(a) The reason for transfer or discharge;

(b) The effective date of transfer or discharge;

(c) The location to which the resident is transferred or discharged;

(d) A statement that the resident has the right to appeal the action to the cabinet;

(e) The name, address and telephone number of the state long-term care ombudsman; and

(f) For nursing facility residents with developmental disabilities, or who are mentally ill, the mailing address and telephone number of the Department of Public Advocacy.

(6) Orientation for transfer or discharge. A facility must provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility.

(7) Notice of bed-hold policy and readmission.

(a) Notice before transfer. Before a facility transfers a resident to a hospital or allows a resident to go on therapeutic leave, the facility shall provide written information to the resident and a family member or legal representative that specifies:

1. That for residents receiving Medicare or Medicaid, that if available under the Medicaid state plan and provider agreement bed-hold days will be requested and the duration to the bed-hold policy under the Medicaid state plan during which the resident is permitted to return and resume residence in the facility; and

2. The facility's policies regarding bed-hold periods, which must be consistent with paragraph (c) of this subsection, permitting a resident to return.

(b) Notice upon transfer. At the time of transfer of a resident to a hospital or for therapeutic leave, a long-term care facility shall provide written notice to the resident and a family member or legal representative, which specifies the duration of the bed-hold policy described in paragraph (a) of this subsection.

(c) Permitting resident to return to facility. A long-term care facility shall establish and follow a written policy under which a resident whose hospitalization or therapeutic leave exceeds the bed-hold period under the Medicaid state plan, is readmitted to the facility immediately upon the first availability of a bed in a semiprivate room if the resident:

1. Requires the services provided by the facility; and

2. Is eligible for Medicaid or Medicare nursing facility services and the facility is certified to participate in Title XVIII or Title XIX of the Social Security Act.

(3) Equal access to quality care. A facility must establish and maintain identical policies and practices regarding transfer, discharge, and the provision of service under the Medicaid state plan for all individuals regardless of source of payment.

Section 3. Appeals Rights. (1) A resident may appeal any discharge.

(2) A resident may appeal a transfer when he is transferred from:

(a) A certified bed into a noncertified bed; or

(b) A bed in a certified entity to a bed in an entity which is certified as a different provider.

(3) A resident has no appeal rights when he is moved from a certified bed into another certified bed of the same certification in the same facility.

(4) A resident, or any person acting on behalf of the resident, may request that the cabinet review any proposed transfer or discharge. The cabinet shall investigate this transfer or discharge to ascertain whether there has been a violation of the resident's transfer or discharge rights. If the cabinet finds that a violation of the resident's transfer or discharge rights has occurred, the cabinet shall

issue a Type B citation and fine the facility $500 per day for any day or portion of a day that the resident is not in the facility due to an actual or attempted transfer or discharge, except for those days a resident requires acute care. The fine shall end when the resident is readmitted, refuses readmission or for health or other reasons cannot be readmitted.

(5) A resident may appeal any discharge or appealable transfer to the cabinet. The resident must inform the cabinet in writing of his intent to appeal within ten (10) days from the resident's receipt of notice of the facility's intent to transfer or discharge. Hearing procedures for appeals are set forth at 900 KAR 2:060.

CLAY CESSNA, Inspector General
DONALD S. DIXON, Department Secretary
APPROVED BY AGENCY: October 14, 1991
FILED WITH LRC: October 16, 1991 at 3 p.m.

STATEMENT OF EMERGENCY
900 KAR 2:060E

This emergency regulation establishes the hearing process for use by long-term residential care recipients which is mandated by 42 CFR 483.12 of the federal regulations. The emergency regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation will be filed with the Regulations Compiler before October 15, 1991.

WALLACE G. WILKINSON, Governor
DONALD G. DIXON, Department Secretary

CABINET FOR HUMAN RESOURCES
Office of Inspector General

900 KAR 2:060E. Hearings concerning transfer and discharge rights.

RELATES TO: KRS 194.030(12)(b)
STATUTORY AUTHORITY: KRS 216.515, 216.525, 216.557, 216.560, 216.567, 42 CFR 483.12
EFFECTIVE: October 16, 1991
NECESSITY AND FUNCTION: 42 CFR 483.12 requires that the state shall have in place a fair and impartial decision-making process for appeals related to involuntary transfer and discharge. This regulation sets forth guidelines for this process for long-term care facilities as licensed by 902 KAR 20:300 or those long-term care facilities certified in accordance with 42 CFR 483. This regulation sets forth the hearing process for appeals related to residents' transfer and discharge rights under Kentucky's Nursing Home Reform statutes and regulations.

Section 1. Definitions. (1) "Facility" means a long-term care facility as defined by KRS 216.510(1) excluding those facilities licensed as family care homes.

(2) "Hearing officer" means the person designated by the cabinet to conduct a hearing and make a decision regarding any appealed transfer or discharge.

(3) "Resident" means a resident of a facility or any legal representative or individual acting on behalf of the resident.

Section 3. Hearing Procedure. (1) Upon receipt of notice of appeal in accordance with 900 KAR 2:050 or 900 KAR 2:020, Section 2(1) and (2), the secretary of the cabinet shall appoint a hearing officer.

(2) Notice of hearing shall be mailed to the facility and resident not less than ten (10) days prior to the commencement of the hearing. The notice of hearing shall contain the reasons, time, and place of the hearing. The notice of hearing shall be mailed by certified mail, return receipt requested, to the facility and the resident.

(3) The facility and the resident may be represented by counsel and make oral or written argument, offer testimony, cross-examine witnesses, or take any combination of such actions. No depositions shall be permitted for the purpose of discovery, however, the hearing officer may authorize depositions of witnesses who, in his opinion, for good cause shown cannot be present at the hearing. A hearing officer shall preside at the hearing, shall keep order, administer oaths, may issue subpoenas and may admit relevant and probative evidence and shall conduct the hearing in accordance with reasonable administrative practice.

(4) All testimony at the hearing shall be recorded but need not be transcribed unless requested. The person or organization requesting a transcript shall bear the cost of such transcript.

(5) The 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) The hearing officer shall make a determination as to whether the resident's transfer or discharge rights, as set forth in 900 KAR 2:050, have been violated. If the hearing officer agrees with the findings of the cabinet that the facility violated the resident's transfer or discharge rights and the imposed fine, this fine shall continue until such time as the resident is readmitted, refuses readmission, or for health or other reasons cannot be readmitted to the facility. If the hearing officer finds that the facility has violated the resident's transfer or discharge rights and the cabinet has not made a similar finding, the facility shall be fined $500 per day from the date of the hearing officer's finding until the resident is readmitted, refuses readmission or for the health or other reasons cannot be readmitted to the facility. If the hearing officer finds that no violation has occurred, any fine imposed by the cabinet shall be voided.

(7) The hearing shall be the only hearing as it relates to cabinet findings regarding fines, citations and cited deficiencies concerning transfer and discharge rights under this or any licensure regulations.

(8) The hearing officer's decision shall be the final determination of the cabinet. The cabinet shall forward the decision to the resident and facility within ten (10) days of the receipt of the hearing officer's decision.

(9) No hearing officer shall participate in any hearing involving a facility with which he has had in the past twelve (12) months preceding the hearing, any ownership, in whole or in part, employment, fiduciary, contractual creditor or consultative relationship or any familial relation to the resident.

(10) A judicial review may be accorded the

resident or facility as specified the KRS 216.570.

CLAY CESSNA, Inspector General
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 14, 1991
FILED WITH LRC: October 16, 1991 at 3 p.m.

STATEMENT OF EMERGENCY
904 KAR 3:010E

This emergency administrative regulation amends the regulation to delete the reference to an individual's failure to attest to his citizenship or alien status from criteria for meeting the definition of an "excluded household member". This emergency administrative regulation is necessary to comply with a policy clarification from the Food and Nutrition Service. Failure to implement the policy could result in a reduction or suspension of federal funds. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler for the November 1991 filing.

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

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

904 KAR 3:010E. Definitions.

RELATES TO: KRS 194.050, 7 CFR 217.2, 273.1, 273.4, 273.5, 273.6, 273.7, 273.11, 273.16
STATUTORY AUTHORITY: KRS 194.050, 7 CFR 271.4
EFFECTIVE: November 7, 1991
NECESSITY AND FUNCTION: The Cabinet for Human Resources is required to administer a Food Stamp Program. KRS 194.050 provides that the secretary shall, by regulation, develop policies and operate programs concerned with the welfare of the citizens of the Commonwealth. This regulation sets forth definitions of terms used by the cabinet in regulations pertaining to the Food Stamp Program. This administrative regulation has been amended to comply with the: (1) amendments to KRS Chapter 13A, enacted during the 1990 Regular Session of the General Assembly, as directed by the Administrative Regulation Review Subcommittee; and (2) quadrennial review required by KRS 13A.347.

Section 1. Definition of terms utilized in regulations relating to the Food Stamp Program are as follows:
(1) "Application for participation" means the form designed or approved by Food and Nutrition Service (FNS) that is completed by:
(a) A household member; or
(b) An authorized representative.
(2) "Authorization to participate card" (ATP) means the document that is issued by the state agency to a certified household to show the allotment the household is authorized to receive on presentation of such document.
(3) "Authorized representative":
(a) Means an individual designated by a household member to act on behalf of the household in one (1) or all of the following capacities:
1. Making application for the program;
2. Obtaining the coupons; and
3. Using the coupons.
(b) An adult who is a nonhousehold member may be designated as the authorized representative for certification purposes if the authorized representative:
1. Has been designated in writing by:
a. The head of the household;
b. The spouse; or
c. Another responsible member of the household; and
2. Is an adult who is aware of relevant household circumstances.
(c) The following individuals shall not act as an authorized representative unless:
1. The specific written approval of the designated state agency officials is obtained; and
2. That official determines that no one else is able to serve as the authorized representative:
a. A state agency employee who is involved in the certification or issuance processes;
b. A retailer that is authorized to accept food coupons; and
c. An individual disqualified for an intentional program violation.
(d) The cabinet shall disqualify an individual from participating as an authorized representative up to one (1) year if the cabinet obtains evidence that the individual has:
1. Misrepresented a household's circumstances;
2. Knowingly provided false information pertaining to the household; or
3. Made improper use of coupons.
(4) "Boarder":
(a) Means an individual to whom a household furnishes lodging and meals for reasonable compensation;
(b) "Reasonable compensation" is determined:
1. By considering only the amount paid for meals; and
2. Provided that the amount paid for meals is distinguishable from the amount paid for lodging.
(c) A reasonable monthly payment for meals shall be:
1. An amount which equals or exceeds the thrifty food plan for the appropriate size of the boarder household for a boarder whose board arrangement is for more than two (2) meals a day; or
2. An amount which equals or exceeds two-thirds (2/3) of the thrifty food plan for the appropriate size of the boarder household for a boarder whose board arrangement is for two (2) meals or less per day.
(d) A boarder is ineligible to participate in the program independent of the household providing the board.
(5) "Certification" means the action necessary to determine eligibility of a household including:
(a) Interview;
(b) Verification; and
(c) Decision.
(6) "Communal dining facility" means:
(a) A public or nonprofit private establishment, approved by FNS, that prepares and serves meals for elderly persons;
(b) A public or private nonprofit establishment (eating or otherwise) that feeds:
1. Elderly persons; and
2. SSI recipients and their spouses;
(c) Federally subsidized housing for the

elderly that prepares and serves meals to the residents; and

(d) A private establishment that contracts with an appropriate state or local agency to offer meals at concessional prices to:

1. Elderly persons; and

2. SSI recipients and their spouses.

(7) "Coupon" means:

(a) Any stamp;

(b) Coupon; or

(c) Type of certificate; that is

(d) Issued in accordance with the Food and Nutrition Service regulations for the purchase of eligible food.

(8) "Date of entry" or "date of admission" means the date established by the Immigration and Naturalization Service as the date the sponsored alien was admitted for permanent residence.

(9) "Disabled" means:

(a) An individual who receives:

1. Supplemental Security Income (SSI) or presumptive SSI under 42 USC 1381 to 1385;

2. Disability or blindness payments under:

a. 42 USC 301 to 306;

b. 42 USC 402 to 433;

c. 42 USC 1201 to 1206;

d. 42 USC 1351 to 1355; or

e. 42 USC 1381 to 1385;

3. Optional or mandatory state supplementation;

4. Disability retirement benefits from a:

a. Federal;

b. State; or

c. Local governmental agency; and

d. Resulting from a disability considered payment under 42 USC 221(i);

5. Annuity payments under:

A. 45 USC 231(a); and

b. Is determined to qualify for Medicare by the Railroad Retirement Board; or

c. Is disabled based upon the criteria used under 42 USC 1381 to 1385; or

(b) A veteran with a service connected or nonservice connected disability rated by the Veteran's Administration (VA) or paid as total (100 percent) by the VA under Title 38 of the United States Code;

(c) A veteran considered by the VA to be in need of regular aid and attendance or permanently housebound under Title 38 of the United States Code;

(d) A surviving spouse of a veteran and considered by the VA to be in need of regular aid and attendance or permanently housebound;

(e) A surviving child of a veteran and considered by the VA to be permanently incapable of self-support under Title 38;

(f) A surviving spouse or surviving child of a veteran and considered by the VA to be entitled to:

1. Compensation for a service-connected death;

2. Pension benefits for a nonservice-connected death under Title 38; and

3. Has a disability considered permanent under 42 USC 221(i);

(g) An individual in receipt of disability related medical assistance under 42 USC 1396;

(h) An individual who is certified to receive, but not yet receiving SSI or Social Security disability payments; or

(i) An individual who is currently having their entire SSI or Social Security disability benefit check recouped to recover a prior overpayment.

(10) "Drug addiction or alcoholic treatment and rehabilitation program" means any:

(a) Drug addiction; or

(b) Alcoholic treatment and rehabilitation program;

(c) Conducted by:

1. A private nonprofit organization; or

2. Institution that is certified as responsible for the administration of the state's program for:

a. Alcoholics; or

b. Drug addicts; by

(i) The cabinet; or

(ii) Agencies designated by the Governor.

(11) "Elderly" means an individual who is:

(a) Age sixty (60) or older; or

(b) Fifty-nine (59) years of age at the time of application but shall turn age sixty (60) before the end of month of application.

(12) "Eligible foods" means any of the following:

(a) Any food or food product intended for human consumption except:

1. Alcoholic beverages;

2. Tobacco;

3. Hot foods; and

4. Hot food products prepared for immediate consumption;

(b) Seeds and plants to grow foods for the personal consumption by eligible households;

(c) Meals prepared and delivered by an authorized meal delivery service to households eligible to use coupons to purchase delivered meals;

(d) Meals served by a communal dining facility for:

1. The elderly;

2. SSI households; or

3. To both; and

4. To households eligible to use coupons for communal dining;

(e) Meals prepared and served by an authorized drug addict or alcoholic treatment and rehabilitation center to eligible households;

(f) Meals prepared and served by an authorized group living arrangement facility to residents who are blind or disabled recipients of benefits under:

1. 42 USC 401 to 433; or

2. 42 USC 1381 to 1385;

(g) Meals prepared and served by an authorized shelter for battered women and children to its eligible residents;

(h) Meals prepared for and served by an approved authorized public or private nonprofit establishment (e.g., soup kitchen, temporary shelter) that feeds homeless persons, provided that the facility shall:

1. Be a nonprofit establishment;

2. Be a licensed food service establishment; and

3. Provide meals to the homeless.

(13) "Excluded household member" means an individual residing with a household but excluded when determining the household's size in accordance with the provisions of 904 KAR 3:035, Section 5(3) and (4).

(a) The income and resources of the excluded household member shall be treated the same as that of an ineligible household member in accordance with 904 KAR 3:035, Section 5(3) and (4).

(b) The following are excluded household members and shall not participate as a separate household:

1. An ineligible alien;

2. An individual disqualified for failure to provide a social security number;
3. An individual disqualified for intentional program violation; or
4. An individual disqualified for failure to comply with work or workforce requirements. [; or]
[5. An individual determined ineligible due to failure to attest to citizenship or alien status.]
(14) "Employment and training program" means a program consisting of one (1) or more of the following components:
(a) Work;
(b) Training;
(c) Education; or
(d) Job search.
(15) "Federal fiscal year" means a period of twelve (12) calendar months beginning with each October 1 and ending with September 30 of the following calendar year.
(16) "FNS" means the Food and Nutrition Service of the United States Department of Agriculture.
(17) "Group living arrangement":
(a) Means a public or private nonprofit residential setting that:
1. Serves no more than sixteen (16) residents; and
2. Is appropriately certified.
(b) To be eligible, a resident shall be:
1. Blind or disabled; and
2. Receiving benefits under:
a. 42 USC 401 to 433; or
b. 42 USC 1381 to 1385.
(18) "Head of household" means the person with primary financial responsibility and in whose name the application for participation is made.
(19) "Household" means an individual living alone or with others, or a group of individuals living together where living quarters are shared.
(a) A household may be composed of any of the following individuals or groups of individuals specified in subsection (19)(b) of this section, provided that such individuals or groups of individuals are not:
1. Residents of an institution;
2. Residents of a commercial boarding house; or
3. Living with others and paying compensation to others for meals and lodging except as otherwise specified in subsection (4) of this section.
(b) A household may be composed of:
1. An individual living alone;
2. An individual living with others, but customarily purchasing food and preparing meals for home consumption separate and apart from the others;
3. A group of individuals living together for whom food is customarily purchased in common and for whom meals are prepared together for home consumption;
4. An individual who is:
a. Sixty (60) years of age or older (and the spouse of such individual);
b. Living with others; and
c. Unable to purchase and prepare meals because he:
(i) Suffers from a disability considered permanent under 42 USC; or
(ii) Suffers from a nondisease-related, severe, permanent disability; and
d. Provided that the income of the others, excluding the income of the individual's spouse, with whom the individual resides does not exceed 165 percent of the federal income poverty guidelines.
(c) In no event shall separate household status or nonhousehold member status be granted to:
1. Parents and natural, adopted or stepchildren, unless:
a. At least one (1) parent is elderly or disabled as defined in subsection (10) of this section; or
b. Unless three (3) generations live together and one (1) of the children has minor children and meals are prepared separately;
2. A child under eighteen (18) years of age, under the parental control of an adult member of the household;
3. A spouse of a member of the household;
4. Siblings (natural, adopted, half or stepbrothers and sisters), unless:
a. At least one (1) sibling is elderly or disabled as defined in subsection (10) of this section; or
b. One (1) sibling has a minor child and meals are prepared separately.
(20) "Identification (ID) card" means a card which identifies the bearer as eligible to receive and use food coupons.
(21) "Immigration and Naturalization Service (INS)" means the Immigration and Naturalization Service, United States Department of Justice.
(22) "Institution of higher education" means any institution providing post high school education, which normally requires a high school diploma or equivalency certificate for a student to enroll, including but not limited to:
(a) College;
(b) University; and
(c) Vocational or technical school.
(23) "Meal delivery service" means an entity with which the cabinet has contracted for the preparation of meals at concessional prices to an individual who is unable to adequately prepare his meals.
(a) A "meal delivery service participant" shall include:
1. An elderly person and his spouse;
2. The physically or mentally handicapped; and
3. A person otherwise disabled and his spouse.
(b) The cabinet shall contract with any of the following "meal delivery service" providers:
1. A political subdivision;
2. A private nonprofit organization; or
3. A private establishment.
(24) "Medicaid" means medical assistance under 42 USC 1396.
(25) "Nonassistance household" (NA) means a household containing at least one (1) member who is not included in a public assistance (PA) household grant.
(26) "Nonprofit cooperative food purchasing venture" means any private nonprofit association of consumers whose members pool their resources to buy food.
(27) "Nonhousehold member" means an individual residing with a household but not considered a household member in determining the household's eligibility or allotment.
(a) The following shall be considered a nonhousehold member and if otherwise eligible, may participate in the program as a separate household:
1. Roomer. An individual to whom a household furnishes lodging, but not meals, for compensation.
2. Live-in-attendant. An individual who

resides with a household to provide medical, housekeeping, child care or other similar personal services.

3. Other. Another individual who shares living quarters with the household but who does not customarily purchase food and prepare meals with the household.

(b) The following shall be considered as a nonhousehold member, ineligible to participate in the program as a separate household, and treated as described in 904 KAR 3:035:

1. An ineligible student;

2. A person disqualified for noncompliance with the work requirements;

3. A border;

4. A resident of an institution, except as provided in subsection (17) of this section;

5. A striker, unless:

a. The household was eligible the day prior to the strike; and

b. The household is eligible at the time of application;

6. A household disqualified due to voluntary quit provisions.

(28) "Overissuance" means the amount by which coupons issued to a household exceeds the amount the household was eligible to receive.

(29) "Public assistance" (PA) means any of the programs authorized under 42 USC 601 to 686 including:

a. Old age assistance;

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

c. Aid to the blind;

d. Aid to the permanently and totally disabled; and

e. Aid to aged, blind or disabled.

(30) "Retrospective budgeting" means the computation of a household's food stamp allotment for an issuance month based on actual income and circumstances which existed in a previous month.

(31) "Shelter for battered women and children" means a public or private nonprofit residential facility that serves battered women and children. If a facility serves other individuals, a portion of the facility must be set aside on a long-term basis to serve only battered women and children.

(32) "Sponsor" means a person who executed an affidavit of support or similar agreement on behalf of an alien as a condition of the alien's entry or admission into the United States as a permanent resident.

(33) "Sponsored alien" means an alien lawfully admitted for permanent residence as an immigrant as defined under 8 USC 1101.

(34) "Spouse" means either of two (2) individuals who:

(a) Would be defined as married to each other under applicable state law; or

(b) Are living together and are holding themselves out to the community as husband and wife by representing themselves as such to relatives, friends, neighbors, or tradespeople.

(35) "Striker" means anyone involved in a strike or other concerted stoppage of work by employees. This shall include:

(a) A stoppage by reason of expiration of a collective-bargaining agreement; and

(b) Any concerted slowdown or other concerted interruption of operations by employees, unless:

1. The individual is exempt from work registration for reasons other than employment; and

2. The exemption existed on the day prior to the strike.

(36) "Supplemental security income (SSI)" means monthly cash payments made under the authority of:

(a) 42 USC 1381 to 1385 to the aged, blind and disabled;

(b) 42 USC 1382e; or

(c) 42 USC 1382.

(37) "Thrifty food plan" means:

(a) The diet required to feed a family of four (4) persons, determined in accordance with the Secretary of the United States Department of Agriculture calculations, consisting of:

1. A man and a woman twenty (20) through fifty (50);

2. A child six (6) through eight (8); and

3. A child nine (9) through eleven (11) years of age; and

(b) The cost of such diet shall be the basis for uniform allotments for all households regardless of their actual composition, except that the Secretary of the United States Department of Agriculture shall make household-size adjustment in the thrifty food plan taking into account economies of scale.

(38) "Underissuance" means the amount that the allotment to that the household was entitled exceeds the allotment which the household received.

MIKE ROBINSON, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 30, 1991
FILED WITH LRC: November 7, 1991 at 3 p.m.

STATEMENT OF EMERGENCY
904 KAR 3:035E

This emergency administrative regulation amends the regulation to delete failure of an individual to attest to his citizenship or alien status from criteria for determining household member ineligibility status. This emergency administrative regulation is necessary to comply with a policy clarification from the Food and Nutrition Service. Failure to implement the policy could result in a reduction or suspension of federal funds. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler for the November 1991 filing.

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

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

904 KAR 3:035E. Certification process.

RELATES TO: KRS 194.050, 7 CFR 273.1, 273.2, 273.5, 273.10, 273.11, 273.12, 273.14, 273.21, 274.6

STATUTORY AUTHORITY: KRS 194.050, 7 CFR 271.4

EFFECTIVE: November 7, 1991

NECESSITY AND FUNCTION: The Cabinet for Human Resources is required to administer a Food Stamp Program. KRS 194.050 provides that the secretary shall, by regulation, develop policies and operate programs concerned with the welfare of

the citizens of the Commonwealth. This regulation sets forth the certification process used by the cabinet in the administration of the Food Stamp Program. This administrative regulation has been amended to comply with the: (1) amendments to KRS Chapter 13A, enacted during the 1990 Regular Session of the General Assembly, as directed by the Administrative Regulation Review Subcommittee; and (2) quadrennial review required by KRS 13A.347.

Section 1. Eligibility and Benefit Levels. (1) Eligibility and benefit levels shall be determined by the cabinet by considering the household's circumstances for the entire period for which each household is certified.

(2) The criteria shall be applicable to all households.

(3) Certain households require special or additional certification procedures as specified in Section 4 of this administrative regulation.

Section 2. Certification Periods. (1) The cabinet shall establish a definite period of time within which a household shall be eligible to receive benefits.

(2) Except as provided below, households shall be certified for at least three (3) months.

(a) If the certification process is completed after the 15th day of the month of application, a household eligible for a certification period of three (3) months or less shall, at the time of certification, have their certification period increased by one (1) month;

(b) A household shall be certified for one (1) or two (2) months, as appropriate if:

1. The household cannot reasonably predict what its circumstances will be in the near future; or

2. There is substantial likelihood of frequent and significant changes in income or household status.

(3) A household composed entirely of recipients of Aid to Families with Dependent Children (AFDC), or a combination of AFDC and Supplemental Security Income (SSI), shall be assigned a certification period to coincide with their AFDC reinvestigation date.

(4) The following households shall be certified for up to twelve (12) months:

(a) A household which is required to submit monthly reports.

(b) If other household circumstances are expected to remain stable, a household composed entirely of unemployable or elderly persons with very stable income; or

(c) A household whose primary source of income is from:

1. Self-employment; or

2. Regular farm employment with the same employer if:

a. The income can be readily predicted; and

b. Household circumstances are not likely to change.

(5) The following households shall be assigned a certification period not to exceed six (6) months, including those household types specified in subsection (4) of this section.

(a) A household which is granted separate household status because:

1. The household consists of an individual and the individual's minor child;

2. The individual and child are living with the individual's parent or sibling; and

3. The individual purchases and prepares meals separately from the parent or sibling; or

(b) A household that consists of recipients of AFDC or a combination of AFDC and SSI, receiving up to fifty (50) dollars child support payments forwarded from the Division of Child Support Enforcement. These households shall be exempt from the monthly reporting requirements.

Section 3. Certification Notices to Households. The cabinet shall provide an applicant with one (1) of the following written notices as soon as a determination is made, but no later than thirty (30) days after the date of the initial application:

(1) Notice of eligibility;

(2) Notice of denial; or

(3) Notice of pending status.

Section 4. Application for Recertification. The cabinet shall process applications for recertification as specified in 904 KAR 3:030, Section 1, as follows:

(1) If the household files the application by the 15th day of the last month of the certification, the cabinet shall provide uninterrupted benefits if the household is otherwise eligible; or

(2) If the household files the application after the 15th day but prior to the last day of the last month of the certification, the cabinet shall provide benefits within thirty (30) days of date of the application if the household is otherwise eligible.

Section 5. Certification Process for Specific Households. Certain households have circumstances that are substantially different from other households and therefore require special or additional certification procedures.

(1) A household with self-employed members shall have its case processed as follows:

(a) Income is annualized over a twelve (12) month period if:

1. Self-employment income represents a household's annual income; or

2. Self-employment income is received on a monthly basis which represents a household's annual support;

(b) Self-employment income which is intended to meet the household's needs for only part of the year shall be averaged over the period of time the income is intended to cover;

(c) The income from a household's self-employment enterprise that has been in existence for less than one (1) year shall be averaged over the period of time the business has been in operation and a monthly amount projected over the coming year; or

(d) The cabinet shall calculate the self-employment income on anticipated earnings if the averaged annualized amount does not accurately reflect the household's actual circumstances because the household has experienced a substantial increase or decrease in business.

(2) A household with boarders shall have its case processed as follows:

(a) Income from the boarder shall:

1. Be treated as self-employment income; and

2. Include all direct payments to the household for:

a. Room;

b. Meals; and

c. Shelter expenses;

(b) Deductible expenses include:

1. Cost of doing business;
2. Twenty (20) percent of the earned income; and
3. Shelter costs.

(3) A household with ineligible members shall be processed, as follows:

(a) Ineligible due to:

1. Intentional program violation;
2. Failure to comply with the work requirements; or
3. Failure to comply with workforce requirements:

a. Income and resources in their entirety shall be counted as income available to the remaining household members;

b. Remaining household members shall receive standard earned income, medical, dependent care, and excess shelter deductions; and

c. The ineligible member shall not be included when:

(i) Assigning benefit level;

(ii) Comparing monthly income with income eligibility standard; and

(iii) Comparing household resources with resource eligibility standard;

(b) Ineligible due to:

1. Failure to provide a Social Security number; or
2. Ineligible alien status; [; or]

[3. Failure to attest to citizenship or alien status:]

a. All resources of ineligible members shall be considered available to the remaining household members;

b. A pro rata share of the ineligible member's income shall be attributed to remaining household members;

c. Earned income deduction shall be applied to pro rata share of earnings; and

d. The ineligible member's share of dependent care and shelter expenses shall not be counted;

4. The ineligible member shall not be included when:

a. Assigning benefit level;

b. Comparing monthly income with income eligibility standard; and

c. Comparing household resources with resource eligibility standard.

(4) A household with nonhousehold members shall be processed as follows:

(a) The income and resources of nonhousehold member (other than those described in subsection (3) of this section) shall not be considered available to the household with whom they reside;

(b) If earned income of household members and nonmembers are combined into one (1) wage, the agency shall:

1. Count that portion due to the household as earned income, if identifiable; or
2. Count pro rata share of earned income if nonmember's share cannot be identified;

(c) The nonmember shall not be included when:

1. Assigning a benefit level to the household;
2. Comparing monthly income with income eligibility standards; and
3. Comparing household resources with resource eligibility standard.

(5) A resident of a drug or alcoholic treatment and rehabilitation program in a private, nonprofit organization or a publicly operated community mental health center shall have his case processed as follows:

(a) Eligibility shall be determined as a one (1) person household;

(b) Certification shall be accomplished through an authorized representative;

(c) Food stamp processing standards and notice provisions shall apply to a resident recipient;

(d) Treatment center shall notify the agency of any changes in a resident's circumstances;

(e) Upon departure of the center, the resident shall be eligible to receive any remaining benefits, if otherwise eligible; and

(f) The organization or institution shall be responsible for knowingly misrepresenting household circumstances.

(6) A resident of a group living arrangement who is blind or disabled and receives retirees, survivors, and disabled individuals or SSI benefits shall have his case processed as follows:

(a) A resident shall apply on his own behalf or through use of the facility's authorized representative;

(b) Certification provisions applicable to all other households shall be applied;

(c) Responsibility for reporting changes depends upon who files the application:

1. If resident applies on his own behalf, the household shall report changes to the agency; or
2. If the center acts as authorized representative, the group living arrangement shall report changes;

(d) Eligibility of the resident shall continue after departure from the group living arrangement, if otherwise eligible; and

(e) The group living arrangement shall be responsible for knowingly misrepresenting household circumstances unless the household applied on its own behalf.

(7) A resident of a shelter for battered women and children shall have her case processed as follows:

(a) The shelter shall:

1. Have food and nutrition service authorization to redeem at wholesalers; or
2. Meet the federal definition of such a shelter;

(b) A shelter resident shall be certified for benefits, if otherwise eligible, if she is currently included in a former household which contains the person who abused her; and

(c) The cabinet shall promptly remove the resident from the former household's case, upon notification.

(8) An SSI recipient shall have his case processed as follows:

(a) Application may be filed at:

1. The Social Security Administration (SSA) Office; or
2. The local food stamp office;

(b) The cabinet shall not require an additional interview for applications filed at the SSA;

(c) The cabinet shall obtain all necessary verification prior to approving benefits;

(d) Certification periods shall conform to Section 2 of this administrative regulation; and

(e) Household changes in circumstances shall conform to Section 6 of this administrative regulation.

(9) A household with a member who is on strike shall have its eligibility determined by:

(a) Comparing the striking member's income the day prior to the strike to the striker's current income;

(b) Adding the higher of the prestrike income or current income to other current household income; and

(c) Allowing the appropriate earnings

deduction.
(10) Student households.
(a) Any person who meets all of the following criteria shall be ineligible to participate in the Food Stamp Program:
1. Between age eighteen (18) and sixty (60);
2. Physically and mentally fit; and
3. Enrolled at least half-time in an institution of higher education.
(b) The criteria in subsection (11)(a) of this subsection shall not deem a household member ineligible if the member:
1. Is employed or self-employed at least twenty (20) hours per week and is paid for such employment;
2. Participates in a federally financed work study program;
3. Is responsible for the care of a dependent household member under age six (6);
4. Is receiving benefits from the Aid to Families with Dependent Children Program (AFDC); or
5. Is assigned to or placed in an institution of higher learning through a program under 29 USC 1501.
(11) Sponsored aliens.
(a) Income of the sponsored alien shall:
1. Include that portion of the sponsor's and his spouse's income deemed to be that of the alien;
2. Be subject to appropriate income exclusions; and
3. Be reduced by:
a. Twenty (20) percent earned income disregard, if appropriate; and
b. An amount equal to the Food Stamp Program monthly gross income limit for a household size equal to the household size of the sponsor.
(b) Resources of the sponsored alien shall include the total resources of the sponsor and the sponsor's spouse, reduced by $1500.
(c) The appropriate portions of income and resources of the sponsor and of the sponsor's spouse shall be deemed unearned income for a period of three (3) years following the alien's admission for permanent residence into the United States.
(12) A household which is required, as specified in 904 KAR 3:020, Section 6(6), to comply with mandatory monthly reporting criteria shall have its case processed as follows:
(a) The cabinet shall adopt a two (2) month system in which the issuance month is the second month following its corresponding budget month;
(b) There shall be up to three (3) beginning months of participation in this system, the first month and the two (2) months following:
(c) Eligibility and benefit calculation shall be determined prospectively for beginning months;
(d) Ongoing eligibility shall be determined by considering all factors of eligibility prospectively and determining benefits retrospectively;
(e) Eligibility factors causing a period of ineligibility which exceeds one (1) month shall be acted upon immediately;
(f) A monthly reporting household which is ineligible for a period not to exceed one (1) month shall be treated as follows:
1. The ineligible household's issuance shall be suspended for one (1) month.
2. If the suspended household remains ineligible after one (1) month, the cabinet shall terminate the household's participation; and
(g) The recertification form shall serve as the report required for that month in which a household must be recertified.

Section 6. Reporting Changes. (1) A certified household is required to report changes in household circumstances within ten (10) days of the date the change becomes known to the household.
(2) An applying household shall report all changes related to its food stamp eligibility and benefits:
(a) At the certification interview; or
(b) If changes occur after the interview but prior to receipt of the notice of eligibility, within ten (10) days of the date of the notice.
(3) A household which is required to report monthly, shall not be required to submit any reports of changes other than the reports required under Section 5(12) of this regulation.

Section 7. Replacement Issuance. (1) The cabinet shall provide a replacement issuance to an eligible household if:
(a) Its authorization document was:
1. Not received in the mail;
2. Stolen from the mail;
3. Destroyed in a household misfortune;
4. Improperly manufactured;
5. Stolen after receipt; or
6. Mutilated;
(b) Its coupons were:
1. Not received in the mail;
2. Destroyed in a household misfortune;
3. Improperly manufactured; or
4. Mutilated;
(c) Food purchased with food stamps was destroyed in a household misfortune; or
(d) It received a partial coupon allotment.
(2) The cabinet shall not provide a replacement issuance to a household if after receipt:
(a) Coupons are:
1. Lost;
2. Stolen; or
3. Misplaced;
(b) Authorization documents are:
1. Lost; or
2. Misplaced;
(c) Coupons or authorization documents are totally destroyed in other than a disaster or misfortune; or
(d) Coupons sent by registered or certified mail are signed for by anyone residing with or visiting with the household.
(3) The cabinet shall not provide a replacement issuance if the household or authorized representative has not provided the written household statement of nonreceipt.
(4) The cabinet shall not provide a replacement allotment for a misfortune for the same month that the household is eligible for disaster food stamp benefits pursuant to a disaster declaration by the FNS.
(5) A replacement issuance shall be provided to a household if:
(a) The household reports a loss timely:
1. Orally; or
2. In writing;
(b) The household provides a statement of nonreceipt; and
(c) The original authorization document or allotment has not been returned to the cabinet at the time of the request for replacement.
(6) The report specified in subsection (5)(a)

of this section shall be considered timely if it is made to the cabinet within ten (10) days of the date that:

(a) An authorization document is stolen from the household; or

(b) The following items are destroyed in a household misfortune:

1. Authorization document;
2. Coupons; or
3. Food purchased with food stamps.

(7) In a mail issuance county, the report must be made:

(a) Within the period of intended use; unless

(b) The original issuance was made after the 20th of the month. The period of intended use shall be extended to the last day of the month following the month of application.

(8) The number of replacement issuances which a household may receive shall be limited to:

(a) A total of two (2) countable replacements in six (6) months for:

1. Authorization documents; or
2. Coupons:
a. Not received in the mail;
b. Stolen from the mail; or
c. Destroyed in a household misfortune.
3. Authorization documents stolen after receipt; and
4. Partial coupon allotments; and

(b) No limit shall be placed on the number of replacements for:

1. Partial allotments if the partial allotments were due to an error by the cabinet;
2. Authorization documents or coupons which were:
a. Improperly manufactured; or
b. Mutilated; or
c. Food purchased with food stamp benefits which was destroyed in a household misfortune.

(9) The replacement shall not be considered a countable replacement if:

(a) The original or replacement issuance is returned or otherwise recouped by the cabinet;

(b) The original authorization document is not transacted;

(c) The replacement authorization document is not transacted; or

(d) The replacement issued due to an error by the cabinet.

(10) A replacement issuance shall be provided:

(a) In the amount of the loss of the household; and

(b) Up to a maximum of one (1) on the allotment; unless

(c) The issuance includes restored benefits which shall be replaced up to their full value.

(11) The cabinet shall provide a replacement issuance to an eligible household in accordance with 904 KAR 3:045, Section 4.

MIKE ROBINSON, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 30, 1991
FILED WITH LRC: November 7, 1991 at 3 p.m.

STATEMENT OF EMERGENCY
907 KAR 1:140E

This emergency administrative regulation is being amended to comply with the amended Home and Community Based Services Waiver and with KRS Chapter 13A drafting requirement. To implement these changes in a timely manner an emergency regulation is necessary. 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 November 1991.

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

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:140E. Alternative home and community based services for the mentally retarded (AIS/MR).

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050, 42 CFR 441 Subpart G, 42 USC 1396a, b, d, n
EFFECTIVE: November 7, 1991
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance [in accordance with Title XIX of the Social Security Act]. KRS 205.520 empowers the cabinet, by regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation sets forth the coverage provisions applicable to home and community based services provided to the mentally retarded as an alternative to intermediate care facility services for the mentally retarded.

Section 1. General Coverage Provisions. The home and community based services described in this regulation shall [may] be provided only to those individuals eligible for Medicaid [medical assistance] who meet intermediate care for the mentally retarded patient status criteria as set forth in 907 KAR 1:022 [1:024]. These services [described herein] are designed to prevent or reduce institutionalization at the intermediate care level and shall [may] therefore be provided only to individuals in community residence living situations [(which may include personal care facilities)]. These services are termed alternative intermediate services for the mentally retarded [/mental retardation] (AIS/MR)[, and are henceforth referred to as AIS/MR services].

Section 2. Provider Participation. Any qualified provider may provide AIS/MR services, upon application to the cabinet for a provider participation agreement accompanied by data sufficient in the opinion of the cabinet to show that the provider is qualified under applicable law to provide the services and has the capability to do so. Providers certified by the cabinet shall [Community mental health/mental retardation centers, which are required by law and Kentucky administrative regulations to provide services to the mentally retarded, need only to be licensed by the cabinet to] be considered qualified to enter into the appropriate AIS/MR provider participation agreement. Certification shall be determined by the Division of Licensing and Regulation, Office of the Inspector General, or other agency designated by the Department for Medicaid Services in accordance with the qualifications in Section 3 of this regulation. Participating providers shall be required to provide, or

arrange for the provision of, [all] services appropriate to their certification described in this regulation[, and to operate the AIS/MR program as described herein].

Section 3. Provider Certification. Providers shall be certified as case management, in-home training, homemaker and home health aide, personal care, residential care, habilitation, day habilitation, respite care, and multiservice providers after survey by the certification agency if the provider has been found to be in major compliance with the provider qualification requirements shown in the AIS/MR provider qualifications manual, dated November 1, 1991, herein incorporated by reference. Providers requesting certification under this regulation shall be considered certified through the date of their first survey to provide any services which were provided by that agency during the period from September 1, 1991 through the effective date of this regulation if those services were provided by or through contract with a participating provider. The AIS/MR provider qualifications manual shall be on file in the Commissioner's Office, Department for Medicaid Services, Third Floor East, CHR Building, 275 East Main Street, Frankfort, Kentucky 40601 and will be available for review on normal working days (Monday through Friday) from 8 a.m. through 4:30 p.m. Copies may be obtained from that office upon payment of an appropriate fee which approximates cost. [The Cluster Concept. The cluster concept shall be used in the provision of AIS/MR services. Each cluster shall consist of one (1) core residence and several alternative residences that are administratively attached to the core, in which specified residential services as shown in Section 4 of this regulation are provided. The cluster will also include those eligible individuals living in their own homes who are being provided specified covered services under the direction of core personnel. Within the cluster, the core residence personnel will perform five (5) major functions: client evaluation, program administration, program support, emergency back-up, and respite care.]

Section 4. Covered Services. The following services shall be [are] covered as AIS/MR services:

(1) [Cluster] Residential care services to include provision of [, including the core residence and alternative living units, providing residential (home)] training, homemaker and [/] home health aide support, and personal care[, and respite care]. Room and board shall be [are] excluded.

(a) "[Residential (home)] Training" which includes [means] services designed to facilitate the acquisition of communication, sensory-motor, independent living, and social skills.

(b) [As part of the residential service residential staff may provide] Homemaker and [/] home health aide support which includes [, including] the provision of [minor home physical adaptation,] laundry services, meal planning and preparation, shopping and light housekeeping.

(c) "Personal care" which includes [means] services to assist and train in ambulation, grooming, feeding, etc.

[(d) "Respite care" means short-term care (more than one (1) hour, less than thirty (30) days) provided to AIS/MR residential clients for the temporary relief of residential alternative living unit staff. Respite care for the residential client may not exceed forty (40) total days per year, except that extended respite exceeding this limit may be provided when preauthorized in writing by the cabinet's AIS/MR project manager (or his/her designee) based on a crisis situation.]

(2) Case management services, which includes the following: provision of intake; evaluation or assessment; access and assuring freedom of choice of provider of AIS/MR; plan-of-care development and coordination; monitoring and support; operation of the core residence; assuring the availability of needed waiver services; meeting with and providing information to clients, parents or legal representatives; establishing and overseeing a human rights committee for review of overall procedures and individual behavioral plans; and acting on behalf of the client to assist him in gaining access to and receiving services from qualified AIS/MR service providers. In addition to the above, the case management provider shall assist the client, his family or legal representatives in accessing other services, as needed. The case management provider shall be responsible for monitoring the health, safety and welfare of the client. Each core residence stay shall be limited to no more than ninety (90) days per patient. [Case management/client evaluation, including case coordination, client evaluation, and plan of care preparation and implementation, provided by core staff to all cluster service recipients.]

[(3) In-home support, including in-home training, homemaker/home health aide services, and personal care services provided to persons living in nonspecialized residential settings (family homes, apartments, etc.) other than alternative living units (which are under more direct supervision by core personnel).]

(3) [(a)] "In-home training" which includes [means] services designed to facilitate the acquisition, retention and improvement of language and communication, sensory-motor, social and self-help skills.

(4) [(b)] "Homemaker and [/] home health aide support" which includes [means] services to clients in their own family homes including the provision of [minor physical adaptations,] laundry services, meal planning and preparation, shopping and house cleaning.

(5) [(c)] "Personal care" which includes [means] services to assist and train in ambulation, dressing, grooming, eating [feeding], toileting, etc.

(6) [(4)] Habilitation services which includes [, including] behavior management, psychological services, minor home physical adaptations (including in-home and alternate living units other than group homes), medical services, occupational therapy, physical therapy, speech therapy, expressive therapies and leisure and recreation therapy [time services]. Services shall be [are] available to both adults and children if [when] not required to be provided by the local schools and if [when] directed at the resolution of problems not associated with mental illness.

(7) [(5) Effective June 1, 1987,] Day habilitation services shall [may] be provided for a minimum of four (4) hours per day, five (5) days per week, twelve (12) months per year, in nonresidential noninpatient settings.

Services shall [must] be age appropriate. Adult means an individual not less than eighteen (18) years of age. For children, day habilitation services shall [will] be covered only during the summer months when school is not in session. Day habilitation services may include supported employment and prevocational training for eligible persons, i.e., those participating individuals who have been deinstitutionalized.

(8) Respite care which includes short-term care and supervision of the AIS/MR client provided for the temporary relief of the family or staff, or for the safety or relief of the client. Coverage shall be limited to a maximum of sixty (60) days per calendar year for clients (excluding those residing in group homes or staff residences), with no more than thirty (30) consecutive days of respite.

[(6) Respite services, meaning short-term care (more than one (1) hour, less than thirty (30) days) provided to nonresidential AIS/MR clients in or out of their home residential environments for the temporary relief of the individual or the family. Respite care may be provided in a variety of settings. Respite service to the nonresidential client may not exceed thirty (30) consecutive days and sixty (60) total days per year, except that extended respite exceeding these limits may be provided when preauthorized in writing by the cabinet's AIS/MR project manager (or his/her designee) based on a crisis situation.]

Section 5. Patient Status Determinations. The cabinet shall make patient status determinations using the criteria specified in 907 KAR 1:024.

Section 6. Authorization for Services; Hearing Rights. The cabinet shall authorize AIS/MR services to insure that patient status is met, that AIS/MR services are adequate for the needs of the client, and that AIS/MR services are financially feasible (i.e., do not cost significantly more than would institutional services). A client found unsuitable due to failure to meet any of the specified reasons shall [may] be denied AIS/MR services. An individual, if eligible for AIS/MR services, shall [will] be given the choice of AIS/MR services or traditional intermediate care facility services for the mentally retarded. Any denial of service may be appealed in the manner provided for by 907 KAR 1:075 [and/]or 904 KAR 2:055 as appropriate.

[Section 7. Subcontracting. A participating provider may subcontract for services. Such service must be provided in accordance with the provider participation agreement and the terms and conditions contained herein, and the subcontractor must meet applicable requirements of law and regulations governing the performance of the service. When subcontracting is used, the participating provider remains responsible for the provision of the service.]

Section 7. [8.] Auditing and Reporting. All participating providers[, including subcontract providers,] shall be required to maintain fiscal and service records and to provide [such] reports [as may be] determined necessary by the cabinet for the effective functioning and administration of the program. Providers[, including subcontract providers,] shall be required to make available upon request all service and financial records to representatives of the Cabinet for Human Resources; the federal Department of Health and Human Services, Comptroller General and Health Care Financing Administration; and the General Accounting Office, and[/or] their designees, for auditing and[/or] monitoring purposes.

Section 8. [9. Effective Date.] The amendments to this regulation shall apply to certification of providers on November 1, 1991 and with regard [be effective with regard] to services provided on or after January 1, 1992 [June 1, 1987.]

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 22, 1991
FILED WITH LRC: November 7, 1991 at 3 p.m.

STATEMENT OF EMERGENCY
907 KAR 1:150E

This emergency administrative regulation is being amended to comply with the amended Home and Community Based Services Waiver and with KRS Chapter 13A drafting requirements. To implement these changes in a timely manner, an emergency regulation is necessary. 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 November 1, 1991.

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

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:150E. Payments for alternative home and community based services for the mentally retarded.

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050, 42 USC 1396a, b, c, d, n, 42 CFR 441 Subpart G
EFFECTIVE: November 7, 1991
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance. KRS 205.520 empowers the cabinet, by regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation sets forth the payment provisions relating to home and community based services provided to the mentally retarded as an alternative to intermediate care facility services for the mentally retarded.

Section 1. Coverage. (1) The cabinet [for Human Resources] shall reimburse participating providers of alternative intermediate services for the mentally retarded (AIS/MR) for services [rendered] to Medicaid [eligible medical assistance] recipients who:

(a) Meet patient status criteria for intermediate care for the mentally retarded; and

(b) [who] Are authorized for the AIS/MR service by the cabinet.

(2) In order to be covered, [The covered service elements shall be those] services shall

be described and defined; and [in 907 KAR 1:140, Alternative home and community based services for the mentally retarded, and services must be] provided in accordance with the terms and conditions specified in 907 KAR 1:140, Alternative home and community based services for the mentally retarded. [described therein. Payments shall not exceed the limits specified in Section 3 of this regulation.]

Section 2. Payment Amounts. (1) Participating in-state AIS/MR case management, in-home training, homemaker and home health aide, personal care, residential care, day habilitation, habilitation, respite care and multiservice providers certified in accordance with 907 KAR 1:140 shall be reimbursed a prospective rate per unit of service during the first year of participation based on a budgeted cost report.

(2) Reimbursement for each subsequent year shall be made using a prospective rate per unit of service based on a budgeted cost report in which the budgetary assumptions made were based on an actual annual cost report of the prior fiscal year ending June 30.

(3) The annual cost report shall be subject to audit. Audit adjustments to the annual cost report shall be carried through to the budgeted cost report based on the budgetary assumptions used in preparation of the budgeted rate.

(4) Habilitation services payments for medical services and items such as dentures, eyeglasses, and hearing aids shall be paid at reasonable cost if they are prescribed for a recipient by a specialist as necessary for a client's habilitation and are not otherwise covered by the Medicaid program. The habilitation services shall be paid apart from the services paid through the cost report but shall be limited to reasonable cost. Minor home physical adaptations shall be paid on the basis of reasonable cost not to exceed $1,500 per client per patient year. The "patient year" for a client begins on the first day of admittance of the client to the AIS/MR program, with a new patient year beginning for that client on that same day in each succeeding calendar year.

(5) All payments and rates established shall be subject to the test of reasonableness.

(6) Utilizing the formula described in 42 CFR 441.303(d)(1) as a guideline and applying accumulated statistical data, the cabinet shall set effective January 1 each year an annualized upper limit to be applied to the total payments for AIS/MR services for the waiver year January 1 through December 31, applicable for waiver years beginning January 1, 1992 and thereafter.

(7) The cabinet may reduce established rates or limit new rates by the percentage amount which will assure that the total payments to the providers do not exceed the annualized upper limit. Reduction factors shall (to the extent possible) be applied in a manner as to ensure an even flow of reimbursement to the AIS/MR providers through the year, i.e., to ensure that the payments for any one (1) month shall not exceed by a substantial amount the prorated annual amount.

[(1) Residential services, including residential (home) training, personal care, and homemaker/home health aide, shall be paid for at the rate of forty-nine (49) dollars per day.]

[(2) Case management services shall be paid for at the rate of fifty (50) dollars per hour.]

[(3) Habilitation services shall be paid for at the rate of forty-eight (48) dollars per hour; however, medical services and/or items (e.g., dentures, eyeglasses, hearing aids, etc.) prescribed for a recipient by an appropriate specialist as necessary to the client's habilitation but not otherwise covered by the medical assistance programs shall be paid for on the basis of reasonable cost. Minor home physical adaptations shall be paid for on the basis of reasonable cost not to exceed $1,500 per client per patient year. The "patient year" for a client begins on the first day of admittance of the client to the AIS/MR program, with a new patient year beginning for that client on that same day in each succeeding calendar year.]

[(4) Day habilitation services shall be paid for at the rate of six (6) dollars per hour.]

[(5) In-home support services shall be paid for at the following rates:]

[(a) In-home training services shall be paid for at the rate of forty-eight (48) dollars per hour.]

[(b) Homemaker/home health aide support services shall be paid for at the rate of twenty-four (24) dollars per hour.]

[(c) Personal care services shall be paid for at the rate of twenty-four (24) dollars per hour.]

[(6) Respite care (twenty-four (24) hours or more) shall be paid for at the rate of forty (40) dollars per day. Respite care (less than twenty-four (24) hours) shall be paid for at the rate of four (4) dollars and fifty (50) cents per hour, with the total not to exceed the upper limit of forty (40) dollars for one (1) full day of care.]

Section 3. Units of Service. The units of service shall be as follows:

(1) The residential care services unit of service: twenty-four (24) hours.

(2) Case management services shall have four (4) different units of service as follows:

(a) Intake, evaluation, and stay (for up to fourteen (14) days) in the core residence for preresidential placement or transition: one (1) unit.

(b) Intake and evaluation in the home of an in-home client: one (1) unit.

(c) Twenty-four (24) hours of continuing evaluation in a core residence: one (1) unit.

(d) One (1) month of ongoing case management for persons living at sites other than the core residence: one (1) unit.

(3) Habilitation services unit of service: one-fourth (1/4) hour.

(4) Day habilitation services unit of service: one (1) hour.

(5) In-home training services unit of service: one-fourth (1/4) hour.

(6) Homemaker and home health aide services unit of service: one-fourth (1/4) hour.

(7) Personal care services unit of service: one-fourth (1/4) hour.

(8) Respite care services shall have two (2) units of services as follows:

(a) Twenty-four (24) hours if respite care is provided continuously for twenty-four (24) hours or more; and

(b) One (1) hour if respite care is provided continuously for less than twenty-four (24) hours.

Section 4. [3.] Payment Exclusions and Limitations. [Limits.] (1) No payment shall include:

(a) The cost of room and board;

(b) The cost of maintenance, upkeep and improvements to the residence when it is a group home or other licensed facility.

(2) No payment shall be made to:

(a) An in-home training provider for routine care and supervision which would be provided by a family and which is duplicative of homemaker and personal care services;

(b) A day habilitation provider for prevocational and supported employment services for clients receiving them under the Rehabilitation Act of 1973 or the Education of the Handicapped Act or for a recipient who has not been in an intermediate care facility prior to receiving AIS/MR services;

(c) A case management provider for ongoing case management provided non-in-home clients during any evaluation period.

(3) Payment to a provider for one (1) hour units of respite care on the same day shall not exceed the budgeted rate for that provider for a twenty-four (24) hour unit of service of respite care.

[(1) Payments shall be made on the above stated rate basis not to exceed the AIS/MR cluster annualized upper limit on payment.]

[(2) Under this system, an AIS/MR cluster shall receive a total of Medicaid payments during the year in the amount of the established rates for services rendered Medicaid eligible recipients, so long as such payments (on a cumulative basis) do not exceed the annualized upper limits (total payment amount) which has been set for the cluster. Each cluster shall also be required to maintain average expenditures per recipient (on a cumulative basis) as described by the Health Care Financing Administration, 42 CFR 441.303(d)(1), and interpreted for the AIS/MR cluster by the Cabinet for Human Resources.]

[(3) Utilizing the formula described in 42 CFR 441.303(d)(1) as a guideline and applying accumulated statistical data, the cabinet shall set effective April 1 each year the annualized upper limits and averages to be applied to the AIS/MR cluster services for the waiver year April 1 through March 31, applicable for waiver years beginning April 1, 1985 and thereafter.]

[(4) The cabinet may reduce payment by the percentage amount which will assure that the payments to the cluster do not exceed the annualized upper limit or average expenditures. Reduction factors shall (to the extent possible) be applied in such a manner as to ensure as even flow of reimbursement to the AIS/MR cluster through the year, i.e., generally so as to ensure that the payments for any one (1) month do not exceed by a substantial amount the prorated annual amount.]

[(5) Any overpayment due the program at the end of the period as a result of exceeding the upper limit shall be recouped by settlement or by withholding payment.]

Section 5. [4.] Implementation. The amendments to this regulation shall apply [be effective with regard] to services provided on or after January 1, 1992 [1991].

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary

APPROVED BY AGENCY: October 22, 1991
FILED WITH LRC: November 7, 1991 at 3 p.m.

STATEMENT OF EMERGENCY
908 KAR 1:300E

This emergency administrative regulation prescribes the rules governing the gathering and reporting of information on clients discharged from treatment from publicly-funded chemical dependency treatment programs in order to assess treatment effectiveness. This was required by House Bill 510 enacted by the 1990 Regular Session. In order to begin gathering client data or clients discharged twelve months after July 13, 1990, effective date of KRS 222.460, it is necessary to promulgate the emergency administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on October, 1991.

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

CABINET FOR HUMAN RESOURCES
Department for Mental Health and Mental Retardation Services

908 KAR 1:300E. Chemical dependency program evaluation.

RELATES TO: KRS Chapter 222.460 to 222.475
STATUTORY AUTHORITY: KRS 194.050, 222.460 to 222.475
EFFECTIVE: October 16, 1991
NECESSITY AND FUNCTION: KRS 194.050 and 222.460 to 222.475 empowers the cabinet to prescribe rules governing the gathering of information on clients discharged from publicly funded chemical dependency treatment programs and the format of reports of such information to the cabinet in order to assess treatment effectiveness.

Section 1. Definitions. (1) "Program" means a substance abuse or chemical dependency treatment program, licensed under KRS Chapters 210, 216B and 222 and receiving state or federal funds.

(2) "Client" means an individual on whom a record or chart has been opened by a program (or subcontractor of a program) and a treatment plan has been prepared for a primary substance abuse problem. Clients receiving only DUI education services, DUI assessment services, or clients receiving only detoxification services during the treatment episode are excluded from the definition.

(3) "Department" means the Department for Mental Health and Mental Retardation Services within the Cabinet for Human Resources.

(4) "Division" means the Division of Substance Abuse within the Department for Mental Health and Mental Retardation Services.

(5) "Follow-up study" means a department defined survey of clients to assess their progress twelve (12) months after discharge from substance abuse treatment.

(6) "Minimum data set client identifier" means a unique and nonintelligent number used by programs and the department to identify clients in a departmental data set.

Section 2. Survey Procedures. (1) Each client discharged from treatment since July 13, 1990 shall be contacted by the discharge program for an assessment of progress after treatment.

(2) Each program shall decide whether to contact clients first by mail or by telephone.

(a) Mail survey. If the method chosen for first contact is a mail survey, each client shall be mailed a return postage guaranteed postcard or a letter questionnaire from the discharging program within thirty (30) days of the twelve (12) month anniversary after discharge.

(b) If the client does not respond to the mailed questionnaire within thirty (30) days of the mailing, the program shall make up to three (3) attempts within a three (3) week period to contact the client by telephone for completion of the survey.

(c) Telephone survey. If the method chosen for first contact is a telephone survey, the program shall follow the telephone procedures in paragraph (b) of this subsection.

(d) If no contact can be made because of incorrect or missing address or phone number, the client can be deleted from the contact list and noted as "unable to contact" on the report to the department.

(3) Telephone interviewers shall observe all state and federal confidentiality regulations when attempting to contact clients. Interviewers shall ask to speak to the client or ask for a means of contacting the client. Interviewers shall not reveal the nature of the call or the treatment program identity to anyone other than the client without specific written consent.

Section 3. Compliance. (1) Programs shall keep a record of all attempted contacts for each client for whom follow-up contact is attempted.

(a) The record shall include client's name, minimum data set client identifier, date, time, method, results of the attempt to contact, and the name of the staff person making the contact.

(b) The record shall be kept on file by the program and made available to departmental staff that shall monitor compliance with the statutes and regulations.

(2) Program compliance shall be determined by site visits and program audits.

(3) If a program is determined to be noncompliant, their federal and state substance abuse funds shall be held in escrow until such time as an acceptable reason for noncompliance is received or the program is in compliance. Escrow decisions shall be reached with the input of division staff and shall be approved by the department commissioner.

Section 4. Reporting. (1) Responses shall be reported to the department using the client identifier from the minimum data set and submitted in a department specified format.

(2) Responses shall be reported to the department quarterly.

(a) Reports shall be due each October 31, January 31, April 30 and July 31.

(b) The first report shall be due January 31, 1992.

(3) Following the receipt of each program's reports, the division shall compile the data received and prepare an annual report to the Governor indicating the results by specific program, as well as a statewide comparison.

(a) The survey data shall be linked to the minimum data set, where possible, for analysis and reporting.

(b) Draft copies of all reports shall be sent to the programs prior to their release as departmental reports.

(c) Program review and comment on reports shall be welcomed by the department.

(4) Division staff shall be available to provide training and technical assistance regarding the follow-up study requirements.

Section 5. Costs. All costs incurred in conducting the follow-up study shall be the responsibility of the program.

DENNIS D. BOYD, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: September 12, 1991
FILED WITH LRC: October 16, 1991 at 3 p.m.

STATEMENT OF EMERGENCY
908 KAR 1:310E

This emergency administrative regulation establishes the procedures for the operation of programs providing services to first and multiple offenders convicted of driving while impaired. These procedures are required by House Bill 11, which amended KRS Chapter 189A, and was enacted during the 1991 Special Session. KRS Chapter 189A provides that all first and multiple offenders convicted after July 1, 1991, receive an assessment and satisfactorily complete required education or treatment services before they can get their driver's license reissued. In order to provide these services, and in order to comply with the state mandate in KRS 189A.040, requiring immediate implementation, it is necessary to promulgate this emergency regulation. This emergency regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on October, 1991.

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

CABINET FOR HUMAN RESOURCES
Department for Mental Health and Mental Retardation Services

908 KAR 1:310E. Administrative procedures for DUI facilities and programs.

RELATES TO: KRS Chapter 189A
STATUTORY AUTHORITY: KRS 189A.040(6), 194.030(9)
EFFECTIVE: October 22, 1991
NECESSITY AND FUNCTION: KRS Chapter 189A requires the Cabinet for Human Resources to promulgate administrative regulations to prescribe standards for the licensing and operation of education and treatment facilities and programs, for offenders receiving assessment, education, or treatment under the driving while impaired law.

Section 1. Definitions. As pertaining to the cabinet's regulations regarding DUI programs unless the content otherwise requires:

(1) "Cabinet" means the Cabinet for Human Resources, Office of the Inspector General, Division of Licensing and Regulation, 275 East

Main Street, Frankfort, Kentucky 40621.

(2) "Division" means the Cabinet for Human Resources, Department for Mental Health and Mental Retardation Services, Division of Substance Abuse, 275 East Main Street, Frankfort, Kentucky 40621.

(3) "DUI" means driving while under the influence of alcohol, drugs or intoxicating substances.

(4) "Program" means any public, private or government entity eligible to deliver DUI assessment, education and treatment services.

(5) "Certification" means the process by which the Division of Substance Abuse recognizes and authorizes any program, assessor or instructor to provide DUI services.

(6) "Services" means the level of care appropriate for a client based on an evaluation of the client's needs.

(7) "Licensee" means the individual or entity approved and licensed by the Cabinet for Human Resources, Office of Inspector General, Division of Licensing and Regulation.

(8) "Assessment" means the procedure used to obtain information about a client's use of alcohol and other drugs and to determine the problems and needs of a client in order to recommend appropriate services.

(9) "Education" means a course which delivers factual information about alcohol and other drugs to increase awareness, knowledge, and change a client's attitude and behavior in relation to substance abuse.

(10) "Treatment" means outpatient, intensive outpatient, inpatient, residential, or detoxification services provided to clients in need of substance abuse services.

(11) "Program survey form" means a form issued by the division to the program to collect all necessary program information.

(12) "Program code" means a three (3) digit number issued to a program by the division when certification is granted.

(13) "Survey report of change form" means a form used by a program when submitting any new or revised information to the division.

(14) "Program administrator" means the person responsible for the services provided in a program and who has responsibility for determining if a client satisfactorily completes all required services.

(15) "Memorandum of understanding (MOU)" means a written communication between programs outlining the duties and responsibilities of each program.

(16) "Certified assessor" means a person who has been trained and approved by the division to evaluate the needs of clients and to recommend appropriate services.

(17) "Certified instructor" means a person who has been trained and approved by the division to provide education services in a DUI program.

(18) "Approved curriculum" means "talking about alcohol driving unimpaired nine (9) hour," "talking about alcohol driving unimpaired twenty (20) hour," "Kentucky alcohol and other drug education program nine (9) hour," and "Kentucky alcohol and other drug education program twenty (20) hour."

(19) "Individual" means a person certified by the division to conduct assessment and education services.

(20) "Uniform citation" means the citation given to the defendant when the defendant is arrested for driving under the influence.

(21) "Administrative Office of the Courts (AOC) Form 494" means the form completed by the circuit clerk on the day of the defendant's conviction and which is sent to the program where the defendant is referred for assessment.

(22) "Cabinet for Human Resources (CHR) Form PAM MHMR 052" means the form completed by the program which conducts the client's assessment, and which is then used to notify the court, the client, Department of Transportation (DOT), and the division when a client has satisfactorily completed any required services.

(23) "Computerized screening instrument" means the Kentucky driver risk inventory (DRI).

(24) "Completion notice" means the client's copy (pink) of CHR Form PAM MHMR 052.

(25) "Case management" means an administrative function to insure coordination of client services and continuity of care.

(26) "Court" means the court where a client is convicted of DUI.

(27) "Department of Transportation (DOT)" means the Commonwealth of Kentucky, Transportation Cabinet, Department of Vehicle Regulation, Division of Driver Licensing, State Office Building, Frankfort, Kentucky 40622.

(28) "Nine (9) hour basic education course" means an education service for low risk first-time offenders consisting of a minimum of nine (9) hours of instruction and group interaction.

(29) "Twenty (20) hour early intervention education course" means an education service for first or multiple offenders consisting of a minimum of twenty (20) hours of instruction and group interaction.

(30) "Client" means any individual receiving services in a DUI program.

(31) "First offender" means a person convicted of DUI for the first time within a five (5) year period.

(32) "Multiple offender" means a person convicted of a second or subsequent DUI within a five (5) year period.

(33) "Low risk" means a client who has been assessed as not having an alcohol or substance abuse problem requiring treatment.

(34) "Medium risk" means a client who has been assessed as having an alcohol or substance abuse problem but is not chemically dependent.

(35) "Satisfactorily completed" means a client has fulfilled all requirements of the program and has received maximum benefits from the services received.

(36) "Negative certification action" means an action by the division to revoke, modify, suspend, or deny certification or recertification of a DUI program, assessor or instructor.

(37) "Hearing officer" means the person designated by the division to conduct a hearing and make a recommendation to the division on any appeal of negative certification action.

(38) "DUI services" means assessment, education, or treatment services provided by an eligible DUI program.

(39) "Applicant" means any individual or entity who has been licensed by the cabinet, and is making application for certification to the division.

(40) "Facility" means the physical area, including the grounds and buildings where program functions take place.

(41) "Release of information" means a client's written authorization for a program to release

information from that client's case file.

(42) "Clinical services supervisor" means a person who meets the qualifications pursuant to the definition in 908 KAR 1:190.

Section 2. Licensing Requirements. (1) An individual or entity desiring to provide DUI services as an assessment facility and program, education facility and program, or treatment facility and program shall first obtain a license from the cabinet in accordance with the drug abuse treatment and education center (DATE center) regulations, 908 KAR 1:150 through 908 KAR 1:260; and the nonmedical alcohol treatment and education center (NATE center) regulations, 908 KAR 1:010 through 908 KAR 1:140.

(2) Programs conducted in a facility established and maintained by a licensed federal hospital shall be exempt from state licensing requirements, as such facilities are created subject to federal licensure and regulatory requirements, in accordance with 38 USC 201, 38 USC 620A, 38 USC 4133, and 38 USC 4134.

(3) Programs conducted in a facility established and maintained by a hospital licensed by the cabinet shall be exempt from obtaining a DATE or NATE center license in accordance with 908 KAR 1:160(1)(c).

(4) The cabinet shall notify the division in writing when an individual or entity:

(a) Is granted a license as a DATE or NATE center;

(b) Has stated in its application that it desires to provide DUI services; and

(c) If its license has been renewed, suspended or revoked.

Section 3. Certification Requirements. (1) An individual or entity, properly licensed, and desiring to provide DUI assessment or education services, shall obtain program certification from the division. A properly licensed treatment facility may provide DUI treatment services without receiving program certification from the division. A certified program may operate statewide if it is properly licensed in all service locations. All service locations shall be subject to the same qualifications as the central office location. A program may be certified to provide assessment, or education services. A program shall have at least one (1) individual on staff who has been certified by the division, to be a certified program.

(2) Any individual or entity eligible to be certified as a program shall make application in writing to the division. The division shall provide an application for program certification along with a program survey form to be completed by the applicant and returned to the division. The applicant shall be required to submit to the division a separate program survey form for each location where the applicant is licensed, and where the applicant desires to provide DUI assessment or education services. The applicant shall designate on the program survey form the types of services that will be provided, the fees charged for such services, and the names and titles of all certified staff providing assessment or education services. The division shall issue a program code to the program when certification is granted and include the name and location of the program on any published list of certified programs.

(a) The division shall publish, on an annual basis, on July 1, a directory listing all programs certified to provide assessment services, the fees charged for such services, and the program service location addresses. The division shall issue the directory to all district court judges, district court clerks, and certified programs, and shall make it available to the public upon request.

(b) The division shall issue directory additions, revisions and corrections on October 1, January 1, and April 1 each year. A program shall submit all additions, revisions and corrections, in writing, on a program survey report of change form at least thirty (30) days prior to the publication dates.

(3) The program certification shall remain in effect for the period of licensure not to exceed one (1) year, is renewable for a like period, and shall expire simultaneously with the expiration of the program's license, unless earlier suspended or revoked. The program shall request recertification, in writing, forty-five (45) days prior to the expiration of certification. If certification has lapsed for more than sixty (60) days, programs shall submit a new application and will be considered as a new applicant. The division shall notify the program, in writing, when certification is issued, renewed, suspended or revoked.

(4) The program certification shall apply only to the program so certified and is not transferable. The program shall be responsible for notifying the division, in writing, when there is a change in ownership or control, a change in location, a change in the types of services provided, or a change in fees charged for such services. In the event of a change of ownership, a new application for certification shall be made to the division in the same manner as if the owner were applying for a new program.

(5) A program shall accept referrals from other programs or from the courts. A program making a referral shall require a client to sign a release of information form, and such form shall be sent to the program receiving the referral. Copies of any other client records available in the client's file including, but not limited to, the assessment results may be sent to the program receiving the referral. The assessment results and any interview notes or other information pertaining to the assessment shall be confidential and shall remain in the client's file.

(6) A program making or receiving client referrals shall execute a written memorandum of understanding (MOU) with all other programs involved in the referrals. The MOU shall fully outline the duties and responsibilities of the programs to each other and the terms of agreement in the MOU shall remain in effect until one (1) of the programs terminates the agreement.

(7) The division shall conduct at least one (1) unannounced inspection of the program's facility annually to determine whether the program is in compliance with the applicable certification standards. In their discretion, the division may conduct more than one (1) inspection annually. The inspection may be at any of the program's locations. The division shall notify the program, in writing, within thirty (30) days of the results of the inspection.

(8) The division shall have the right to inspect any office, files, client records or other materials of any certified program to

insure compliance. The division shall have the right to attend and observe any assessment or education session conducted by the program. During these inspections program administrators, office managers, employees, or agents of the program shall cooperate with the division's representatives and shall provide such records or materials requested. The client record shall contain all information pertinent to the provision of services. Program records shall be confidential and shall not be released without written consent of the client, unless court ordered or requested by the division, as part of a compliance review. A program shall maintain client records for a minimum of five (5) years. When records are discarded they shall be burned or shredded.

(9) The division shall suspend or revoke the certification of any program that is not in compliance with the applicable certification standards. The division shall notify the program, in writing, of any pending certification action, and shall provide written reports citing observed deficiencies as they relate to the certification standards. The program must submit an acceptable plan of correction for cited deficiencies to the division within ten (10) working days. The revocation or suspension of program certification shall be effective on the date stated in the notice sent to the program by the division. Programs shall have the right to appeal any suspension or revocation of their program certification. Hearing procedures involving certification shall be conducted in accordance with this regulation.

(10) All individuals desiring to provide assessment or education services shall meet the requirements for certification and receive certification from the division. A program shall employ only individuals who hold valid certification from the division to provide DUI assessment and DUI education services. It shall be the duty and responsibility of the program to insure that any individual in their employ providing DUI assessment services or DUI education services complete all training required by the division. Only training approved by the division shall suffice as proper training for DUI assessment and DUI education services. An individual shall make application for DUI assessor or DUI instructor certification by submitting an application for DUI assessor or DUI instructor training. The application shall be accompanied by a copy of any required transcript, diploma, certificate, certification, or proof of work experience. An individual certified by the division shall not provide DUI assessment services or DUI education services except in a program that is certified by the division.

(a) An individual providing DUI assessment or DUI education services for a program shall be considered an agent of the program and the program shall share the responsibility for all acts performed by the individual within the scope of employment.

(b) If a certified DUI assessor or DUI instructor terminates association with a program, the program shall notify the division in writing.

(11) The division shall notify the program and the individual, in writing, within thirty (30) days after completion of a DUI assessor or DUI instructor training session that the individual has satisfactorily completed the training, has met all of the requirements for certification, and has been certified. The division shall notify the program and the individual, in writing, of any observed deficiencies, as they relate to DUI assessor and DUI instructor certification, within thirty (30) days after completion of a training session. The division shall state the reasons for withholding DUI assessor or DUI instructor certification and shall notify the program and the individual of any required corrective plan of action.

(12) An individual desiring certification as a DUI assessor shall demonstrate minimum competency in order to successfully complete the requirements for DUI assessor certification.

(a) An individual desiring DUI certification as an assessor shall have the following education or training:

1. Certified chemical dependency counselor (CCDC); or

2. Certified chemical dependency counselor (CCDC) trainee, working under the supervision of a clinical services supervisor; or

3. Qualified mental health professional defined as:

a. Psychiatrist - board certified or board eligible;

b. Psychologist - licensed clinical psychologist, certified psychologist, or a psychological associate;

c. Psychiatric nurse - or registered nurse with one (1) of the following combinations of education and experience:

(i) Master of science in nursing (MSN) with specialty in psychiatric or mental health nursing;

(ii) Bachelor of science in nursing (BSN) and a minimum of one (1) year of work experience in a mental health setting;

(iii) Three (3) year educational program diploma with two (2) years of work experience in a mental health setting;

(iv) Associate degree in nursing (ADN) with three (3) years of work experience in a mental health setting; or

d. Psychiatric social worker - MSW or MSSW; or

e. Professional equivalent as defined by the Division of Substance Abuse; or

f. Mental health associate - an individual with a bachelor's degree in a mental health related field, working under the supervision of a clinical services supervisor.

(b) An individual desiring certification as a DUI assessor shall complete the following training requirements:

1. Attend and participate in all sessions of the assessor training;

2. Obtain an eighty (80) percent or above overall score on performance in the following areas:

a. A written pretest and posttest on general course content;

b. A written pretest and posttest on the computerized assessment instrument;

c. A demonstration of ability to conduct an assessment interview; and

d. A demonstration of ability to make a client referral based on a case study.

3. Receive the recommendation of the trainer(s) and the division's representative.

4. Sign a statement agreeing to abide by a code of ethical practice and the standards stated in these regulations.

(13) An individual desiring certification as a

DUI instructor shall demonstrate minimum competency in order to successfully complete the requirements for instructor certification.

(a) An individual desiring certification as a DUI instructor shall have the following education or training:

1. Bachelors degree in a related field - social work, psychology, sociology, counseling, or education; or

2. Associate degree and two (2) years of work experience in the substance abuse field; or

3. High school diploma or a general education development (GED) equivalency certificate and four (4) years of work experience in the substance abuse field.

(b) An individual desiring certification as a DUI instructor shall successfully complete DUI instructor training in one (1) of the curricula approved by the division. The individual shall attend and participate in all sessions of the training; take a pretest and obtain a score of eighty (80) out of a possible 100 points on a written posttest; demonstrate ability to make an oral presentation of assigned material; demonstrate group facilitation skills; and receive the recommendation of the trainer(s) and the division's representative.

(14) Certification for DUI assessors and DUI instructors shall be for a period of five (5) years, is renewable for a like period, and shall expire on the anniversary date of certification, unless earlier suspended or revoked. It shall be the duty and responsibility of the individual, to submit to the division, a completed recertification application and all other required forms, at least sixty (60) days prior to the date of expiration of the DUI assessor or DUI instructor certification. An individual shall attend any recertification training required by the division, during the previous sixty (60) month period. If certification has lapsed for more than one (1) year, an individual's recertification application shall be processed as a new application, and the individual shall attend all additional training required by the division. An individual shall have the right to appeal any suspension or revocation of their DUI assessor or DUI instructor certification. Hearing procedures involving certification shall be conducted in accordance with this regulation.

(15) All complaints relating to a certified program, a certified DUI assessor, or a certified DUI instructor shall be sent to the division, in writing, and signed by the complainant. The division shall investigate the complaint and notify the complainant, in writing, within thirty (30) days, of the action taken.

Section 4. Assessment Requirements. (1) The courts shall refer all convicted first and multiple DUI offenders for an assessment to a certified program, listed in a directory, provided to the courts by the division. The court clerk, shall on the day of conviction, send a copy of the client's uniform citation, attached to the Administrative Office of the Courts (AOC) Form 494, to the program which will conduct the client's assessment.

(2) AOC Form 494 is hereby incorporated by reference. Copies of the form may be inspected or obtained at the Department for Mental Health and Mental Retardation Services, Division of Substance Abuse, 801 Schenkel Lane, Frankfort, Kentucky 40601 between the hours of 8 a.m. through 4:30 p.m., Eastern time, Monday through Friday.

(3) A program providing DUI assessment services shall use only the computerized screening instrument approved by the division. The DUI assessment shall be conducted by an assessor holding valid certification from the division. The computerized screening instrument portion of the assessment may be administered individually or in groups. A program shall arrange for the oral reading of the assessment questions and instructions for clients who are unable to read the written instructions. A program shall maintain a roster of all clients assessed, in a format approved by the division, and a copy of such roster shall be maintained in the program files and made available to the division upon request.

(4) An assessment shall include the administration of the approved computerized screening instrument; a structured private clinical interview between the certified DUI assessor and the client; a discussion of referral options and client resources; the determination of a diagnostic impression; and referral to a program offering services at the level of care needed by the client. A client shall pay all required fees for the assessment to the program. A program may reduce or waive the assessment fee as deemed necessary by that program.

(5) An assessor shall refer any client assessed as needing education or treatment services to any program eligible to provide substance abuse or chemical dependency education or treatment services. The assessor shall refer a client to receive the type of service appropriate to the client's needs at their own program or to any other eligible program. The client shall choose the program where the client desires to receive education or treatment services but the client shall not choose the level of care or type of service that the client is to receive.

(6) A program shall maintain a case file on each client assessed. The assessment results and any interview notes or other information pertaining to the assessment shall be maintained in the client's file. There shall be written documentation in each client's case file of all actions related to any referral to education or treatment services. Each client file shall contain the Cabinet for Human Resources (CHR) Form PAM MHMR 052 and this form shall be used as a referral notice and as a completion notice.

(7) CHR Form PAM MHMR 052 is hereby incorporated by reference. Copies of the form may be inspected or obtained at the Department for Mental Health and Mental Retardation Services, Division of Substance Abuse, 801 Schenkel Lane, Frankfort, Kentucky 40621 between the hours of 8 a.m. through 4:30 p.m. Eastern time, Monday through Friday.

(8) A program providing assessment services, shall maintain case management responsibilities, for every client the program assesses, whether the client receives DUI education or treatment services at the program conducting the assessment, or at another eligible program. The case management process shall include the coordination of services provided to each client; the responsibility of communicating with the court such information as the court requests on each client; the responsibility of notifying

the court when a client is noncompliant; and the responsibility of notifying the Department of Transportation (DOT), the courts, and the division when a client has satisfactorily completed the required services. The program shall issue to each client, who has successfully completed the required services, a copy of their completion notice contained in CHR Form PAM MHMR 052, as referred to in subsection (6) of this section.

(9) Program discontinuing operations while still maintaining case management responsibility for a client, shall notify the client in writing, and shall transfer the client's case file to the division. The division shall then maintain case management responsibility for the client until the client satisfactorily completes any required services.

Section 5. Education Requirements. (1) A program desiring to provide DUI education services, shall use a curriculum approved by the division, and instruction shall be provided by an instructor holding valid certification from the division. Two (2) levels of DUI education services; a nine (9) hour basic education course, and a twenty (20) hour early intervention education course shall be provided. Two (2) nine (9) hour curricula and two (2) twenty (20) hour curricula have been approved by the division. A program may provide any or all levels of DUI education courses, and may use any or all of the approved curricula. The maximum number of clients in a class shall be no more than twenty-five (25). An instruction session shall not exceed three (3) hours per day.

(a) The nine (9) hour DUI basic education course shall be for first offenders only. Those first offenders assessed as low risk shall be enrolled in a nine (9) hour education course.

(b) The twenty (20) hour DUI early intervention education course shall be for first offenders or multiple offenders. A program may enroll first offenders and multiple offenders in the same session.

(2) The approved curricula are hereby incorporated by reference. Copies of the curricula may be inspected or obtained at the Department for Mental Health and Mental Retardation Services, Division of Substance Abuse, 801 Schenkel Lane, Frankfort, Kentucky 40621 between the hours of 8 a.m. through 4:30 p.m., Eastern time, Monday through Friday.

(3) A client shall attend and complete all sessions of class instruction, in the required sequence, and shall comply with all standards of behavior required by the program to satisfactorily complete a DUI education service. If a client demonstrates a need for services at a different level of care, the program administrator shall refer the client to any eligible program for the required services, and notify the program, which conducted the assessment of such action. The program administrator shall make the determination as to whether a client has satisfactorily completed the DUI education service, and shall be responsible for notifying the program, which conducted the client's assessment, when a client has satisfactorily completed the required DUI education services, or when a client is noncompliant.

(4) All required fees for an education service shall be paid to the program by the client and such fees shall cover the cost of all course materials. A program may reduce or waive fees for a client as deemed necessary by that program.

(5) A client not residing in the state may receive DUI education services in an out-of-state program that is licensed and eligible as determined by the division, based on the standards in this regulation, to provide comparable services at the level of care determined necessary to meet the client's individual needs.

Section 6. Treatment Requirements. (1) A program desiring to provide treatment services shall be licensed by the cabinet to provide the services offered, shall conform to the state licensure standards for treatment facilities, and shall employ qualified staff members, who have training and experience in dealing with the physical and psychological complications of alcohol and drug dependence. A program may provide outpatient, intensive outpatient, inpatient, residential or detoxification chemical dependency or substance abuse treatment services.

(a) A client assessed as having an alcohol or drug abuse problem, who is chemically dependent and who is not at risk for problems with withdrawal symptoms is eligible to receive outpatient or intensive outpatient treatment services. A client may also be referred to outpatient or intensive outpatient treatment services after receiving inpatient, residential or detoxification services.

1. A program may provide outpatient or intensive outpatient treatment services to a client individually or in a group. A group may include first and multiple offenders in the same session. The maximum number of clients in a group shall be no more than fifteen (15).

a. A client shall receive a minimum of one (1) hour of individual outpatient treatment each week or a minimum of two (2) hours of group outpatient treatment each week. If a client receives outpatient treatment services less than one (1) time each week, to meet the individual clinical needs of the client, the program administrator shall maintain proper documentation in the client's case file to show cause.

b. A client may receive intensive outpatient treatment services, more often, and in longer sessions, each week to meet the individual clinical needs of the client.

2. A client may be referred to a self-help group to supplement but not to replace the outpatient or intensive outpatient treatment services.

(b) A client assessed as having a severe alcohol or drug abuse problem, who is chemically dependent, who exhibits symptoms of withdrawal, and who has not been able to maintain sobriety while receiving outpatient treatment is eligible for referral to inpatient, residential, or detoxification treatment services. First or multiple offenders may be referred to receive inpatient, residential, or detoxification services.

(2) A program providing DUI treatment services shall be responsible for developing a treatment plan for each client accepted for treatment services. The treatment plan shall be individualized for the needs of each client and shall include a written statement of treatment goals and measurable objectives together with a realistic time schedule for achieving them. A

client's treatment plan shall be reviewed at least once every ninety (90) days and all changes shall be recorded in the client's case file.

(3) A client shall comply with all attendance requirements of the treatment plan to satisfactorily complete a required treatment service. If a client demonstrates a need for service at a different level of care the program administrator shall refer the client to any eligible program for the required services, and notify the program which conducted the client's assessment of such action. The program administrator shall make the determination as to whether a client has satisfactorily completed the treatment service, and shall be responsible for notifying the program, which conducted the client's assessment, when a client has satisfactorily completed the required treatment services, or when a client is noncompliant.

(4) All required fees for treatment services shall be paid to the program by the client. A program may reduce or waive fees for a client as deemed necessary by that program.

(5) Any client may receive treatment services at an out-of-state program that is licensed, and eligible, as determined by the division, based on the standards in this regulation, to provide comparable services at the level of care determined necessary to meet the client's individual needs.

Section 7. Hearing Requirements. (1) Any program or individual may appeal negative certification action taken by the division by notifying the division in writing within twenty (20) days of the issuance of notice of negative certification action. Upon receipt of notice of appeal, the director of the division shall designate a hearing officer.

(2) Notice of hearing shall be mailed to the program or individual not less than ten (10) days prior to the commencement of the hearing. The notice of hearing shall contain the reasons for negative certification action. The notice of hearing shall be mailed by certified mail, return receipt requested to the parties.

(3) The program, individual and the division may be represented by counsel and make oral or written argument, offer testimony, cross-examine witnesses, or take any combination of such actions. No depositions shall be permitted for the purpose of discovery, however, the hearing officer may authorize depositions or witnesses, who for good cause shown, cannot be present at the hearing. A hearing officer shall reside at the hearing, shall keep order, administer oaths, may issue subpoenas and may admit relevant and probative evidence and shall conduct the hearing in accordance with reasonable administrative practice.

(4) All testimony at the hearing shall be recorded but need not be transcribed unless requested. The person or organization requesting a transcript shall bear the cost of such transcript.

(5) The 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) The hearing officer shall send a written determination to the division including findings of fact and conclusion of law. With the determination, the hearing officer shall forward to the division the record consisting of all documents, exhibits, and recorded testimony introduced in the hearing.

(7) The division shall issue the hearing officer's final determination of certification status within ten (10) days of receipt of the determination from the hearing officer.

(8) No hearing officer shall participate in any hearing involving a program or individual with which the hearing officer has had in the past twelve (12) months preceding the hearing, any ownership, in whole or in part, employment, staff, fiduciary, contractual, creditor or consultative relationship.

(9) The division shall retain all records related to a hearing for a period of five (5) years.

DENNIS D. BOYD, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: September 23, 1991
FILED WITH LRC: October 22, 1991 at 2 p.m.

REGULATIONS AS AMENDED BY THE PROMULGATING AGENCY AND THE REVIEWING SUBCOMMITTEE

COMPILER'S NOTE: The following regulations were amended by the promulgating agency and the Administrative Regulation Review Subcommittee at its November 6-7, 1991, meeting, unless otherwise noted.

GENERAL GOVERNMENT CABINET
Board of Social Work Examiners
(As Amended)

201 KAR 23:070. Specialty certification.

RELATES TO: 335.080, 335.090, 335.100
STATUTORY AUTHORITY: KRS 335.070
NECESSITY AND FUNCTION: This regulation further clarifies descriptions of specialty certification and the functions evolving therefrom, in addition to clarifying terms used KRS Chapter 335.

Section 1. Definitions. (1)(a) "Educational institution approved by the board" means graduate schools of social work accredited by the Council on Social Work Education, except that the board **shall** [will] evaluate credentials of foreign graduates on a case-by-case basis; and

(b) "A social work or social welfare program" not accredited by the Council on Social Work Education **shall** [must] demonstrate to the satisfaction of the board that they meet the Council on Social Work Education standards for accreditation of graduate programs.

(2) Supervision for the independent practice of clinical social work **means** [shall be defined as] the educational process of utilizing a partnership aimed at enhancing the professional development of supervisees in providing services which focus upon the evaluation and treatment of emotional disorders and mental illness as related to the total health of the individual, and on helping with problems of living and activities designed to stimulate growth and development.

(3) "Certification for the independent practice of clinical social work" **means** [is defined as] the process whereby the board recognizes a certified social worker to have special training and/or competence to engage in the independent practice of clinical social work.

(4) "Independent practice of clinical social work" **means** [is defined as] that practice in which an individual who, wholly or in part, practices clinical social work outside of those settings specifically exempted by KRS 335.010, and has responsibility for his own practice and sets up his own conditions of exchange with his clients and identifies himself in any manner as a clinical social work practitioner in offering services. In addition, a social work employee of any individual, institution, or organization except those exempted by KRS 335.010 providing clinical social work services and paid by such persons, institutions or organizations rather than by direct arrangement with the client is considered within the definition of the private independent practice of clinical social work.

(5) "Clinical social work" **means** [is defined as] practice which focuses on the evaluation and treatment of emotional disorders and mental illness as related to the total health of the individual. Such practice is based on knowledge of psychodynamics, human relations, crisis intervention, psychopathology, and group dynamics. Practitioners have numerous skills including those necessary for individual, marital, family and group psychotherapy, as well as other treatment modalities. The responsibility of the clinical social worker **shall** [is to] establish a therapeutic relationship which leads to correction of the dysfunction. Such relationship includes diagnosis using professionally recognized clinical nomenclature; treatment planning which includes development, implementation, and modification of the plan; evaluation of progress; and termination of the treatment process. This relationship **shall be** [is further] characterized by face-to-face contact with the client system throughout the treatment process. Because the clinical social worker holds the welfare of the client/patient in high regard, all persons seen in a therapeutic capacity shall be informed of the regulatory authority of this board. This notice **shall** [will] be in a written format as specified by the board.

(6) "Supervisor of record" **means** [is defined as] a licensed clinical social worker who enters into a plan of supervised activities for clinical social work experience with a certified social worker for any authorized purpose. This person shall assume responsibility for the CSW's practice and shall supervise in accordance with Section 3 of this regulation, and KRS 335.100(B) during the period covered by the plan.

Section 2. (1) A certified social worker who is an [work] employee of an individual LCSW, nonexempt institution, or a nonexempt organization may engage in the practice of clinical social work by contracting, in writing, with a person who holds a valid Kentucky certification for clinical practice, who shall assume responsibility for the employee's practice and shall supervise in accordance with Section 3 of this regulation, and KRS 335.100(b), over the qualifying period of eligibility for taking the specialty certification exam. The certified social worker shall, for purposes of this section, be an employee of a nonexempt institution or nonexempt organization in which he has no direct or indirect interest other than such employment. He shall not enter into such practice of social work until this contract has been approved by the board and shall cease such practice of social work immediately upon the termination of said contract. At the termination of the contract the employee shall apply for the speciality certification or request an extension of the contract from the board.

(2) The supervisory contract required in subsection (1) of this section shall contain all of the following:

(a) The name and license number of the supervisee.

(b) The name and license number of the supervisor.

(c) The nature of such practice.

(d) The nature, duration and frequency of the supervision.

(e) The conditions or procedures for

termination of the supervision.

(f) The explicit statement that the supervisor understands that he shall be held accountable to the board for the care given to the supervisee's clients.

(g) The explicit statement that the certified social worker is a bona fide employee, and as such has social security and income tax deducted from his salary.

(h) The explicit statement that the supervisor meets the criteria set out in subsection (3) of this section.

(3) While practicing under supervision, the employee shall notify each client/patient of this fact in **the following** [a] format [specified by the board]:

(a) This notice shall be in writing and include the name, office address, telephone number, and license number of the supervisor of record.

(b) It shall also contain information regarding the regulatory authority of this board.

(4) [(3)] For purposes of the contractual arrangement mentioned in subsection (1) of this section only, the criteria for a supervisor shall be:

(a) A person who has been in the independent practice of clinical social work for five (5) years following licensure for the independent practice of clinical social work.

(b) A person who has no unresolved complaints filed before the board.

(c) A person who has no more than six (6) certified social workers with whom they have a contract to be held accountable to the board.

(d) A person who has demonstrated to the board's satisfaction a level of competence equivalent to that contained in paragraph (a) of this subsection.

Section 3. To be certified for the independent practice of clinical social work the licensee must have:

(1) Had the required number of hours of experience in clinical social work under supervision. Such supervision shall have been provided by an individual meeting the requirement set forth in subsection (4) of this section;

(2) Spent at least sixty (60) percent of the required experience in a direct client-professional relationship;

(3) Had direct responsibility for specific individual [and/]or groups of clients;

(4) Qualifying experience which provides broad exposure and opportunity for skill development with a variety of dysfunctions, diagnoses, acuity levels and population groups. [Supervision provided by one (1) of the following:]

[(a) An individual certified for the independent practice of clinical social work by this board.]

[(b) An individual listed at the time of supervision in either the National Association of Social Workers Registry of Clinical Social Workers or the National Registry of Health Care Providers in Clinical Social Work. Persons beginning supervision after September 1, 1987 must obtain their supervision from persons meeting the qualifications set out in paragraph (a) or (c) of this subsection.]

[(c) A person who has demonstrated to the board's satisfaction a level of competence equivalent to that contained in paragraph (a) of this subsection.]

(5) Supervision provided by one (1) of the following:

(a) An individual certified for the independent practice of clinical social work by this board;

(b) A person who has demonstrated to the board's satisfaction a level of competence equivalent to that contained in paragraph (a) of this subsection. [Supervision related specifically to the experience which is proffered as the qualifying experience for the clinical certificate;]

(6) Supervision related specifically to the experience which is proffered as the qualifying experience for the clinical certificate. Such supervision shall focus on:

(a) The accurate diagnosis of client problems leading to proficiency in applying professionally recognized clinical nomenclature;

(b) The development and modification of the treatment plan;

(c) The development of treatment skills suitable to each phase of the therapeutic process;

(d) Ethical problems in independent practice; and

(e) The development and use of the professional self in the therapeutic process. [A written agreement among an authorized agent of the agency, the supervisor, and the supervisee, including evidence of built-in accountability and the assurance of the confidentiality of patient records shall be provided to the board before supervision may be obtained outside the agency in which the clinical experience is occurring;]

(7) Supervision which totals a minimum of 200 hours equitably distributed throughout the qualifying period; not more than 100 hours of which, excepting hours of supervision received prior to December 31, 1981, may be obtained through group supervision in groups of six (6) or fewer members;

(8) Supervision congruent with the board's code of ethical practice;

(9) Passed an examination developed by the board.

Section 4. The period of supervised experience required by KRS 335.100(1)(b) and the supervisory requirements set forth in Section 3 of this regulation shall be evaluated by the board according to one (1) of the two (2), or a combination of the two (2) following methods at the option of the candidate:

(1) Postexperience evaluation. The candidate submits his[/her] application along with appropriate documentation of supervision upon completion of the experience on forms provided by the board.

(2) Preexperience evaluation. The candidate submits a detailed description of the plan for experience which will be taking place over the required time period on forms provided by the board. This plan shall be evaluated by the board and shall be approved or disapproved within ninety (90) days of its submission. The plan shall include all of the following:

(a) The name and license number of the supervisee;

(b) The name and license number of the supervisor;

(c) The agency where the experience will be received;

(d) A detailed description of the nature of the practice, which includes all of the following:
1. The type of clients which will be seen;
2. The type of therapies and treatment modalities which will be used including the prospective length of treatment;
3. The type of problems which will be treated;
(e) The nature, duration and frequency of the supervision which includes all of the following:
1. The number of hours of supervision per week;
2. The amount of group and individual supervision;
3. The methodology for transmission of case information;
(f) The conditions or procedures for termination of the supervised experience;
(g) The explicit statement that the supervisor meets the criteria set forth in Section 3(4) of this regulation.

JACK B. JOHNSON, Chairman
APPROVED BY AGENCY: August 15, 1991
FILED WITH LRC: August 15, 1991 at noon

GENERAL GOVERNMENT CABINET
Kentucky Department of Agriculture
(As Amended)

302 KAR 45:010. Ginseng, general provisions.

RELATES TO: KRS 246.650, 246.660, 50 CFR Part 23
STATUTORY AUTHORITY: KRS Chapter 13A, 246.660
NECESSITY AND FUNCTION: KRS 246.660 authorized the Department of Agriculture to adopt rules and regulations relating to the administration of a program for Wild American Ginseng. This regulation sets forth general provisions which apply in this chapter with regard to definitions, harvest season, and cooperative agreements.

Section 1. (1) "Ginseng Dealer" means any person engaged in the business of buying ginseng roots from ginseng collectors, ginseng cultivators, and other ginseng dealers for resale to ginseng exporters or to other ginseng dealers or any person who sells ginseng in any form in interstate commerce.
(2) "Commissioner" means the Commissioner of Agriculture.
(3) "Department" unless otherwise specified means the Kentucky Department of Agriculture.
(4) "State" means the Commonwealth of Kentucky.

Section 2. Registration. (1) No person shall be a ginseng dealer without first obtaining a certificate of registration issued by the department. No registration shall be renewed until the ginseng dealer has met all requirements of recordkeeping and reporting as required by the department.
(2) Certificates of registration will be issued for a period of one (1) year, and will expire on the 30th day of April each year.
(3) Completed applications for certification of registration, issued by the department, must be returned prior to June 30th of each year.

Section 3. Record Keeping. (1) All ginseng dealers shall keep records, on forms furnished by the department, of all purchases and sales of ginseng. These records will include month purchased, month dug, county where dug, weight of purchase, and signature and address of digger or seller. Ginseng dealers shall also keep records of purchases from other dealers. These records shall include the month each purchase from a dealer is made, the weight of purchase, and the signature and registration number of the dealer from whom the purchase is made. All purchase records shall be submitted to the department on a monthly basis. No ginseng shall be certified until the purchase records are recorded by the department.
(2) Retention. All persons required to maintain records under this section shall retain the records for a period of three (3) years.
(3) Availability. Records required under this section shall be made available to the department upon request.

Section 4. Annual Report. All ginseng dealers will file an annual report with the department by April 30th. The annual report shall include the listing of each purchase and sale of ginseng made by the dealer since July 1 the previous year.

Section 5. All ginseng dealers will file a report with the department at least every calendar-year quarter if the dealer has any commerce in ginseng originating from any state other than Kentucky. The report must be sent within fifteen (15) days of the end of any calendar-year quarter and shall list each purchase and sale of out-of-state ginseng made by the dealer during that quarter.

Section 6. Harvest Season. Beginning September 1, 1988 and each year thereafter, wild ginseng will only be dug between August 15th [September 1st] and December 1st of each year. Any seeds adhering to a plant taken during the season shall be planted within fifty (50) feet of the location of the plant with no tool used other than the finger.

Section 7. All sales of ginseng by dealers shall be certified for sale during the ginseng selling season beginning September 1st [15th] of each year and extending until March 31st of the following year.

Section 8. All ginseng unsold by March 31st of the year after harvest must be weighed by the department and the dealer given a weight receipt. Any future export certification of this stock will only be issued against the weight receipt.

Section 9. (1) All ginseng dealers holding a certificate of registration hereunder must obtain a certificate of legal taking issued by the department after inspection by an official of the department identifying the origin, year of taking, and weight of any shipment of ginseng to a destination outside the Commonwealth of Kentucky. The certificate shall also state whether the ginseng is Wild American Ginseng or whether the ginseng has been cultivated or propagated by a grower. Such certification shall be issued to the dealer on triplicate forms issued by the department. A copy of such certification must be enclosed with the shipment subject of the certification. A copy of such certificate shall be retained for a minimum of three (3) years by the licensed ginseng dealer

and a copy of the certificate shall be retained by the certifying agent of the department and submitted in accordance with internal procedures of the department.

(2) At the time of issuance of the certificate, the department official shall receive from the ginseng dealer copies of all purchase records covering the amount of ginseng certified. Records of ginseng purchased from other dealers shall be recorded with the department prior to a certificate being issued.

Section 10. No ginseng dug outside the borders of Kentucky which is uncertified in its state of origin shall be allowed to enter Kentucky.

Section 11. (1) Any ginseng which is obtained in contravention of laws for the protection of the species or in violation of any other law shall not be purchased, sold, shipped, or transported within the Commonwealth of Kentucky.

(2) The Kentucky Department of Agriculture may enforce the provisions of Section 11 of this regulation herein as provided in KRS 260.030.

CHARLES L. HAMILTON, Commissioner
APPROVED BY AGENCY: July 22, 1991
FILED WITH LRC: July 23, 1991 at 11 a.m.

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

401 KAR 8:010. Definitions for Title 401 Chapter 8.

RELATES TO: KRS Chapter 223, 224, 40 CFR 141.2

STATUTORY AUTHORITY: KRS Chapter 223, 224.032, 224.033, 40 CFR 141.2, as amended at 54 FR 27,526 and 27,562 (1989),[; PL 93-523, The Safe Drinking Water Act, as amended in 1986 and by the Lead Contamination and Control Act of 1988, PL 100-572;] 42 USCA 300f, 300g, 300j

NECESSITY AND FUNCTION: KRS 224.032 directs the cabinet to enforce rules and regulations adopted by the secretary for the regulation and control of the purification of water for public and semipublic use. The Safe Drinking Water Act, as amended by the Safe Drinking Water Act Amendments of 1986, provides for primary enforcement responsibility by states that have adopted regulations "no less stringent than the national primary drinking water regulations", as well as meeting other criteria stipulated by the Act. The Commonwealth of Kentucky has accepted and is currently exercising such primary enforcement responsibility. The purpose of this regulation is to define terms used by the cabinet in regulation of public and semipublic drinking water supplies pursuant to KRS Chapter 224 and PL 93-523, as amended, as well as to regulate certification of public water system operators pursuant to KRS Chapter 223.

Section 1. The following definitions shall apply to 401 KAR Chapter 8:

(1) "Approved source" means the source[(s)] of the water whether it be from a spring, well, public water system, or [any] other source that has been sampled and the water analyzed, and found to be of a safe and sanitary quality and quantity in accordance with 401 KAR 8:010 through 401 KAR 8:700, inclusive.

(2) "Auxiliary intake" means a [any] piping connection or other device whereby raw water may be secured for treatment from a location or source other than the intake which is normally used.

(3) "Best available technology" or "BAT" means the best technology, treatment techniques, or other means which the cabinet finds, after examination for efficacy under field conditions, and not solely under laboratory conditions, are available to the public water system (taking cost into consideration). For the purposes of setting maximum contaminant levels for synthetic organic chemicals, [any] BAT shall be at least as effective as granular activated carbon.

(4) "Blood lead level or PbB level" means the concentration of lead in the blood as measured in micrograms of lead per deciliter of blood (mg/dl).

(5) "Board" means the Kentucky Board of Certification of Water Treatment Plant and Water Distribution System Operators.

(6) "Boil water advisory" or "consumer advisory" means a notice to the consuming public through radio, television, direct mail, posting, newspaper or other media to convey to the consuming public in the quickest manner possible information that water provided by a system may cause adverse human health effects if consumed. The [Such] advisory shall include information concerning all actions which [should be taken] by the affected public is advised to take.

(7) "Boil water notice" means a notice to the consuming public through radio, television, direct mail, posting, newspaper or other media to convey to the [said] consuming public in the quickest manner possible information that water provided by a system is unfit for human consumption unless first boiled for two (2) minutes at a rolling boil.

(8) "Bottled water" means water that is from an approved bottled water treatment plant and is placed in a sealed container or package and is offered for human consumption or other consumer uses.

(9) "Bottled water system" means a water system which provides bottled drinking water. The term includes, but is not limited to, the sources of water, and treatment, storage, bottling, manufacturing, or distribution facilities. The term excludes a public water system which provides only a source of water supply for a bottled water system and excludes an entity providing only transportation, distribution or sale of bottled water in sealed bottles or other sealed containers. Bottled water systems shall be designated as community public water systems.

(10) "Bottled water treatment plant" means a facility which provides the product water used for bottled water by processing water from an approved source.

(11) "Bypass" means a physical arrangement whereby water may be diverted around any feature of the purification process of a public or semipublic water supply.

(12) "Cabinet" means the Natural Resources and Environmental Protection Cabinet, Department for Environmental Protection, Division of Water, or its successor.

(13) "Certificate" means a certificate of competency issued by the secretary or his designated agent stating that the operator has met all requirements for the specified operator

classification as set by these regulations.

(14) "Certified laboratory" means a laboratory where the physical, instrumental, procedural, and personnel capabilities have been approved by either the U.S. Environmental Protection Agency or the cabinet. A laboratory may be certified for [any] one (1) or more types of the contaminants listed in these regulations or for one (1) or more [any] of the specific constituents or combinations of constituents listed [therein].

(15) "Check samples" means chemical and radiological samples taken subsequent to a routine compliance sample and at the same location to determine if results of the routine sample are valid.

(16) "Coagulation" means a process using coagulant chemicals and mixing by which colloidal and suspended materials are destabilized and agglomerated into flocs.

(17) "Confluent growth" means a continuous bacterial growth covering the entire filtration area of a membrane filter, or a portion of the filter, in which bacterial colonies are not discrete.

(18) [(16)] "Contaminant" means a [any] physical, chemical, biological, or radiological substance or other matter found in water.

(19) [(17)] "Contaminant group" means all of the constituent members that collectively comprise the individual bacteriological, inorganic chemical, organic chemical, radiological, volatile organic chemical, synthetic organic chemical, and secondary contaminant groups regulated under these regulations.

(20) "Conventional filtration treatment" means a series of processes including coagulation, flocculation, sedimentation, and filtration resulting in substantial particulate removal.

(21) [(18)] "Corrosion" means the dissolution or erosion of pipe or other plumbing material by water.

(22) [(19)] "Corrosivity" means the tendency of water to form or dissolve calcium carbonate as a film or scale.

(23) [(20)] "Cross connection" means a [any] physical connection or arrangement between two (2) otherwise separate systems, one (1) of which contains potable water and the other being either water of unknown or questionable safety, or steam, gas or chemicals, whereby there may be flow from one (1) system to the other, the direction of flow depending on the pressure differential between the two (2) systems.

(24) "CT or CT calc" means the product of "residual disinfectant concentration" (C) in mg/l determined before or at the first customer and the corresponding "disinfectant contact time" (T) in minutes, i.e., "C" x "T". If a public water system applies disinfectants at more than one (1) point prior to the first customer, it shall determine the CT of each disinfectant sequence before or at the first customer to determine the total percent inactivation or "total inactivation ratio". In determining the total inactivation ratio, the public water system shall determine the residual disinfectant concentration of each disinfection sequence and corresponding contact time before subsequent disinfection application points. "$CT_{99.9}$" means the CT value required for 99.9 percent (3-log) inactivation of Giardia lamblia cysts.

$$\frac{\text{CT calc}}{\text{CT}_{99.9}}$$

is the inactivation ratio. The sum of the inactivation ratios, or total inactivation ratio shown as

$$\frac{(\text{CT calc})}{(\text{CT}_{99.9})}$$

is calculated by adding together the inactivation ratio for each disinfection sequence. A total inactivation ratio equal to or greater than one and zero-tenths (1.0) is assumed to provide a 3-log inactivation of Giardia lamblia cysts.

(25) [(21)] "Department" means the Kentucky Department for Environmental Protection.

(26) "Diatomaceous earth filtration" means a process resulting in substantial particulate removal in which a precoat cake of diatomaceous earth filter media is deposited on a support membrane (septum), and while the water is filtered by passing through the cake on the septum, additional filter media known as body feed is continuously added to the feed water to maintain the permeability of the filter cake.

(27) "Direct filtration" means a series of processes including coagulation and filtration but excluding sedimentation resulting in substantial particulate removal.

(28) [(22)] "Direct responsible charge" means personal, first hand responsibility, control or supervision of the operation of a public water system.

(29) "Disinfectant contact time" ("T" in CT calculations) means the time in minutes that it takes for water to move from the point of disinfectant application or the previous point of disinfectant residual measurement to a point before or at the point where residual disinfectant concentration ("C") is measured. If only one (1) "C" is measured, "T" means the time in minutes that it takes for water to move from the point of disinfectant application to a point before or at where residual disinfectant concentration ("C") is measured. If more than one (1) "C" is measured, "T" means for the first measurement of "C", the time in minutes that it takes for water to move from the first or only point of disinfectant application to a point before or at the point where the first "C" is measured and for subsequent measurements of "C", the time in minutes that it takes for water to move from the previous "C" measurement point to the "C" measurement point for which the particular "T" is being calculated. Disinfectant contact time in pipelines must be calculated based on "plug flow" by dividing the internal volume of the pipe by the maximum hourly flow rate through that pipe. Disinfectant contact time within mixing basins and storage reservoirs shall be determined by tracer studies or an equivalent demonstration.

(30) [(23)] "Disinfection" means a [the] process which inactivates pathogenic organisms in water by chemical oxidants or equivalent agents. [of destroying disease-causing organisms, usually through the use of chlorine or other disinfectants approved by the cabinet].

(31) [(24)] "Distributed water" means water leaving the water treatment facility and entering the distribution system.

(32) [(25)] "Division" means the Division of Water.

(33) "Domestic or other nondistribution system

plumbing problem" means a coliform contamination problem in a public water system with more than one (1) service connection that is limited to the specific service connection from which the coliform-positive sample was taken.

(34) [(26)] "Dose equivalent" means the product of the absorbed dose from ionizing radiation and the [such] factors that [as] account for differences in biological effectiveness due to the type of radiation and its distribution in the body as specified by the International Commission on Radiological Units and Measurements (ICRU).

(35) [(27)] "Fee" means a monetary charge to be assessed by the cabinet.

(36) "Filtration" means a process for removing particulate matter from water by passage through porous media.

(37) "Flocculation" means a process to enhance agglomeration or collection of smaller floc particles into larger, more easily settleable particles through gentle stirring by hydraulic or mechanical means.

(38) [(28)] "Free flowing tap or outlet" means a [any] tap or outlet that when turned on is flowing freely. It does not mean a continuously operating tap.

(39) [(29)] "Gross alpha particle activity" means the total radioactivity due to alpha particle emission as inferred from measurements on a dry sample.

(40) [(30)] "Groundwater source" means a [any] source of water for a public or semipublic water supply that does not have a free water surface exposed to the atmosphere or a turbidity content which exceeds acceptable levels for potable water as specified in 401 KAR 8:010 through 8:700 inclusive, and is not under the direct influence of surface water.

(41) "Groundwater under the direct influence of surface water" means water ebeneath the surface of the ground with significant occurrence of insects or other macroorganisms, algae, or large-diameter pathogens such as Giardia lamblia, or significant and relatively rapid shifts in water characteristics such as turbidity, temperature, conductivity, or pH which closely correlate to climatological or surface water conditions. Direct influence shall be determined for individual sources in accordance with criteria established by the cabinet. The cabinet's determination of direct influence may be based on site-specific measurements of water quality as well as documentation of well construction characteristics and geology with field evaluation.

(42) "Legionella" means a genus of bacteria, some species of which have caused a type of pneumonia called Legionnaires Disease.

(43) [(31)] "Manmade beta particle and photon emitters" means all radionuclides emitting beta particles and photons listed in "Maximum Permissible Body Burdens and Maximum Permissible Concentration of Radionuclides in Air or Water for Occupational Exposure," NBS Handbook 69, except the daughter products of thorium-232, uranium-235 and uranium-238.

(44) [(32)] "Maximum contaminant level" (MCL) means the maximum permissible level of a contaminant in water which is delivered to a [any] user of a public water system as measured at points specified in 401 KAR 8:010 through 8:700 inclusive.

(45) [(33)] "Maximum total trihalomethane potential (MTP)" means the maximum concentration of total trihalomethanes (TTHMs) produced in a given water containing excess free chlorine residuals after seven (7) days retention at a temperature of twenty-five (25) degrees Centigrade (seventy-seven (77) degrees Fahrenheit) or above.

(46) [(34)] "Mineral water" means bottled water that contains no less than 500 parts per million total dissolved solids.

(47) "Near the first service connection" means at one (1) of the twenty (20) percent of service connections in the entire system that are nearest the water supply treatment facility, as measured by water transport time within the distribution system.

(48) [(35)] "Operator" means a [any] person who has on-site responsibility and authority to conduct the procedures and practices necessary to ensure that the water supply system or a [any] portion thereof is operated in accordance with the laws and regulations of the Commonwealth; or to supervise others in conducting the [such] procedures and practices. Maintenance personnel and others who do not participate directly in the production or distribution of potable water are not included in the term "operator".

(49) [(36)] "Person" means an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, federal agency, state agency, city, commission, political subdivision of the Commonwealth or any interstate body.

(50) [(37)] "Picocurie (pCi)" means that quantity of radioactive material producing 2.22 nuclear transformations per minute.

(51) "Point of disinfectant application" means the point where the disinfectant is applied and water downstream of that point is not subject to recontamination by surface water runoff.

(52) [(38)] "Point-of-entry treatment device" means [is] a treatment device applied to the drinking water entering a house or building for the purpose of reducing contaminants in the drinking water distributed throughout the house or building.

(53) [(39)] "Point-of-use treatment device" means [is] a treatment device applied to a single tap used for the purpose of reducing contaminants in drinking water at that one tap.

(54) [(40)] "Potable water" means [any] water which meets the provisions of 401 KAR 8:010 through 401 KAR 8:700, inclusive, [these regulations], the quality of which is approved by the cabinet for human consumption [by the cabinet].

(55) [(41)] "Private water supply" means a residential water supply located on private property for the use of residents, and not qualifying as a public or semipublic water system.

(56) [(42)] "Product water" means the water processed by a bottled water treatment plant that is used for bottled drinking water.

(57) [(43)] "Professional engineer" means an engineer with current registration as a professional engineer in Kentucky.

(58) [(44)] "Public water system" means a water [any] system owned by a [any] person, for the provision to the public of water for human consumption, if the [such] system has at least fifteen (15) service connections or regularly serves an average of at least twenty-five (25) individuals daily at least sixty (60) days of

the year, and includes a [any] collection, treatment, storage or distribution facility[ies] used primarily in connection with the [such] system. For the purposes of 401 KAR 8:020, 401 KAR 8:150, 401 KAR 8:200, "public water system" shall also include a [any] commercial facility which serves food to the public and is not using water purchased from a public water system. However, if a facility serving food to the public uses exclusively bottled water as defined by this section for the preparation of food and the cleaning of food preparation utensils and dishes to serve food, the facility may establish, to the cabinet's satisfaction, that only potable water shall be received by the public and the facility shall be exempt from this definition. A public water system is either a "community water system" or a "noncommunity water system."

(a) "Community water system" means a public water system which serves at least fifteen (15) service connections used by year-round residents or regularly serves at least twenty-five (25) year-round residents.

(b) "Noncommunity water system" means a public water system which serves at least fifteen (15) service connections used by persons for a period less than year-round or which serves an average of at least twenty-five (25) individuals daily at least sixty (60) days of the year but less than year-round. Noncommunity water systems are either transient or nontransient.

1. "Transient noncommunity water system" means a water system which serves a transient group of people and does not meet the definition for nontransient noncommunity water system set forth below.

2. "Nontransient noncommunity water system" means a system which serves at least twenty-five (25) of the same persons over six (6) months of the year.

(59) [(45)] "Rem" means the unit of dose equivalent from ionizing radiation to the total body or an [any] internal organ or organ system.

(60) "Residual disinfectant concentration" ("C" in CT calculations) means the concentration of disinfectant measured in mg/l in a representative sample of water.

(61) [(46)] "Sanitary survey" means an on-site review of the water source, facilities, equipment, operation and maintenance of a public water system for the purpose of evaluating the adequacy of [such] source, facilities, equipment, operation and maintenance for producing and distributing safe drinking water.

(62) [(47)] "Secondary contaminants" means contaminants which do not, in general, have a direct impact on the health of consumers but whose presence in excessive quantities may discourage the utilization of drinking water and discredit the supplier.

(63) [(48)] "Secondary standards" means the maximum contaminant levels for secondary contaminants.

(64) [(49)] "Secretary" means the secretary for the Natural Resources and Environmental Protection Cabinet.

(65) "Sedimentation" means a process for removal of solids before filtration by gravity or separation.

(66) [(50)] "Semipublic water system" means a [any] water system made available for drinking or domestic use which serves more than three (3) families but does not qualify as a public water system.

(67) "Slow sand filtration" means a process involving passage of raw water through a bed of sand at low velocity (generally less than four-tenths (0.4) m/h) resulting in substantial particulate removal by physical and biological mechanisms.

(68) [(51)] "Specific analysis" means a laboratory analysis or procedure acceptable to the cabinet for determining the amount of a specific constituent of a type of contaminant regulated under these regulations.

(69) [(52)] "Standard Methods" means the 16th Edition of "Standard Methods for the Examination of Water and Wastewater," prepared and jointly published by the American Public Health Association, the American Water Works Association, and the Water Pollution Control Federation.

(70) [(53)] "Standard sample" means the aliquot of finished drinking water that is examined for the presence of coliform bacteria.

(71) [(54)] "Supplier of water" means a [any] person who owns or operates a public water system.

(72) "Surface water" means water which is open to the atmosphere and subject to surface runoff, or groundwater under the direct influence of surface water.

(73) [(55)] "Surface water source" includes, but is not limited to, ponds, reservoirs, streams of all sizes, free-flowing springs, wells with variable turbidity due to the characteristics of the raw water, or a [any] source of water supply for a public water system that has a free water surface exposed to the atmosphere, or groundwater under the influence of surface water.

(74) "System with a single service connection" means a system which supplies drinking water to consumers via a single service line.

(75) [(56)] "Total trihalomethanes (TTHMs)" means the arithmetic sum of the concentrations in milligrams per liter of the trihalomethane (THM) compounds (trichloromethane, dibromochloromethane, bromodichloromethane, and tribromomethane) rounded to two (2) significant figures.

(76) "Too numerous to count" means that the total number of bacterial colonies exceeds 200 on a forty-seven millimeter (47-mm) diameter membrane filter used for coliform detection.

(77) [(57)] "Trihalomethane (THM)" means one (1) family of organic halogen compounds resulting from the displacement of three (3) of the four (4) hydrogen atoms in methane with chlorine, bromine, or iodine atoms in the molecular structure.

(78) [(58)] "Turbidity" means the presence of suspended particulates, including, but not limited to, sand, silt, clay, finely divided organic or inorganic matter, plankton or other microscopic organisms or elements which optically interfere with the clarity of liquids.

(79) "Virus" means a virus of fecal origin which is infectious to humans by waterborne transmission.

(80) "Waterborne disease outbreak" means the significant occurrence of acute infectious illness, epidemiologically associated with the ingestion of water from a public water system which is deficient in treatment as determined by the cabinet.

(81) [(59)] "Water distribution system" means the portion of the water supply system in which water is conveyed from the water treatment plant

or other supply point to the premises of a consumer or a system of piping and ancillary equipment which is owned and operated by an established water system independent of the water supply system from which potable water is purchased.

(82) [(60)] "Water supply reservoir" and "lake primarily used for drinking water" means, for the purpose of 401 KAR 8:020, Section 2(18), a [any] lake or reservoir so designated by its developer, a public water system drawing raw water from the lake, a local government, and a property owner having an interest in the lake and the watershed upstream of the dam or downstream outlet of the lake.

(83) [(61)] "Water supply system" means the source of supply and all structures and appurtenances used for the collection, treatment, storage and distribution of water for a public or semipublic water supply.

(84) [(62)] "Water treatment plant" or "purification plant" means that portion of the water supply system which is designed to alter either the physical, chemical or bacteriological quality of the water.

[Section 2. The following items are incorporated by reference and are available for public inspection and copying between the hours of 8 a.m. and 4:30 p.m. Monday through Friday, at the Division of Water, 18 Reilly Road, Frankfort Office Park, Frankfort, Kentucky 40601:]

[(1) Standard Methods for the Examination of Water and Wastewater, 16th Edition, 1985, prepared and jointly published by the American Public Health Association, the American Water Works Association, and the Water Pollution Control Federation. This publication may be obtained by contacting the Publication Office, American Public Health Association, 1015 15th Street NW, Washington, D.C. 20005.]

[(2) "Maximum Permissible Body Burdens and Maximum Permissible Concentrations of Radionuclides in Air and Water for Occupational Exposure," National Bureau of Standards Handbook Number 69, U.S. Department of Commerce, August 1963. This document may be obtained by contacting the Division of Water.]

[Section 3. Severability. If a [any] provision of this regulation is set aside by a court of competent jurisdiction, the remainder of this regulation remains in effect.]

CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: September 12, 1991
FILED WITH LRC: September 13, 1991 at 9 a.m.

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

401 KAR 8:020. Public and semipublic water supplies - general provisions.

RELATES TO: KRS Chapters 223, 224, 40 CFR 141.3, 141.74, 141.75, 142.14, 142.15

STATUTORY AUTHORITY: KRS Chapter 223, 224.032, 224.033, 40 CFR 141.3, 141.74, 141.75, 142.14, 142.15, as amended at 54 FR 27,530 (1989) [PL 93-523, The Safe Drinking Water Act, as amended in 1986 and by the Lead Contamination and Control Act of 1988, PL 100-572], 42 USCA 300f, 300g, 300j

NECESSITY AND FUNCTION: KRS 224.032 directs the cabinet to enforce rules and regulations adopted by the secretary for the regulation and control of the purification of water for public and semipublic use. The Safe Drinking Water Act, as amended by the Safe Drinking Water Act Amendments of 1986, provides for primary enforcement responsibility by states that have adopted regulations "no less stringent than the national primary drinking water regulations", as well as meeting other criteria stipulated by the Act. The Commonwealth of Kentucky has accepted and is currently exercising such primary enforcement responsibility. The purpose of this regulation is to stipulate general provisions for public and semipublic water supplies to enable the supplies to comply with KRS 224.032, as well as the Safe Drinking Water Act, as amended. The amendments to this regulation are to add certain new recordkeeping and reporting requirements which have become necessary as a result of new federal requirements.

Section 1. Applicability. (1) Inclusions. All public and semipublic water systems are subject to the requirements of 401 KAR 8:010 through 8:700, inclusive except those noted in subsection (2) of this section. A [Any] commercial facility which uses water from its own premises to prepare food to be served to the public is subject to the requirements of 401 KAR 8:020, 401 KAR 8:150, and 401 KAR 8:200 unless bottled water is used exclusively for food preparation and dish washing, and the facility has demonstrated to the cabinet's satisfaction that no contaminated water may reach the public.

(2) Exclusions. Except as stated above, this chapter does not apply to water systems in the following two (2) categories:

(a) Water systems which consist only of distribution and storage facilities, which do not have [any] collection or [and] treatment facilities, which obtain all of their water from, but are not owned or operated by, public water systems covered by these regulations, and which do not sell water to any person; or

(b) Water systems which are carriers which convey passengers in interstate commerce.

Section 2. Operation, Maintenance and Safety Requirements. (1) Public and semipublic water systems. No person shall operate or commence operation of a public or semipublic water system except in compliance with the provisions of 401 KAR 8:010 through 8:700, inclusive. Water supply systems constructed prior to the effective date of these regulations may be continued in use, if the operation, maintenance, bacteriological, chemical, physical, and radiological standards comply with 401 KAR 8:010 through 401 KAR 8:700 inclusive, or the [such] system[s] obtains a variance or exemption as set forth in 401 KAR 8:060 from those standards with which they do not comply.

(2) Cross-connections prohibited. All cross-connections are prohibited. The use of automatic devices, such as reduced pressure zone back flow preventers and vacuum breakers, may be approved by the cabinet in lieu of proper air gap separation. A combination of air gap separation and automatic devices shall be required if determined by the cabinet to be

necessary due to the degree of hazard to public health. It shall be the responsibility of every public water system to determine whether or where cross-connections exist and to immediately eliminate them.

(3) Bypasses. No bypass shall be created or maintained without the prior written approval of the cabinet stating the approved circumstances for establishment of a bypass, its design, and the exact conditions which must exist for its use.

(4) Auxiliary intakes. No auxiliary intake shall be used in direct connection with a public or semipublic water system except with prior written approval from the cabinet stating the emergency conditions which necessitate the [such an] intake.

(5) Water and sewer connections. The sewer system serving the purification plant and auxiliary facilities, including all plumbing fixtures, toilets, showers, drinking fountains, and floor drains, shall discharge to the sewer system where available. If no such sewer is available, the connection shall be made to an approved sewage disposal facility. There shall be no connections between the sewer system and a [any] filter backwash, filter-to-waste drains or clearwell overflow lines, unless an approved air gap is provided between such drains and overflow lines and the approved sanitary, storm sewer, or natural drainage system, so as to preclude the possibility of back-up of sewage or waste into the drain or overflow lines.

(6) Proper operation and maintenance. The owner or operator of a public water system shall at all times properly operate and maintain all facilities and systems of treatment, intake and distribution to achieve compliance with the provisions of 401 KAR 8:010 through 8:700 inclusive. Proper operation and maintenance includes effective performance, preventive maintenance, adequate operator staffing and training, adequate representative sample points, and adequate process controls for testing, including appropriate quality assurance procedures.

(7) Reports to the cabinet.

(a) Monthly operating reports. The supplier of water shall file complete monthly operating reports with the cabinet. The reports shall be on forms provided or approved by the cabinet and shall be received at the Division of Water, Frankfort Office Park, 18 Reilly Road, Frankfort, Kentucky 40601, no later than ten (10) days after the end of the month for which the report is filed. Completed reports shall include volume of water treated, type and amount of chemicals added, and test results appropriate to be reported by the plant. Completed reports shall also include the dated original signature of the owner or authorized agent. Beginning with the month of July 1992 for subparagraph 1 of this paragraph, and January 1993 for subparagraph 2 of this paragraph, the supplier of water shall submit the following reports to the cabinet no later than ten (10) days after the end of each month the public water system serves water to the public:

1. Turbidity measurements with maximum contaminant levels as required by 401 KAR 8:200, Section 4(4) and (5) and monitoring in accordance with that section and 401 KAR 8:150, Section 3(2)(a) until June 29, 1993. After June 29, 1993, turbidity monitoring shall be in accordance with 401 KAR 8:150, Section 3(2)(a), with measurements in accordance with 401 KAR 8:150, Section 3(1)(d) and (2)(a), and maximum contaminant levels in accordance with 401 KAR 8:150, Section 2. The supplier of water shall include the following turbidity information in the monthly operating report:

a. The total number of filtered water turbidity measurements taken during the month.

b. The number and percentage of filtered water turbidity measurements taken during the month which are less than or equal to the turbidity limits specified in 401 KAR 8:150, Section 2, for the filtration technology being used.

c. The date and value of any turbidity measurements taken during the month which exceed five (5) NTU.

2. Disinfection information specified in 401 KAR 8:150, Section 3(2)(b). The supplier of water shall include the following disinfection information in the monthly operating report:

a. For each day, the lowest measurement of residual disinfectant concentration in mg/l in water entering the distribution system.

b. The date and duration of each period when the residual disinfectant concentration in water entering the distribution system fell below the residual requirements as specified in 401 KAR 8:150, Section 1(1), and when the cabinet was notified as of the occurrence.

c. The following information on the samples taken in the distribution system in conjunction with total coliform monitoring pursuant to 401 KAR 8:150, Sections 1 and 3(2)(c):

(i) Number of instances where the residual disinfectant concentration is measured.

(ii) Number of instances where the residual disinfectant concentration is not measured but heterotrophic bacteria plate count (HPC) is measured.

(iii) Number of instances where the residual disinfectant concentration is measured but not detected and no HPC is measured.

(iv) Number of instances where no residual disinfectant concentration is detected and where HPC is greater than 500/ml.

(v) Number of instances where the residual disinfectant concentration is not measured and HPC is greater than 500/ml.

(vi) For the current and previous month the system serves water to the public the value of "V" in the following formula:

$$V = \frac{c+d+e}{a+b} \times 100$$

where

a = the value in subclause (i) of this clause
b = the value in subclause (ii) of this clause
c = the value in subclause (iii) of this clause
d = the value in subclause (iv) of this clause
e = the value in subclause (v) of this clause

(vii) If the cabinet determines, based on site-specific considerations, that a system has no means for having a sample transported and analyzed for HPC by a certified laboratory within the requisite time and temperature conditions specified by 401 KAR 8:150, Section 3(1)(c), and that the system is providing adequate disinfection in the distribution system, the requirements of paragraph (a)2c(i) through (vi) of this subsection do not apply.

d. A system need not report the date listed in clause a. of this subparagraph if all data listed in clauses a. through c. of this subparagraph remain on file at the system and the cabinet determines that the system has submitted all the information required by

clauses a. through c. of this subparagraph for at least twelve (12) months.

3. Each system, upon discovering that a waterborne disease outbreak potentially attributable to that water system has occurred, shall report that occurrence to the cabinet in accordance with paragraph (c) of this subsection. If the turbidity exceeds five (5) NTU, the system shall inform the cabinet as soon as possible in accordance with paragraph (c) of this subsection. If the residual falls below the requirements specified in 401 KAR 8:150, Section 1(1), in the water entering the distribution system, the system shall notify the cabinet as soon as possible in accordance with paragraph (c) of this subsection. The system also shall notify the cabinet by the end of the next business day whether or not the residual was restored to the residual required by 401 KAR 8:150, Section 1(1), within four (4) hours.

(b) Reports of failure to comply. Public water systems shall report to the cabinet, within forty-eight (48) hours, by phone or in writing, the failure to comply with any provision of 401 KAR 8:010 through 8:700, inclusive, including the failure to comply with monitoring requirements.

(c) Emergency reports. When a public water system experiences a line break as described in 401 KAR 8:150, Section 4(3), loss of pressure, loss of disinfection, or other event which may result in contamination of the water, the public water system shall immediately report to the cabinet by calling the drinking water branch of the division of water in Frankfort at (502) 564-3410 or the appropriate regional field office of the division of water. If a report required by paragraph (c) of this subsection is made at a time other than normal business hours, it shall be made through the twenty-four (24) hour environmental emergency telephone number, (502) 564-2380.

(8) Records to be maintained. All owners or operators of public water and semipublic water systems shall keep on or near the premises the records set forth in this subsection.

(a) Data summaries. Either actual laboratory reports shall be kept or data shall be transferred to tabular summaries. The following information shall be included:

1. The date, place and time of sampling, and the name of the person who collected the sample;
2. Whether the sample was a routine distribution system sample, check sample, raw or processed water sample or other special purpose sample;
3. The date of analysis;
4. The laboratory and person responsible for performing analysis;
5. The analytical technique or [/] method used; and
6. The results of the analysis.

(b) Bacteriological analysis records shall be kept at least five (5) years.

(c) Chemical analysis records shall be kept for a period of ten (10) years.

(d) Turbidity analysis records shall be kept for a period of at least one (1) year.

(e) Records of violations and the actions taken by the system to correct violation of primary drinking water regulations shall be kept no less than ten (10) years after the last action taken with respect to the particular violation involved.

(f) Records of sanitary surveys, copies of [any] written reports, summaries of communications relating to sanitary surveys of the system, conducted by the system, a private consultant, or a [any] local, state or federal agency, shall be kept no less than ten (10) years after completion of the sanitary survey involved, at which time they may be transferred to the cabinet.

(g) Records concerning a [any] variance or exemption granted to the system shall be kept no less then five (5) years following the expiration of the variance or exemption.

(9) Boil water notices and consumer advisories.

(a) Boil water notices and advisories. Public water systems and semipublic water systems may issue boil water notices or boil water advisories if [at any time] the system feels a notice or advisory is warranted. The cabinet may direct that a boil water notice be issued when positive bacteriological sample results have been confirmed by an analysis or analyses made in a certified laboratory. The cabinet may direct that a boil water advisory be issued when conditions within a public water system indicate a possible adverse health effect from microbiological contamination may result from consumption of the water distributed by a system. The cabinet may, when it determines circumstances warrant, issue a boil water notice or boil water advisory directly, rather than rely on a public or semipublic water system to issue the [such] notice.

(b) Consumer advisory. The cabinet may issue a consumer advisory if [at any time] conditions within a public water system or semipublic water system indicate a possible adverse health effect from consumption of the water distributed by the system or when [anytime] other information of interest to the consumer exists. The advisory will notify affected persons of a [any] required or recommended action that should be taken.

(10) How to issue notice or advisory. Boil water notices, boil water advisories, and consumer advisories shall be issued through newspapers, radio, television, or [any] other media having an immediate public impact. As a health and safety measure, the water system shall repeat the notification during the period of imminent danger at intervals which maintain public awareness. The notice or advisory shall be readily understandable and shall include instructions for the public, as well as an explanation of the steps being taken to correct the problem. Boiling instructions shall caution to only boil drinking water for short range use by boiling water for at least two (2) minutes at a rolling boil.

(11) Other notices. Other public notifications shall be issued by public water systems as required by 401 KAR 8:010 through 8:700 inclusive.

(12) Maps. Within twelve (12) months of November 15, 1990, [the effective date of this regulation, all] public and semipublic water systems shall have on the premises, or conveniently located to the premises, an up-to-date map of the distribution system. The map shall, at a minimum, show line size, cutoff valves, fire hydrants, flush hydrants, tanks, booster pumps, chlorination stations, connection to emergency or alternative sources, and wholesale customer master meters. The type of piping material in the distribution system and its location shall also be provided. If a public water system, due to age, improper

documentation, lost documentation or other valid reason cannot comply with this requirement, the system may petition the cabinet to modify this requirement to the extent that compliance is not feasible. The petition for modification [waiver] shall state specifically what portion of this requirement is not practical and why.

(13) Operation and maintenance manual. Each public water [supply] system shall develop and keep on the premises, for operators and employees of the system, an operation and maintenance manual that includes a detailed design of the plant, daily operating procedures, a schedule of testing requirements designating who is responsible for the [such] tests, and safety procedures for operation of the facility, including storage and inventory requirements for materials and supplies used by the facility. The operation and maintenance manual shall be updated as necessary and no less than annually and shall [will] be available by November 16, 1991 [within twelve (12) months of the effective date of this regulation]. Public water systems serving fewer than 100 people or thirty (30) service connections may request that the cabinet waive this requirement. The request shall be in writing and any waiver granted by the cabinet shall be in writing and be retained by the public water system for examination by cabinet personnel.

(14) Flushing recommended. It is recommended that all distribution systems be thoroughly flushed at least twice a year, usually in the spring and fall. The purpose of systematic flushing is to reduce turbidity created from the scouring of accumulated sediment within the water lines. Flushing should start at the hydrants nearest the source of supply and proceed in an outward direction to the end of each main. Flushing should continue at each hydrant until all traces of turbidity and color are gone. Hydrants should be opened and shut slowly to prevent damage from water hammer. In addition to the regularly scheduled flushing, the following conditions indicate a need to flush the entire system: turbidity within the distribution system greater than five (5) nephelometric turbidity units (NTU); an inability to maintain an adequate residual of a disinfection agent in any part of the system or a heterotrophic plate count (HPC) in excess of 500. Other indicators that flushing may be called for are taste and odor complaints, color of water, contaminated water samples, or line repairs.

(15) No person shall introduce a [any] substance which may have a deleterious physiological effect, or for which physiological effects may not be known, to the water supply system.

(16) Certified lab analysis required. For the purpose of determining compliance with the sampling requirements of 401 KAR 8:010 through 8:700 inclusive, samples shall be analyzed by a laboratory certified by the cabinet as prescribed in 401 KAR 8:040, except that measurements for turbidity and disinfectant residuals [free chlorine] may be performed by a [any] person approved by the cabinet.

(17) Right of entry. The cabinet may enter, during normal business hours, an [any] establishment, facility or other property of public and semipublic water supplies in order to determine whether the [such] supplies have acted or are acting in compliance with [any] applicable laws or regulations which the cabinet has the authority to enforce. [Such] Entry may include collection of water samples for laboratory analyses, inspection of records, files, papers, processes, controls and facilities required to be kept, installed or used under the provisions of 401 KAR 8:010 through 8:700, inclusive. The cabinet or its authorized agent may cause to be tested a [any] feature of a public water system, including its raw water source, to determine compliance with applicable legal requirements.

(18) Recommended practices for water supply reservoirs to be used for drinking water. The following practices are recommended to be employed by water systems which have a lake primarily used as a source of raw drinking water:

(a) Prohibition of swimming, water skiing and other contact sports.

(b) Prohibition of large motor-driven craft or any craft with toilets.

(c) An area at least 100 feet wide from the upper pool elevation shall be kept clear of all sources of potential contamination such as septic tanks, drain fields, livestock, barns, etc.

(d) No effluent from sewage treatment plants shall be discharged into the lake.

(e) Picnicking may be permitted around the lake if plans for the development of any picnic area meet regulatory requirements of the cabinet.

(f) A nonpoint source pollution control plan shall be implemented.

(19) Water treatment chemicals and system components. [All] Chemical additives and protective materials (such as paints and linings) used by a water system shall be acceptable to the cabinet for use in contact with potable water.

(20) Disposal of chlorinated water. Chlorinated water resulting from disinfection of treatment facilities and new, repaired or extended distribution systems shall be disposed in a manner which will not violate 401 KAR 5:031.

(21) Water loading stations. Public water systems which provide water loading stations for the purpose of providing water to water hauling trucks or other bulk water devices shall construct such stations to conform to the standards in the Great Lakes Upper Mississippi River Board of State Public Health & Environmental Managers' "Recommended Standards for Water Works," incorporated by reference in Section 4 [3](1) of this regulation.

Section 3. Records and Reports Maintained by the Cabinet. The cabinet shall maintain and report records and reports as governed by 40 CFR 142.14 and 142.15, as amended at 54 Federal Register 27,557, 27,567, and 27,579 (1989), hereby adopted without change.

Section 4. [3.] Incorporation by Reference. The following materials are hereby incorporated by reference and are available for public inspection and copying between 8 a.m. and 4:30 p.m., Monday through Friday, at the Division of Water, Frankfort Office Park, 18 Reilly Road, Frankfort, Ky. 40601:

(1) Great Lakes Upper Mississippi River Board of State Public Health & Environmental Managers' "Recommended Standards for Water Works," 1987, published by the Health Research Inc., Health Education Services Division, P.O. Box 7126, Albany, New York 12224.

(2) "General Design Criteria for Surface and Ground Water Supplies", 1984, published by the Kentucky Division of Water, Frankfort Office Park, 18 Reilly Road, Frankfort, Kentucky 40601.
(3) "Guidelines for Conducting Stream Studies for Wastewater Discharges Proposed Within Five Miles Upstream from Public Water Supply Sources or From the Location of Public Water Supply Intakes Within Five Miles Downstream from Wastewater Discharges" 1983, published by the Kentucky Division of Water, Frankfort Office Park, 18 Reilly Road, Frankfort, Kentucky 40601.

[Section 5. [4.] Severability. If any provision of this regulation is set aside by a court of competent jurisdiction, the remainder of this regulation remains in effect.]

FRANK DICKERSON, Commissioner
CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: September 12, 1991
FILED WITH LRC: September 13, 1991 at 9 a.m.

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

401 KAR 8:070. Public notification.

RELATES TO: KRS Chapter 224, 40 CFR Parts 141, 142, 143.5
STATUTORY AUTHORITY: KRS 224.032, 224.033, 40 CFR Part 141.32, as amended by Federal Register 27,556 (1989) and 54 Federal Register 27,527 (1989), [PL 93-523, The Safe Drinking Water Act, as amended in 1986 and by the Lead Contamination and Control Act of 1988, PL 100-572,] 42 USCA 300f, 300g, 300j
NECESSITY AND FUNCTION: KRS 224.032 directs the cabinet to enforce rules and regulations adopted by the secretary for the regulation and control of the purification of water for public and semipublic use. The Safe Drinking Water Act, as amended by the Safe Drinking Water Act Amendments of 1986, provides for primary enforcement responsibility by states that have adopted regulations "no less stringent than the national primary drinking water regulations", as well as meeting other criteria stipulated by the Act. The Commonwealth of Kentucky has accepted and is currently exercising such primary enforcement responsibility. This regulation relates to notification of the public when these regulations have been violated by a public or semipublic water system. It has been substantially revised to reflect amendments to the Safe Drinking Water Act[, and it will replace the public notification requirements of 401 KAR 6:015(12)].

Section 1. Notification for Tier One Violations. The owner or operator of a public or semipublic water system which fails to comply with an applicable maximum contaminant level or treatment technique established by 401 KAR 8:010 through 401 KAR 8:700, inclusive, or which fails to comply with the requirements of a [any] schedule prescribed pursuant to a variance or exemption, shall notify the public in accordance with the requirements of this section. These violations are Tier One violations and may be designated by the cabinet as ordinary or acute, with acute violations representing a class of violation which may represent an immediate threat to the public health, requiring consumers to take special precautions.
(1) Community public water systems. The owner or operator of a community public water system shall provide notice of a [any] Tier One violation in the following manner:
(a) Newspaper. By publication in a daily newspaper of general circulation in the area served by the system as soon as possible, but in no case later than fourteen (14) days after the violation or failure has occurred. If the area served by a public water system is not served by a daily newspaper of general circulation, notice shall instead be given by publication in a weekly newspaper of general circulation serving the area; and
(b) Mail. By mail delivery (by direct mail or with the water bill), or by hand delivery, no later than forty-five (45) days after the violation or failure. The cabinet may waive mail or hand delivery if it determines that the owner or operator of the public water system in violation has corrected the violation or failure within the forty-five (45) day period. The cabinet, if it chooses to issue a waiver, will issue the waiver in writing and within the forty-five (45) day period; and
(c) Acute violation. In addition to the other requirements of this section, for violations of acute Tier One standards the owner or operator of the public water system shall furnish copies of the public notification to radio and television stations serving the area served by the public water system as soon as possible, but in no case later than seventy-two (72) hours after notice of the violation is received by the public water system from the laboratory. The following violations are acute violations:
1. Violations of the maximum contaminant level for total coliforms, if fecal coliforms or E. coli are present in the water distribution system, [coliform bacteria, confirmed by a check sample] as provided in 401 KAR 8:200;
2. Violation of the maximum contaminant level for nitrate, as provided in 401 KAR 8:250; and
3. [Any] Other violations that the cabinet or public water system determines call[s] for special care by the consumer.
(d) Repeat notice. For as long as the violation continues, the owner or operator of the public water system shall give notice at least once every three (3) months by mail delivery (by direct mail or with the water bill) or by hand delivery.
(e) Newspaper not available. Community water systems in an area not served by a daily or weekly newspaper of general circulation may satisfy the requirements of this subsection by giving notice, within fourteen (14) days of the violation or failure, by hand delivery or by continuous posting in conspicuous places within the area served by the system. Posting shall continue for as long as the violation or failure exists. Notice by hand delivery shall be repeated at least once every three (3) months for as long as the violation or failure exists.
(2) Noncommunity public water systems. The owner or operator of noncommunity water systems may comply with the notice requirements of this section by giving notice within seventy-two (72) hours for acute violations or within fourteen (14) days after [any] other violations or failure by hand delivery or by continuous

posting in conspicuous places within the area served by the system. Posting shall continue for as long as the violation or failure exists. Notice by hand delivery shall be repeated at least once every three (3) months for as long as the violation or failure exists.

(3) Semipublic. The owner or operator of semipublic water systems may be required to give notice equivalent to the requirements of noncommunity systems at the discretion of the cabinet.

Section 2. Notification for Tier Two Violations. The owner or operator of a public or semipublic water system which fails to perform the monitoring required by 401 KAR 8:010 through 8:700, inclusive, fails to make a report required by 401 KAR 8:010 through 8:700, inclusive, fails to comply with a testing procedure established by 401 KAR 8:010 through 8:700, inclusive, is subject to a variance to 401 KAR 8:010 through 8:700, inclusive, granted by the cabinet, or is subject to an exemption from 401 KAR 8:010 through 8:700, inclusive, granted by the cabinet, shall notify persons served by the system as prescribed in this section. The [Such] violation or receipt of a variance or exemption shall be considered a Tier Two category violation.

(1) Community systems. The owner or operator of community public water systems shall give notice of Tier Two violations in the following manner:

(a) Newspaper. Notice of Tier Two violations shall be made by the owner or operator of a community public water system, within three (3) months of the violation or granting of a variance or exemption, by publication in a daily newspaper of general circulation in the area served by the system. If the area served by a public water system is not served by a daily newspaper of general circulation, notice shall instead be given by publication in a weekly newspaper of general circulation serving the area.

(b) Repeat notice. Following the initial notice given under this section, the owner or operator of the public water system shall give notice at least once every three (3) months by mail delivery (by direct mail or with the water bill) or by hand delivery, for as long as the violation exists. Repeat notice of the existence of a variance or exemption shall be given for as long as the variance or exemption remains in effect.

(c) Notice when newspaper not available. The owner or operator of community water systems not being served by a daily or weekly newspaper of general circulation may meet the requirements of paragraphs (a) and (b) of this subsection by giving notice, within three (3) months of the violation or granting of the variance or exemption, by hand delivery or by continuous posting in conspicuous places within the area served by the system. Posting shall continue for as long as the violation exists or a variance or exemption remains in effect. Notice by hand delivery shall [must] be repeated at least once every three (3) months for as long as the violation exists or a variance or exemption remains in effect.

(2) Noncommunity public water systems. The owner or operator of a noncommunity water system may comply with the notice provisions of this section by giving notice, within three (3) months of the violation or the granting of the variance or exemption, by hand delivery or by continuous posting in conspicuous places within the area served by the system. Posting shall continue for as long as the violation exists or the variance or exemption remains in effect. Notice by hand delivery shall be repeated at least once every three (3) months for as long as the violation exists or a variance or exemption remains in effect.

(3) Semipublic. The owner or operator of semipublic water systems may be compelled to give the notice required of noncommunity systems when public health considerations require it.

(4) Reduction in notification frequency. The cabinet may reduce notification frequency for minor violations when criteria for the [such] reduction have been approved as a program revision, as stipulated by the U.S. Environmental Protection Agency.

Section 3. New Billing Units. The owner or operator of a community water system shall give a copy of the most recent public notice for any outstanding Tier One violation to all new billing units or new hookups prior to, or when [at the time] service begins.

Section 4. General Content of Public Notices. Each notice required by this regulation shall provide a clear and readily understandable explanation of the violation, [any] potential adverse health effects, the population at risk, the steps that the public water system is taking to correct the [such] violation, the necessity for seeking alternative water supplies, if any, and any preventive measures the consumer should take until the violation is corrected. Each notice shall be conspicuous; shall not contain unduly technical language, unduly small print, or other problems that frustrate the purpose of the notice; and, where appropriate, the notice shall be multilingual. Each notice shall include the name and telephone number of the owner, operator or designee of the public water system as a source of additional information concerning the notice.

Section 5. Proof of Notice. (1) How to submit. [All] Public notices required by this regulation shall be submitted to the cabinet. For [In the case of] newspaper advertisements, a copy of the complete page of the newspaper or newspapers in which the advertisement appeared and the date of its appearance, shall be submitted by the water system. For notices to radio and television media for acute violations, a copy of all material submitted to the radio and television media shall be submitted to the cabinet by the water system, along with an affidavit, signed by the operator or owner of the public water system, stating when and to which radio and television media the notice was given. A copy of notices that are hand delivered, delivered to radio or television media for acute violations, or mailed, shall be mailed to the cabinet by the water system, along with an affidavit signed by the operator or owner of the water system stating that all consumers were notified. Mailing to the cabinet shall take place the same day as hand delivery, delivery to radio or television media, or mailing to the public. If the notice is posted, the owner or operator of the water system shall submit a copy of the notice and an affidavit stating where the [such]

notices were placed. All notices to the cabinet shall be addressed to the Division of Water, Drinking Water Branch, Frankfort Office Park, 18 Reilly Road, Frankfort, Kentucky 40601.

(2) Public notification by the cabinet. The cabinet may give the notice to the public required by this section on behalf of the owner or operator of the public water system. However, the owner or operator of the public water system remains legally responsible for ensuring that the requirements are met.

(3) Failure to submit proof of notice. The cabinet may construe failure to submit proof of notice as evidence that the public water system has failed to notify the public. When the public water system fails to submit proof of notice within thirty (30) days of any requirement for notice, the cabinet may submit the notice to be published, with the cost of publication to be billed to the public water system by the publishing entity. [Any] Costs incurred by the cabinet to notify the public, resulting from the failure of the public water system to do so, may be recovered by the cabinet.

Section 6. Mandatory Language for Tier One Violations. Public notice for those contaminants listed in this section shall contain language in addition to the information on potential adverse health effects required by Section 4 of this regulation. The owner or operator of a public water system shall include the language specified below for each contaminant listed in those notices. The following mandatory-health-effects language shall be published intact and may not include inserted material not prescribed by this regulation:

(1) Trichloroethylene. The U.S. Environmental Protection Agency (EPA) sets drinking water standards and has determined that trichloroethylene is a health concern at certain levels of exposure. This chemical is a common metal cleaning and dry cleaning fluid. It generally gets into drinking water by improper waste disposal. This chemical has been shown to cause cancer in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed at lower levels over long periods of time. EPA has set forth the enforceable drinking water standard for trichloroethylene at 0.005 parts per million (ppm) to reduce the risk of cancer or other adverse health effects which have been observed in laboratory animals. Drinking water which meets this standard is associated with little to none of this risk and should be considered safe.

(2) Carbon tetrachloride. The U.S. Environmental Protection Agency (EPA) sets drinking water standards and has determined that carbon tetrachloride is a health concern at certain levels of exposure. This chemical was once a popular household cleaning fluid. It generally gets into drinking water by improper waste disposal. This chemical has been shown to cause cancer in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed at lower levels over long periods of time. EPA has set the enforceable drinking water standard for carbon tetrachloride at 0.005 parts per million (ppm) to reduce the risk of cancer or other adverse health effects which have been observed in laboratory animals. Drinking water which meets this standard is associated with little to none of this risk and should be considered safe.

(3) 1,2-Dichloroethane. The U.S. Environmental Protection Agency (EPA) sets drinking water standards and has determined that 1,2-dichloroethane is a health concern at certain levels of exposure. This chemical is used as a cleaning fluid for fats, oils, waxes, and resins. It generally gets into drinking water from improper waste disposal. This chemical has been shown to cause cancer in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed at lower levels over long periods of time. EPA has set the enforceable drinking water standard for 1,2-dichloroethane at 0.005 parts per million (ppm) to reduce the risk of cancer or other adverse health effects which have been observed in laboratory animals. Drinking water which meets this standard is associated with little to none of this risk and should be considered safe.

(4) Vinyl chloride. The U.S. Environmental Protection Agency (EPA) sets drinking water standards and has determined that vinyl chloride is a health concern at certain levels of exposure. This chemical is used in industry and is found in drinking water as a result of the breakdown of related solvents. The solvents are used as cleaners and degreasers of metals and generally get into drinking water by improper waste disposal. This chemical has been associated with significantly increased risks of cancer among certain industrial workers who were exposed to relatively large amounts of this chemical during their working careers. This chemical has also been shown to cause cancer in laboratory animals when the animals are exposed at high levels over their lifetimes. Chemicals that cause increased risk of cancer among exposed industrial workers and in laboratory animals also may increase the risk of cancer in humans who are exposed at lower levels over long periods of time. EPA has set the enforceable drinking water standard for vinyl chloride at 0.002 parts per million (ppm) to reduce the risk of cancer or other adverse health effects which have been observed in humans and laboratory animals. Drinking water which meets this standard is associated with little to none of this risk and should be considered safe.

(5) Benzene. The U.S. Environmental Protection Agency (EPA) sets drinking water standards and has determined that benzene is a health concern at certain levels of exposure. This chemical is used as a solvent and degreaser of metals. It is also a major component of gasoline. Drinking water contamination generally results from leaking underground gasoline and petroleum tanks or improper waste disposal. This chemical has been associated with significantly increased risks of leukemia among certain industrial workers who were exposed to relatively large amounts of this chemical during their working careers. This chemical has also been shown to cause cancer in laboratory animals when the animals are exposed at high levels over their lifetimes. Chemicals that cause increased risk of cancer among exposed industrial workers and

in laboratory animals also may increase the risk of cancer in humans who are exposed at lower levels over long periods of time. EPA has set the enforceable drinking water standard for benzene at 0.005 parts per million (ppm) to reduce the risk of cancer or other adverse health effects which have been observed in humans and laboratory animals. Drinking water which meets this standard is associated with little to none of this risk and should be considered safe.

(6) 1,1-Dichloroethylene. The U.S. Environmental Protection Agency (EPA) sets drinking water standards and has determined that 1,1-dichloroethylene is a health concern at certain levels of exposure. This chemical is used in industry and is found in drinking water as a result of the breakdown of related solvents. The solvents are used as cleaners and degreasers of metals and generally get into drinking water by improper waste disposal. This chemical has been shown to cause liver and kidney damage in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. Chemicals which cause adverse effects in laboratory animals also may cause adverse health effects in humans who are exposed at lower levels over long periods of time. EPA has set the enforceable drinking water standard for 1,1-dichloroethylene at 0.007 parts per million (ppm) to reduce the risk of these adverse health effects which have been observed in laboratory animals. Drinking water which meets this standard is associated with little to none of this risk and should be considered safe.

(7) Para-dichlorobenzene. The U.S. Environmental Protection Agency (EPA) sets drinking water standards and has determined that para-dichlorobenzene is a health concern at certain levels of exposure. This chemical is a component of deodorizers, moth balls, and pesticides. It generally gets into drinking water by improper waste disposal. This chemical has been shown to cause liver and kidney damage in laboratory animals such as rats and mice when the animals are exposed to high levels over their lifetimes. Chemicals which cause adverse effects in laboratory animals also may cause adverse health effects in humans who are exposed at lower levels over long periods of time. EPA has set the enforceable drinking water standard for para-dichlorobenzene at 0.075 parts per million (ppm) to reduce the risk of these adverse health effects which have been observed in laboratory animals. Drinking water which meets this standard is associated with little to none of this risk and should be considered safe.

(8) 1,1,1-Trichloroethane. The U.S. Environmental Protection Agency (EPA) sets drinking water standards and has determined that 1,1,1-trichloroethane is a health concern at certain levels of exposure. This chemical is used as a cleaner and degreaser of metals. It generally gets into drinking water by improper waste disposal. This chemical has been shown to damage the liver, nervous system, and circulatory system of laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. Some industrial workers who were exposed to relatively large amounts of this chemical during their working careers also suffered damage to the liver, nervous system, and circulatory system. Chemicals which cause adverse effects among exposed industrial workers and in laboratory animals also may cause adverse health effects in humans who are exposed at lower levels over long periods of time. EPA has set the enforceable drinking water standard for 1,1,1-trichloroethane at 0.2 parts per million (ppm) to protect against the risk of these adverse health effects which have been observed in humans and laboratory animals. Drinking water which meets this standard is associated with little to none of this risk and should be considered safe.

(9) Fluoride. The U.S. Environmental Protection Agency (EPA) requires that we send you this notice on the level of fluoride in your drinking water. The drinking water in your community has a fluoride concentration of _____ (Public Water Supply shall insert the compliance result which triggered public notice) milligrams per liter (mg/l).

Federal regulations require that fluoride, which occurs naturally in your water supply, not exceed a concentration of 4.0 mg/l in drinking water. This is an enforceable standard called a Maximum Contaminant Level (MCL), and it has been established to protect the public health. Exposure to drinking water levels above 4.0 mg/l for many years may result in some cases of crippling skeletal fluorosis, which is a serious bone disorder.

Federal law also requires that we notify you when monitoring indicates that the fluoride in your drinking water exceeds 2.0 mg/l. This is intended to alert families about dental problems that might affect children under nine (9) years of age. The fluoride concentration of your water exceeds this federal guideline.

Fluoride in children's drinking water at levels of approximately 1.0 mg/l reduces the number of dental cavities. However, some children exposed to levels of fluoride greater than about 2.0 mg/l may develop dental fluorosis. Dental fluorosis, in its moderate and severe forms, is a brown staining and/or pitting of the permanent teeth.

Because dental fluorosis occurs only when developing teeth (before they erupt from the gums) are exposed to elevated fluoride levels, households without children are not expected to be affected by this level of fluoride. Families with children under the age of nine (9) are encouraged to seek other sources of drinking water for their children to avoid the possibility of staining and pitting. Your water supplier can lower the concentration of fluoride in your water so that you will still receive the benefits of cavity prevention while the possibility of stained and pitted teeth is minimized. Removal of fluoride may increase your water costs. Treatment systems are also commercially available for home use. Information on such systems is available at the address given below. Low fluoride bottled drinking water that would meet all standards is also commercially available. For further information contact _____ (Public Water Supply shall insert the name, address and telephone number of a contact person) at your water system.

(10) Total coliforms (to be used when there is a violation of 401 KAR 8:200, Section 2(1), and not a violation of 401 KAR 8:200, Section 2(2)). The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that the presence of total coliforms is a possible health concern. Total coliforms are common in the environment and are

generally not harmful themselves. The presence of these bacteria in drinking water, however, generally is a result of a problem with water treatment of the pipes which distribute the water, and indicates that the water may be contaminated with organisms that can cause disease. Disease symptoms may include diarrhea, cramps, nausea, and possibly jaundice, and any associated headaches and fatigue. These symptoms, however, are not just associated with disease-causing organisms in drinking water, but also may be caused by a number of factors other than your drinking water. EPA has set an enforceable drinking water standard for total coliforms to reduce the risk of these adverse health effects. Under this standard, no more than five (5.0) percent of the samples collected during a month can contain these bacteria, except that systems collecting fewer than forty (40) samples/month that have one (1) total coliform-positive sample per month are not violating the standard. Drinking water which meets this standard is usually not associated with a health risk from disease-causing bacteria and should be considered safe.

(11) Fecal Coliforms--E. coli (to be used when there is a violation of 401 KAR 8:200, Section 2(2)). The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that the presence of fecal coliforms of E. coli is a serious health concern. Fecal coliforms and E. coli are generally not harmful themselves, but their presence in drinking water is serious because they usually are associated with sewage or animal wastes. The presence of these bacteria in drinking water is generally a result to a problem with water treatment or the pipes which distribute the water, and indicates that the water may be contaminated with organisms that can cause disease. Disease symptoms may include diarrhea, cramps, nausea, and possibly jaundice, and associated headaches and fatigue. These symptoms, however, are not just associated with disease-causing organisms in drinking water, but also may be caused by a number of factors other than your drinking water. EPA has set an enforceable drinking water standard for fecal coliforms and E. coli to reduce the risk of these adverse health effects. Under this standard all drinking water samples must be free of these bacteria. Drinking water which meets this standard is associated with little or none of this risk and should be considered safe. State and local health authorities recommend that consumers take the following precautions: (to be inserted by the public water system according to instructions from state or local authorities).

(12) Microbiological contaminants (for use when there is a violation of the treatment technique requirements for filtration and disinfection in 401 KAR 8:150). The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that the presence of microbiological contaminants are a health concern at certain levels of exposure. If water is inadequately treated, microbiological contaminants in that water may cause disease. Disease symptoms may include diarrhea, cramps, nausea, and possibly jaundice, and any associated headaches and fatigue. These symptoms, however, are not just associated with disease-causing organisms in drinking water, but also may be caused by a number of factors other than your drinking water. EPA has set enforceable requirements for treating drinking water to reduce the risk of these adverse health effects. Treatment such as filtering and disinfecting the water removes or destroys microbiological contaminants. Drinking water which is treated to meet EPA requirements is associated with little to none of this risk and should be considered safe.

[Section 7. Severability. If any provision of this regulation is set aside by a court of competent jurisdiction, the remainder of this regulation remains in effect.]

FRANK DICKERSON, Commissioner
CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: September 12, 1991
FILED WITH LRC: September 13, 1991 at 9 a.m.

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

401 KAR 8:150. Disinfection and filtration.

RELATES TO: KRS Chapter 224, 40 CFR Parts 141, 142

STATUTORY AUTHORITY: KRS 224.032, 224.033, 40 CFR Parts 141 and 142, as amended at 54 Federal Register 27,526 (1989), [PL 93-523, The Safe Drinking Water Act as amended in 1986 and by the Lead Contamination and Control Act of 1988, PL 100-572,] 42 USCA 300f, 300g, 300j

NECESSITY AND FUNCTION: KRS 224.032 directs the cabinet to enforce rules and regulations adopted by the secretary for the regulation and control of the purification of water for public and semipublic use. The Safe Drinking Water Act, as amended by the Safe Drinking Water Act Amendments of 1986, provides for primary enforcement responsibility by states that have adopted regulations "no less stringent than the national primary drinking water regulations", as well as meeting other criteria stipulated by the Act. The Commonwealth of Kentucky has accepted and is currently exercising such primary enforcement responsibility. This regulation sets out requirements for the disinfection and filtration of drinking water in public water systems using surface water or groundwater under the direct influence of surface water. These requirements shall serve as treatment techniques in lieu of maximum contaminant levels for the following contaminants: Giardia lamblia, viruses, heterotrophic plate count bacteria, Legionella, as well as an MCL for turbidity. [It is anticipated that this regulation will be amended or replaced in the near future as a result of the Surface Water Treatment rule or the Total Coliform rule published in the Federal Register June 29, 1989.]

Section 1. Disinfection. [(1) Obligation to disinfect.] All public and semipublic water systems [supplies] shall provide disinfection.

(1) Public water systems using groundwater or surface water as a source. Supplies which use chlorine shall use [a] continuous automatic disinfection by chlorination and shall provide a minimum free chlorine residual of two-tenths (0.2) milligrams per liter (or ppm) at all

points throughout the distribution system. A contact period of at least thirty (30) minutes shall be provided between the chlorine and the water to allow adequate time for disinfection. For those supplies using chlorine, free chlorine residuals shall be checked daily at representative points throughout the system and shall be reported monthly pursuant to 401 KAR 8:020, Section 2(7)(a). Disinfecting agents other than chlorine, such as chloramines and chlorine dioxide, may be acceptable to the cabinet but shall [must] be specifically approved by the cabinet on a case-by-case basis. If chloramination is used, a minimum combined residual of five-tenths [one-half] (0.5) milligrams per liter (or ppm) shall be provided throughout the distribution system. If chlorine dioxide is used, the concentration of combined oxidants (chlorine dioxide, chlorate and chlorite) shall not exceed one and zero-tenths (1.0) milligrams per liter (or ppm) in the water delivered to the distribution system.

(2) All public water systems using surface water as a source, or groundwater under the direct influence of surface water, shall provide disinfection treatment as follows:

(a) The disinfection treatment shall be sufficient to ensure that the total treatment processes of that system achieve at least ninety-nine and nine-tenths (99.9) percent (3-log) inactivation or removal of Giardia lamblia cysts and at least ninety-nine and 99.99 percent (4-log) inactivation or removal of viruses as determined by the cabinet, consistent with the "Guidance Manual for Compliance with the Filtration and Disinfection Requirements for Public Water Systems using Surface Water Sources" incorporated by reference in Section 5 of this regulation.

(b) The residual disinfectant concentration in the water entering the distribution system measured as specified in Section 3(1)(e) of this regulation shall not be less than required by subsection (1) of this section for more than four (4) hours.

(c) The residual disinfectant concentration in the distribution system measured as free chlorine, total chlorine, combined chlorine, or chlorine dioxide as specified in Section 3(1)(e) of this regulation, shall not be less than two-tenths (0.2) milligrams per liter (or ppm) in more than five (5) percent of the samples each month, for two (2) consecutive months that the system serves water to the public. Water in the distribution system with a heterotrophic bacteria concentration less than or equal to 500/ml, measured as heterotrophic plate count (HPC), as specified in Section 3(1)(c) of this regulation, is deemed to have an adequate disinfectant residual for purposes of determining compliance with this requirement. Thus the value "V" in the following formula shall not exceed five (5) percent in one (1) month for two (2) consecutive months.

$$V = \frac{c+d+e}{a+b} \times 100$$

where:

a = number of instances that the residual disinfectant concentration is measured;

b = number of instances that the residual disinfectant concentration is not measured but heterotrophic bacteria plate count (HPC) is measured;

c = number of instances that the residual disinfectant concentration is measured but not detected and no HPC is measured;

d = number of instances that no residual disinfectant concentration is detected and where the HPC is greater than 500/ml; and

e = number of instances that the residual disinfectant concentration is not measured and HPC is greater than 500/ml.

(d) If the cabinet determines, based on site-specific considerations, that a system has no means for having a sample transported and analyzed for HPC by a certified laboratory under the requisite time and temperature conditions specified in Section 3(1)(c) of this regulation and that the system is providing adequate disinfection in the distribution system, the requirements of paragraph (c) of this subsection shall not apply.

(3) Variances or exemptions shall not be granted for subsection (2) of this section.

[(2) Disinfection of water lines. All water distribution systems, including storage distribution tanks, repaired portions of existing systems or all extensions to existing systems, shall be thoroughly disinfected before being placed in service. Water distribution shall disinfect with chlorine or chlorine compounds, in such amounts as to produce a concentration of at least fifty (50) ppm and a residual of at least twenty-five (25) ppm at the end of twenty-four (24) hours, followed by a thorough flushing. New water distribution lines shall not be placed into service until bacteriological samples taken at the points specified in paragraph (a) of this subsection are examined and are shown to be negative following disinfection. Other methods of disinfection may be used with the written permission of the cabinet.]

[(a) Water distribution systems shall submit to the cabinet results of bacteriological samples for each new construction project, routine repair (which includes restoration of pressure to lines where pressure is lost), replacement, or extension to existing systems, after the disinfection and flushing. A core zone, which includes up to the first one-half mile, shall be established. Two (2) samples shall be taken from the core zone. Additionally, one (1) sample taken from each mile of new distribution line shall be submitted to the cabinet. New or routine replacement lines shall not be placed in service until negative laboratory results are obtained on the bacteriological analyses. Sample bottles shall be clearly identified as "special" construction tests. Notification of analytical results shall be given to the cabinet by the most expedient method. Other disinfection methods and testing procedures may be used if the cabinet grants prior written approval.]

[(b) When emergency repairs, due to breaks or ruptures in distribution system lines are required, public water systems may suspend bacteriological sampling, if appropriate and thorough flushing safeguards, with a chlorine residual present, are taken. When this suspension is exercised, records of flushing and chlorine residuals shall be maintained for one (1) year, and bacteriological tests shall be conducted after returning the line to service with records of results maintained for one (1) year. In all cases of loss of pressure below twenty (20) pounds per square inch or breaks or

ruptures requiring more than four (4) hours to repair, the public water systems shall notify the cabinet immediately pursuant to 401 KAR 8:020, Section 2(7)(c). These emergency reports are not required for a loss of pressure, break or rupture occurring in service lines serving only one (1), single family residence.]

Section 2. Filtration. All public water systems using a surface water source and all ground water systems under the direct influence of surface water shall establish filtration systems. The design for such systems shall be submitted to the cabinet in accordance with 401 KAR 8:100, and shall comply with the following by June 29, 1993:

(1) Conventional filtration treatment or direct filtration:

(a) If a public water system uses conventional filtration or direct filtration, the turbidity level of representative samples of the system's filtered water shall be less than or equal to five-tenths (0.5) NTU in at least ninety-five (95) percent of the measurements taken each month, measured as specified in Section 3(1)(d) of this regulation, except that if the cabinet determines that the system is capable of achieving at least ninety-nine and nine-tenths (99.9) percent removal or inactivation of Giardia lamblia cysts at some turbidity level higher than five-tenths (0.5) NTU in at least ninety-five (95) percent of the measurements taken each month, the cabinet may substitute this higher turbidity limit for that system. However, the cabinet shall not approve a turbidity limit that allows more than one (1) NTU in more than five (5) percent of the samples taken each month measured as specified in Section 3(1)(d) of this regulation.

(b) The turbidity level of representative samples of a system's filtered water shall not exceed five (5) NTU, measured as specified in Section 3(1)(d) of this regulation.

(2) Slow sand filtration.

(a) If a public water system uses slow sand filtration, the turbidity level of representative samples of the system's filtered water shall be less than or equal to one (1) NTU in at least ninety-five (95) percent of the measurements taken each month, measured as specified in Section 3(1)(d) of this regulation, except that if the cabinet determines there is no significant interference with disinfection at a higher turbidity level, the cabinet may substitute this higher turbidity limit for that system.

(b) The turbidity level of representative samples of a system's filtered water shall not exceed five (5) NTU, measured as specified in Section 3(1)(d) of this regulation.

(3) Diatomaceous earth filtration.

(a) If a public water system uses diatomaceous earth filtration, the turbidity level of representative samples of the system's filtered water shall be less than or equal to one (1) NTU in at least ninety-five (95) percent of the measurements taken each month, measured as specified in Section 3(1)(d) of this regulation.

(b) The turbidity level of representative samples of a system's filtered water shall not exceed five (5) NTU measured as specified in Section 3(1)(d) of this regulation.

(4) Other filtration technologies. A public water system may use a filtration technology not listed in subsections (1) through (3) of this section if it demonstrates to the cabinet, using pilot plant studies or other means, that the alternative filtration technology, in combination with disinfection treatment that meets the requirements of this regulation, consistently achieves ninety-nine and nine-tenths (99.9) percent removal or inactivation of Giardia lamblia cysts and 99.99 percent removal or inactivation of viruses. If a system makes this demonstration, the requirements of subsection (2) of this section shall apply.

(5) Variances or exemptions shall not be granted for this section.

Section 3. Analytical and Monitoring Requirements. (1) Analytical requirements. The analytical methods specified in this subsection, or otherwise approved by the cabinet, shall be used to demonstrate compliance with this regulation. Measurements for pH, temperature, turbidity, and residual disinfectant concentrations shall be conducted by a party approved by the cabinet. Measurements for total coliforms, fecal coliforms, and HPC shall be conducted by a laboratory certified by the cabinet or EPA to do the analyses. Until laboratory certification criteria are developed for the analysis of HPC and fecal coliforms, a laboratory certified for total coliform analysis by EPA or the cabinet shall be deemed certified for HPC and fecal coliform analysis. The following procedures shall be performed in accordance with the respective methods set forth below:

(a) Fecal coliform concentration - Method 908C (Fecal Coliform MPN Procedures), pp. 878-880, Method 908D (Estimation of Bacterial Density), pp. 880-882, or Method 909C (Fecal Coliform Membrane Filter Procedure), pp. 896-898, as set forth in Standard Methods for the Examination of Water and Wastewater, 1985, American Public Health Association et al, 16th edition.

(b) Total coliform concentration - Method 908A (Standard Total Coliform Multiple - Tube (MPN) Tests), pp. 872-876, Method 908B (Application of Tests to Routine Examinations), pp. 876-878, Method 908D (Estimation of Bacterial Density), pp. 880-882, Method 909A (Standard Total Coliform Membrane Filter Procedure), pp. 887-894, or Method 909B (Delayed - Incubation Total Coliform Procedure), pp. 894-896, as set forth in Standard Methods for the Examination of Water and Wastewater, 1985, American Public Health Association et al, 16th edition; Minimal Medium ONPG-MUG Test, as set forth in the article "National Field Evaluation of a Defined Substrate Method for the Simultaneous Enumeration of Total Coliforms and Escherichia coli from Drinking Water: Comparison with the Standard Multiple Tube Fermentation Method" (Edberg et al), Applied and Environmental Microbiology, Volume 54, pp. 1595-1601, June 1988 (as amended under Erratum, Volume 54, p. 3197, December 1988). (Note: the Minimal Medium ONPG-MUG Test is sometimes referred to as the Autoanalysis Colilert System). Systems may use a five (5) tube test or a ten (10) tube test.

(c) Heterotrophic Plate Count - Method 907A (Pour Plate Method), pp. 864-866, as set forth in Standard Methods for the Examination of Water and Wastewater, 1985, American Public Health Association et al, 16th edition.

(d) Turbidity - Method 214A (Nephelometric Method - Nephelometric Turbidity Units), pp.

134-136, as set forth in Standard Methods for the Examination of Water and Wastewater, 1985 American Public Health Association et al, 16th edition.

(e) Residual disinfectant concentration - residual disinfectant concentrations for free chlorine and combined chlorine (chloramines) shall be measured by Method 408C (Amperometric Titration Method), pp. 303-306, Method 408D (DPD Ferrous Titrimetric Method), pp. 306-309, Method 408E (DPD Colorimetric Method), pp. 309-310, or Method 408F (Leuco Crystal Violet Method), pp. 310-313, as set forth in Standard Methods for the Examination of Water and Wastewater, 1985, American Public Health Association et al, 16th edition. Residual disinfectant concentrations for free chlorine and combined chlorine may also be measured by DPD colorimetric test kits if approved by the cabinet. Residual disinfectant concentrations for ozone shall be measured by the Indigo Method published in the 17th edition of Standard Methods for the Examination of Water and Wastewater, American Public Health Association et al; the Iodometric Method in the 16th edition shall not be used. Other automated methods which are calibrated in reference to the results obtained by the Indigo method on a regular basis may be approved by the cabinet. Residual disinfectant concentrations for chlorine dioxide shall be measured by Method 410B (Amperometric Method) or Method 410C (DPD Method), pp. 322-324, as set forth in Standard Methods for the Examination of Water and Wastewater, 1985, American Public Health Association et al, 16th edition.

(f) Temperature - Method 212 (Temperature) pp. 126-127, as set forth in Standard Methods for the Examination of Water and Wastewater, 1985, American Public Health Association et al, 16th edition.

(g) pH - Method 423 (pH Value), pp. 429-437, as set forth in Standard Methods for the Examination of Water and Wastewater, 1985, American Public Health Association, 16th edition.

(2) Monitoring requirements. A public water system that uses a surface water source or a groundwater source under the influence of surface water shall monitor in accordance with paragraph (a) of this subsection beginning July 1, 1992, and with paragraph (b) of this subsection beginning January 1, 1993, or when filtration is installed, whichever is later.

(a) Turbidity measurements shall be performed by public water systems on representative samples of the system's filtered water at least every four (4) hours that the system serves water to the public. A public water system may substitute continuous turbidity monitoring for grab sample monitoring if it validates the continuous measurement for accuracy on a regular basis using a protocol approved by the cabinet. In addition, a system using continuous monitoring shall submit to the cabinet a schedule of times when the monitoring will be recorded. The schedule shall reflect monitoring at least every four (4) hours the system serves water to the public. If a system uses slow sand filtration or filtration treatment other than conventional treatment, direct filtration, or diatomaceous earth filtration, the cabinet may reduce the sampling frequency to once per day if it determines in writing, that less frequent monitoring is sufficient to indicate effective filtration performance. If a system serves 500 or fewer persons, the cabinet may reduce the turbidity sampling frequency to once per day, regardless of the type of filtration treatment used, if the cabinet determines, in writing, that less frequent monitoring is sufficient to indicate effective filtration performance.

(b) The residual disinfectant concentration of the water entering the distribution system shall be monitored by public water systems continuously, and the lowest value shall be recorded each day, except that if there is a failure in the continuous monitoring equipment, grab sampling every four (4) hours may be conducted in lieu of continuous monitoring, but for no more than five (5) working days following the failure of the equipment, and systems serving 3,300 or fewer persons may take grab samples in lieu of providing continuous monitoring on an ongoing basis at the frequencies each day prescribed below:

System Size by Population	Samples/Day
less than 500	1
501 to 1,000	2
1,001 to 2,500	3
2,501 to 3,300	4

The day's samples shall not be taken at the same time. The sampling intervals shall be subject to cabinet review and approval. If the residual disinfectant concentration falls below the requirements of Section 1(1) of this regulation in a system using grab sampling in lieu of continuous monitoring, the system shall take a grab sample every four (4) hours until the residual disinfectant concentration meets the requirements of Section 1(1) of this regulation.

(c) The residual disinfectant concentration shall be measured at least at the same points in the distribution system and at the same time as total coliforms are sampled, as specified in 401 KAR 8:200, except that the cabinet may allow a public water system which uses both a surface water source, or a groundwater source under direct influence of surface water, and a groundwater source to take disinfectant residual samples at points other than the total coliform sampling points if the cabinet determines in writing that such points are more representative of treated (disinfected) water quality within the distribution system. Heterotrophic bacteria, measured as heterotrophic plate count (HPC) as specified in subsection (1)(c) of this section, may be measured in lieu of residual disinfectant concentration.

(d) If the cabinet determines in writing, based on site-specific considerations, that a system has no means for having a sample transported and analyzed for HPC by a certified laboratory under the requisite time and temperature conditions specified by subsection (1)(c) of this section and that the system is providing adequate disinfection in the distribution system, the requirements of paragraph (c) of this subsection shall not apply to that system.

Section 4. Disinfection of New and Repaired Water Lines. (1) Disinfection of water lines. A water distribution system, including storage distribution tanks, repaired portions of existing systems or all extensions to existing systems, shall be thoroughly disinfected before being placed in service. A water distribution system shall disinfect with chlorine or chlorine

compounds, in amounts as to produce a concentration of at least fifty (50) ppm and a residual of at least twenty-five (25) ppm at the end of twenty-four (24) hours, and the disinfection shall be followed by a thorough flushing. New water distribution lines shall not be placed into service until bacteriological samples taken at the points specified in subsection (2) of this section are examined and are shown to be negative following disinfection. Other methods of disinfection may be used with the written permission of the cabinet.

(2) Water distribution systems shall submit to the cabinet results of bacteriological samples for each new construction project, routine repair (which includes restoration of pressure to lines where pressure is lost), replacement, or extension to existing systems, after the disinfection and flushing. A core zone, which includes up to the first one-half (1/2) mile, shall be established. Two (2) samples shall be taken from the core zone. Additionally, one (1) sample taken from each mile of new distribution line shall be submitted to the cabinet. A new or routine replacement line shall not be placed in service until negative laboratory results are obtained on the bacteriological analyses. Sample bottles shall be clearly identified as "special" construction tests. Notification of analytical results shall be given to the cabinet by the most expedient method. Other disinfection methods and testing procedures may be used if the cabinet grants prior written approval.

(3) If emergency repairs due to breaks or ruptures in distribution system lines are required, public water systems may suspend bacteriological sampling, if appropriate and thorough flushing safeguards, with a chlorine residual present, are taken. If a public water system suspends bacteriological sampling, it shall maintain records of flushing and chlorine residuals for one (1) year, and conduct bacteriological tests immediately after normal disinfectant residuals are detected after returning the line to service. Records of results shall be submitted to the cabinet and shall be maintained for one (1) year. In cases of loss of pressure below twenty (20) pounds per square inch or breaks or ruptures requiring more than eight (8) hours to repair, the public water system shall notify the cabinet immediately pursuant to 401 KAR 8:020, Section 2(7)(c). These emergency reports are not required for a loss of pressure, break or rupture occurring in service lines serving only one (1) single family residence. Community and nontransient noncommunity public water systems shall provide a log of all breaks or ruptures which includes the date and location of the break or rupture, the time it was discovered, the population affected, the length of time required to repair the break or rupture, the date and time disinfectant residuals are detected and the date and time bacteriological samples are taken. The log shall be submitted to the cabinet monthly with the monthly operating report required by 401 KAR 8:020, Section 2(7)(a).

Section 5. Incorporation by Reference. The following items are incorporated by reference and are available for public inspection and copying, subect to copyright law, between the hours of 8 a.m. and 4:30 p.m. eastern standard time, Monday through Friday, at the Division of Water, 18 Reilly Road, Frankfort Office Park, Frankfort, Kentucky 40601:

(1) Standard Methods for the Examination of Water and Wastewater, 16th edition 1985, and for the purposes of 401 KAR 8:150, Section 3(1)(e), the 17th edition, 1989, prepared and jointly published by the American Public Health Association, the American Water Works Association, and the Water Pollution Control Federation. This publication may be obtained by contacting the Publication Office, American Public Health Association, 1015 15th Street NW, Washington, D.C. 20005.

(2) "National Field Evaluation of a Defined Substrate Method for the Simultaneous Enumeration of Total Coliforms and Escherichia Coli from Drinking Water: Comparison with the Standard Multiple Tube Fermentation Method" (Minimal Medium ONPG-MUG Method) (Edgerg et al), Applied and Environmental Microbiology, Volume 54, pp. 1595-1601, June 1988 (as amended under Erratum, Applied and Environmental Microbiology, Volume 54, p. 3197, December, 1988), which may be obtained from the American Water Works Association Research Foundation, 6666 West Quincy Avenue, Denver, Colorado 80235.

(3) "Guidance Manual for Compliance with the Filtration and Disinfection Requirements for Public Water Systems using Surface Water Sources" October, 1989, as published by the United States Environmental Protection Agency, Science and Technology Branch, Criteria and Standards Division, Office of Drinking Water, Washington, D.C., and available from the American Water Works Association, Management Services, 6666 West Quincy Avenue, Denver, Colorado 80235, (303) 794-7711.

[Section 6. [3.] Severability. If any provision of this regulation is set aside by a court of competent jurisdiction, the remainder of this regulation remains in effect.]

FRANK DICKERSON, Commissioner
CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: September 12, 1991
FILED WITH LRC: September 13, 1991 at 9 a.m.

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

401 KAR 8:200. Microbiological and turbidity monitoring.

RELATES TO: KRS Chapter 224, 40 CFR Part 141
STATUTORY AUTHORITY: KRS 224.032, 224.033, 40 CFR Part 141, as amended at 54 FR 27,562 (1989), 56 FR 642 (1991), 56 FR 1557 (1991) [PL 93-523, The Safe Drinking Water Act, as amended in 1986, and by the Lead Contamination and Control Act of 1988], 42 USCA 300f, 300g, **300h**, 300j
NECESSITY AND FUNCTION: KRS 224.032 directs the cabinet to enforce the rules and regulations adopted by the secretary for the regulation and control of the purification of water for public and semipublic use. This regulation sets out a schedule and method for sampling drinking water to test for bacteriological contaminants and establishes maximum contaminant levels for bacteria. This regulation also specifies requirements if tests show maximum contaminant

levels have been exceeded, as well as requirements for monitoring turbidity.

Section 1. All suppliers of water operating a public or semipublic water system, including suppliers operating those systems which provide water purchased from another system, shall meet the requirements of this regulation.

(1) Routine monitoring for total coliform bacteria. A public water system shall collect total coliform samples at sites which are representative of water throughout the distribution system according to a written sample siting plan. A public water system shall submit the written sample siting plan to the cabinet in a manner prescribed by the cabinet and obtain the cabinet's approval of the plan. The plan shall contain the following elements: [Sampling frequency. Suppliers of water for all public water systems shall collect samples to be analyzed for total coliform bacteria per 100 milliliters of water. Coliform density samples shall be taken at regular time intervals and in numbers proportionate to the population served by the system. In no event shall the frequency be less than that set forth as follows:]

(a) A complete name, address, city and zip code for each sample site. If a post office box number or rural route number is used, the highway number, rural route number or other information adequate to locate the sampling site shall be included.

(b) The site shall be identified as residential, commercial, industrial, educational, or some other specific type of sampling location.

(c) A map shall be submitted with the siting plan showing the public water system's distribution system and the location of all proposed sites. A duplicate map shall be maintained by the public water system. These maps shall be prepared on Kentucky county maps, scale: 1:62,500 (1 inch = 1 mile) or on city maps. These maps may be obtained from the Kentucky Transportation Cabinet, Map Sales, 419 Ann Street, Frankfort, Kentucky 40622. The cabinet may waive this requirement in writing for systems with less than five (5) service connections or which serve a population of less than 500 people.

(2) The monitoring frequency for total coliforms for public water systems shall be based on the population served by the system as follows:

TABLE 1
TOTAL COLIFORM SAMPLING REQUIREMENTS
BASED ON POPULATION SERVED

Population Served	Minimum Number Samples	Population Served	Minimum Number Samples
25 - 2,500	2	59,001 - 70,000	70
2,501 - 3,300	3	70,001 - 83,000	80
3,301 - 4,100	4	83,001 - 96,000	90
4,101 - 4,900	5	96,001 - 130,000	100
4,901 - 5,800	6	130,001 - 220,000	120
5,801 - 6,700	7	220,001 - 320,000	150
6,701 - 7,600	8	320,001 - 450,000	180
7,601 - 8,500	9	450,001 - 600,000	210
8,501 - 12,900	10	600,001 - 780,000	240
12,901 - 17,200	15	780,001 - 970,000	270
17,201 - 21,500	20	970,001 - 1,230,000	300
21,501 - 25,000	25	1,230,001 - 1,520,000	330
25,001 - 33,000	30	1,520,001 - 1,850,000	360
33,001 - 41,000	40	1,850,001 - 2,270,000	390
41,001 - 50,000	50	2,270,001 - 3,020,000	420
50,001 - 59,000	60	3,020,001 - 3,960,000	450
		3,960,001 or more	480

[MINIMUM NUMBER OF SAMPLES PER MONTH]

Population Served	Minimum Number Samples	Population Served	Minimum Number Samples
25 - 2,500	2	37,001 - 41,000	45
2,501 - 3,300	3	41,001 - 46,000	50
3,301 - 4,100	4	46,001 - 50,000	55
4,101 - 4,900	5	50,001 - 54,000	60
4,901 - 5,800	6	54,001 - 59,000	65
5,801 - 6,700	7	59,001 - 64,000	70
6,701 - 7,600	8	64,001 - 70,000	75
7,601 - 8,500	9	70,001 - 76,000	80
8,501 - 9,400	10	76,001 - 83,000	85
9,401 - 10,300	11	83,001 - 90,000	90
10,301 - 11,100	12	90,001 - 96,000	95
11,101 - 12,000	13	96,001 - 111,000	100
12,001 - 12,900	14	111,001 - 130,000	110
12,901 - 13,700	15	130,001 - 160,000	120
13,701 - 14,600	16	160,001 - 190,000	130
14,601 - 15,500	17	190,001 - 220,000	140
15,501 - 16,300	18	220,001 - 250,000	150
16,301 - 17,200	19	250,001 - 290,000	160
17,201 - 18,100	20	290,001 - 320,000	170
18,101 - 18,900	21	320,001 - 360,000	180
18,901 - 19,800	22	360,001 - 410,000	190
19,801 - 20,700	23	410,001 - 450,000	200
20,701 - 21,500	24	450,001 - 500,000	210
21,501 - 22,300	25	500,001 - 550,000	220
22,301 - 23,200	26	550,001 - 600,000	230
23,201 - 24,000	27	600,001 - 660,000	240
24,001 - 24,900	28	660,001 - 720,000	250
24,901 - 25,000	29	720,001 - 780,000	260
25,001 - 28,000	30	780,001 - 840,000	270
28,001 - 33,000	35	840,001 - 910,000	280
33,001 - 37,000	40	910,001 - 970,000	290
		970,001 - 1,050,000	300]

(3) [(2)] Population-served calculation. For purposes of determining the population served, the applicable method below shall be used:

(a) When the supplier of water serves an area defined by an official census count or a population projection, the most recent census count or official population projection shall be used; or

(b) When no official figures on population are available on the area served by a supplier of water, the population served shall be considered to be a factor of not less than three and three-tenths (3.3) times the number of residential connections or a factor of not less than three (3) times the total number of all connections, whichever is greater.

(4) [(3)] Semipublic systems. Suppliers of water for semipublic water systems shall cause samples to be tested, for the purpose of determining the presence or absence coliforms [density], at least twice per month. If coliforms are present, appropriate repeat samples shall be taken.

(5) [(4)] Sampling schedule. Each public and semipublic water system shall take routine samples to determine the presence or absence of [for the purpose of determining] coliforms [density]. No more than half of the samples shall be taken in one (1) week. Results of the analyses of the samples shall be submitted to

the cabinet no later than ten (10) days after the end of the month for which the samples were taken. If the tenth day falls on a Saturday, Sunday or holiday the results shall be submitted on the following working day. A noncommunity water system shall sample for total coliform bacteria per 100 milliliters twice each month of operation. Seasonally operated facilities shall notify the cabinet in writing in advance as to the opening and closing dates covered by the [such] sampling requirements. This frequency may be changed by the cabinet on the basis of subsequent surveys and conditions.

(6) [(5)] Forwarding samples. The cabinet shall, upon request, notify a [any] water supplier as to those commercial or state laboratories, certified in accordance with 401 KAR 8:040, to which samples may be sent for determining the presence or absence of coliforms [density analysis]. The samples shall be forwarded to a certified laboratory by the most expeditious or speedy method available to the water supply.

[(6) Sampling points. The water supply shall sample for coliform analysis shall be taken at representative points throughout the water distribution system. Different sampling points shall be designated by the water supply, including remote points in the distribution system. When the sample is collected, the free chlorine residual shall be determined and recorded on the form provided with the sample container. Bacteriological sampling forms shall be fully and accurately completed or the sample shall be invalid.]

(7) Sample collection. Samples taken by or on behalf of public water systems shall be collected in bottles prepared and sterilized in accordance with "Standard Methods". When the sample is collected, the disinfectant residual shall be determined and recorded on the form provided by the laboratory with the sample container. Bacteriological sampling forms shall be fully and accurately completed or the sample shall be invalid. The [Any] disinfecting agent shall be removed from the sample at the time of its collection. A distributor of water collecting bacteriological samples for analysis in its own certified laboratory may use containers other than bottles, if this practice is approved in writing by the cabinet.

(8) Special purpose samples, such as those taken to determine whether disinfection practices are sufficient following pipe placement, replacement, or repair, shall not be used to determine compliance with the MCL for total coliforms set forth in Section 2 of this regulation. Repeat samples taken pursuant to subsection (9)(a) of this section are not special purpose samples, and shall be used to determine compliance with the MCL for total coliforms set forth in Section 2 of this regulation.

(9) Repeat monitoring.

(a) If a routine sample is total coliform-positive, the public water system shall collect a set of repeat samples within twenty-four (24) hours of being notified of the positive result. The system shall collect at least three (3) repeat samples for each total coliform-positive sample found. The cabinet may extend the twenty-four (24) hour limit on a case-by-case basis if the system demonstrates that it has a logistical problem in collecting the repeat samples within twenty-four (24) hours that is beyond its control. If an extension is granted, the cabinet shall specify how much time the system has to collect the repeat samples.

(b) The public water system shall collect at least one (1) repeat sample from the sampling tap where the original total coliform-positive sample was taken, and at least one (1) repeat sample at a tap within five (5) service connections upstream and at least one (1) repeat sample at a tap within five (5) service connections downstream of the original sampling site. If a total coliform-positive sample is at the end of the distribution system, or one (1) away from the end of the distribution system, the cabinet may waive the requirement to collect a repeat sample upstream or downstream of the original sampling site, but a total of three (3) repeat samples shall be collected.

(c) The public water system shall collect all repeat samples on the same day.

(d) If one (1) or more repeat samples in the set is total coliform-positive, the public water system shall collect an additional set of repeat samples in a manner specified in paragraphs (a), (b), and (c) of this subsection. The public water system shall collect the additional samples within twenty-four (24) hours of being notified of the positive result, unless the cabinet extends the limit as provided in paragraph (a) of this subsection. The public water system shall repeat this process until either total coliforms are not detected in one (1) complete set of repeat samples or the system determines that the MCL for total coliforms set forth in Section 2 of this regulation has been exceeded and notifies the cabinet, and the public, pursuant to 401 KAR 8:070. The cabinet may require further testing until all samples are total coliform-negative.

(10) If a system collecting fewer than five (5) routine samples per month has one (1) or more total coliform-positive samples and the cabinet does not invalidate the sample pursuant to subsection (13) of this section, the public water system shall collect at least five (5) routine samples during the next month the system provides water to the public.

(11) After a system collects a routine sample and before it learns the results of the analysis of that sample, if it collects another routine sample from within five (5) adjacent service connections of the initial sample, and the initial sample, after analysis, is found to contain total coliforms, then the system may count the subsequent sample as a repeat sample instead of a routine sample.

(12) Results of routine and repeat samples not invalidated by the cabinet shall be included in determining compliance with the MCL for total coliforms set forth in Section 2 of this regulation.

(13) Invalidation of total coliform samples. A total coliform-positive sample invalidated under this subsection shall not count towards meeting the minimum monitoring requirements of this section.

(a) The cabinet may invalidate a total coliform-positive sample only if the conditions of clause 1, 2, or 3 of this subparagraph are met.

1. The laboratory establishes to the satisfaction of the cabinet that improper sample analysis caused the total coliform-positive result.

2. The cabinet, on the basis of the results of

repeat samples collected as required by subsection (9) of this section, determines in writing that the total coliform-positive sample resulted from a domestic or other nondistribution system plumbing problem. The cabinet shall not invalidate a sample on the basis of repeat sample results unless every repeat sample collected at the same tap as the original total coliform-positive sample is total coliform-positive and every repeat sample collected within five (5) service connections of the original tap is total coliform-negative. The cabinet shall not invalidate a total coliform-positive sample on the basis of repeat samples if every repeat sample is total coliform-negative, or if the public water system has only one (1) service connection.

3. The cabinet has substantial grounds to believe that a total coliform-positive result is due to a circumstance or condition which does not reflect water quality in the distribution system. A decision made by the cabinet to this effect shall be in writing and signed by the Director of the Division of Water upon the written recommendation of the Manager of the Drinking Water Branch. The written decision shall be submitted to the U.S. Environmental Protection Agency and shall be available to the public. The written decision shall state the specific cause of the total coliform-positive sample and shall state what action the public water system has taken, or will take, to correct the problem. The public water system shall, regardless of the cabinet action taken under this clause, take the repeat samples required under subsection (9) of this section. The cabinet shall not invalidate a total coliform-positive sample solely on the grounds that each repeat sample is total coliform-negative.

(b) A laboratory shall invalidate a total coliform sample (unless total coliforms are detected) if the sample produces a turbid culture in the absence of gas production using an analytical method where gas formation is examined (e.g., the Multiple-Tube Fermentation Technique), produces a turbid culture in the absence of an acid reaction in the Presence-Absence (P-A) Coliform Test, or exhibits confluent growth or produces colonies too numerous to count with an analytical method using a membrane filter (e.g., Membrane Filter Technique). If a laboratory invalidates a sample because of the interference, the public water system shall collect another sample from the same location as the original sample, within twenty-four (24) hours of being notified of the interference problem, and have it analyzed for the presence of total coliforms. The system shall continue to resample within twenty-four (24) hours and have the samples analyzed until it obtains a valid result. The cabinet may waive the twenty-four (24) hour time limit on a case-by-case basis.

(14) Sanitary surveys.

(a) A public water system which does not collect five (5) or more routine samples per month shall undergo an initial sanitary survey by June 29, 1994, if it is a community public water system, and June 29, 1999, if it is a noncommunity water system. Thereafter, the system shall undergo a sanitary survey at least once every five (5) years except that a noncommunity water system using only disinfected groundwater not under the influence of surface water, shall undergo a sanitary survey at least once every ten (10) years. The cabinet shall review the results of each sanitary survey to determine whether the existing monitoring frequency is adequate and what additional measures, if any, the system needs to undertake to improve drinking water quality.

(b) Information relating to a source of contamination within a delineated wellhead protection area, which is collected in the course of developing and implementing a U.S. Environmental Protection Agency approved wellhead protection program, may be considered in conducting a sanitary survey of a public water system using groundwater if the information was collected since the last time the public water system was subject to a sanitary survey.

(c) Sanitary surveys shall be performed by the cabinet or an agent approved by the cabinet. Public water systems are responsible for ensuring that required sanitary surveys take place.

(15) Fecal-coliforms - Escherichia coli (E. coli) testing.

(a) If a routine or repeat sample is total coliform-positive, the public water system shall analyze that total coliform-positive culture medium to determine if fecal coliforms are present, except that the public water system may test for E. coli in lieu of fecal coliforms. If fecal coliforms or E. coli are present, the system shall notify the cabinet by the end of the day the system is notified of the test result pursuant to 401 KAR 8:020, Section 2(7)(c).

(b) The cabinet may allow a public water system, on a case-by-case basis, to forego fecal coliform or E. coli testing on a total coliform-positive sample if that system assumes that the total coliform-positive sample is fecal coliform-positive or E. coli-positive and notifies the cabinet as specified in paragraph (a) of this subsection and the provisions of Section 2(2) of this regulation apply.

(16) Analytical methodology. The analysis for the presence or absence of total coliforms shall commence within thirty (30) hours of the sample being collected, unless the cabinet waives this requirement in writing.

(a) The standard sample volume required for total coliform analysis, regardless of analytical method used, is 100 ml.

(b) Public water systems shall determine the presence or absence of total coliforms; a determination of total coliform density is not required.

(c) Public water systems shall conduct total coliform analyses in accordance with one (1) of the following analytical methods:

1. Multiple-Tube Fermentation (MTF) Technique, as set forth in Standard Methods for the Examination of Water and Wastewater, 1985, American Public Health Association et al, 16th edition, Method 908, 908A, and 908B-pp. 870-887, except that ten (10) fermentation tubes shall be used; or Microbiological Methods for Monitoring the Environment, Water and Wastes, U.S. EPA, Environmental Monitoring and Support Laboratory, Cincinnati, Ohio 45268 (EPA-600/8-78-017, December 1978, available from ORD Publications, CERI U.S. EPA, Cincinnati, Ohio 45268), Part III, Section B.4.1-4.6.4, pp. 114-118 (Most Probable Number Method), except that ten (10) fermentation tubes shall be used; or

2. Membrane Filter (MF) Technique, as set forth in Standard Methods for the Examination of Water and Wastewater, 1985, American Public Health Association et al, 16th edition, Method 909, 909A and 909B-pp. 886-896; or Microbiological Methods for Monitoring the Environment, Water and Wastes, U.S. EPA, Environmental Monitoring and Support Laboratory, Cincinnati, Ohio 45268 (EPA-600/8-78-017, December 1978, available from ORD Publications, CERI, U.S. EPA, Cincinnati, Ohio 45268), Part III, Section B.2.1-2.6, pp. 108-112; or

3. Presence-Absence (P-A) Coliform Test, as set forth in Standard Methods for the Examination of Water and Wastewater, 1985, American Public Health Association et al, 16th edition, Method 908E-pp. 882-886; or

(d) In lieu of the ten (10) tube MTF Technique specified in paragraph (c)1 of this subsection, a public water system may use the MTF Technique using either five (5) tubes (twenty (20) ml sample portions) or a single culture bottle containing the culture medium for the MTF Technique, I.E., lauryl tryptose broth (formulated as described in Standard Methods for the Examination of Water and Wastewater, 1985, American Public Health Association et al, 16th edition, Method 908A-pp. 872), as long as a 100 ml water sample is used in the analysis;

(e) A public water system shall conduct fecal coliform analysis in accordance with the following procedure: If the MTF Technique or Presence-Absence (P-A) Coliform Test is used to test for total coliforms, shake the lactose-positive presumptive tube or P-A bottle vigorously and transfer the growth with a sterile three (3) millimeter loop or sterile applicator stick into brilliant green lactose bile broth and EC medium to determine the presence of total and fecal coliforms, respectively. For EPA approved analytical methods which use a membrane filter, transfer the total coliform-positive culture by one (1) of the following methods: remove the membrane containing the total coliform colonies from the substrate with a sterile forceps and carefully curl and insert the membrane into a tube of EC medium (the laboratory may first remove a small portion of selected colonies for verification), swab the entire membrane filter surface with a sterile cotton swab and transfer the inoculum to EC medium (do not leave the cotton swab in the the EC medium), or inoculate individual total coliform-positive colonies into EC medium. Gently shake the inoculated tubes of EC medium to insure adequate mixing and incubate in a waterbath at forty-four and five-tenths (44.5) plus or minus two-tenths (0.2) degrees Celsius for twenty-four (24) plus or minus two (2) hours. The production of gas in the inner fermentation tube of the EC medium indicates positive fecal coliform test. The preparation of EC medium is described in Standard Methods for the Examination of Water and Wastewater, 1985, American Public Health Association, 16th edition. Method 908C-p. 879, paragraph 1a. Public water systems shall determine the presence or absence of fecal coliforms; a determination of fecal coliform density is not required.

(f) A public water system shall conduct analysis of Escherichia coli in accordance with one (1) of the following analytical methods:

1. EC medium supplemented with fifty (50) micrograms/ml of 4-methylumbelliferyl-beta-D-glucuronide (MUG) final concentration). EC medium is described in Standard Methods for the Examination of Water and Wastewater, 1985, American Public Health Association et al, 16th edition, p. 879. MUG may be added to EC medium before autoclaving. EC medium supplemented with fifty (50) micrograms/ml of MUG is commercially available. At least ten (10) ml of EC medium supplemented with MUG shall be used. The inner inverted fermentation tube may be omitted. The procedure for transferring a total coliform-positive culture to EC medium supplemented with MUG shall be as specified in paragraph (e) of this subsection for transferring a total coliform-positive culture to EC medium. Observe fluorescence with an ultraviolet light (366nm) in the dark after incubating tube at forty-four and five-tenths (44.5) plus or minus two-tenths (0.2) degrees Celsius for twenty-four (24) plus or minus two (2) hours; or

2. Nutrient agar supplemented with 100 micrograms/ml 4-methylumbelliferyl-beta-D-glucuronide (MUG) (final concentration). Nutrient agar is described in Standard Methods for the Examination of Water and Wastewater, 1985, American Public Health Association et al, 16th edition, p. 874. This test is used to determine if a total coliform-positive sample, as determined by the Membrane Filter Technique or any other method in which a membrane filter is used, contains E. coli. Transfer the membrane filter containing one (1) or more total coliform colonies to nutrient agar supplemented with 100 micrograms per milliliter (final concentration) of MUG. After incubating the agar plate at thirty-five (35) degrees Celsius for four (4) hours, observe the colonies under ultraviolet light (366 nm) in the dark for fluorescence. If fluorescence is visible, E. coli are present.

(17) Response to violation.

(a) If a public water system exceeds the MCL for total coliforms set forth in Section 2 of this regulation, it shall report the violation to the cabinet no later than the end of the next business day after it learns of the violation, and notify the public in accordance with 401 KAR 8:070.

(b) If a public water system fails to comply with a coliform monitoring requirement, including the sanitary survey requirement, it shall report the monitoring violation to the cabinet within ten (10) days after the system discovers the violation, and notify the public in accordance with 401 KAR 8:070.

[(8) Analytical techniques and maximum contaminant levels for bacteriological contamination. The analysis for the determination of bacteriological contamination shall be determined by either the membrane filter technique or the multiple tube fermentation technique (MPN procedure). The analysis shall be conducted in accordance with "Standard Methods" except that a standard sample size shall be employed. The standard sample used in the membrane filter procedure shall be 100 milliliters. The standard sample used in the five (5) tube most probable number (MPN) procedure (fermentation tube method) shall be five (5) times the standard portion. The standard portion is either ten (10) milliliters or 100 milliliters, as described herein.]

[(9) Maximum bacteriological contaminant level, membrane filter technique. When the membrane filter technique is used, the number of

coliform bacteria shall not exceed any of the following:]

[(a) One (1) per 100 milliliters as the arithmetic mean of all samples examined per month pursuant to subsection (1) of this section except that, at the cabinet's discretion, systems required to take ten (10) or fewer samples per month may be authorized to exclude one (1) positive routine sample per month from the monthly calculation if:]

[1. As approved on a month-to-month basis, the cabinet determines and notifies the public water system that no unreasonable risk to health would exist under the conditions of this modification. A notification may be based upon, but is not limited to, the following:]

[a. The fact that the system provides and maintains an active disinfectant residual in the distribution system;]

[b. The potential for contamination, as indicated by a sanitary survey; and]

[c. The history of water quality at the public water system, including, but not limited to, MCL or monitoring violations;]

[2. The supplier initiates a check sample on each of two (2) consecutive days from the same sampling point, within twenty-four (24) hours after notification that the routine sample is positive, and each check sample is negative; and]

[3. The original positive routine sample is reported to the cabinet and recorded by the supplier pursuant to the provisions of 401 KAR 8:020, Section 2(8). The supplier shall report to the cabinet its compliance with the conditions specified in this subparagraph and a summary of the action taken to correct the prior positive sample result. If a positive routine sample is not used for the monthly calculation, another routine sample shall be analyzed for compliance purposes. This provision may be used only once during two (2) consecutive compliance periods.]

[(b) Four (4) per 100 milliliters in more than one (1) sample when less than twenty (20) are examined per month.]

[(c) Four (4) per 100 milliliters in more than five (5) percent of the samples when twenty (20) or more are examined per month.]

[(10) Maximum bacteriological contaminant level, multiple tube fermentation technique (MPN procedure).]

[(a) Ten (10) milliliter standard tube. When the fermentation tube method and ten (10) milliliter standard tube are used, coliform bacteria shall not be present in any of the following:]

[1. More than ten (10) percent of the tubes in any month except that, at the cabinet's discretion, systems required to take twenty (20) or fewer samples per month may be authorized to exclude one (1) positive routine sample, resulting in one (1) or more positive tubes per month, from the monthly calculation, if:]

[a. As approved on a case-by-case basis, the cabinet determines and notifies the public water system, in writing, that no unreasonable risk to health exists under the conditions of this modification. A notification may be based upon, but not limited to, the following:]

[(i) The provision and maintenance, by the system, of an active disinfectant residual in the distribution system;]

[(ii) The potential for contamination, as indicated by a sanitary survey; and]

[(iii) The history of the water quality at the public water system (e.g., MCL or monitoring violations);]

[b. The supplier initiates a check sample on each of two (2) consecutive days, from the same sampling point, within twenty-four (24) hours after notification that the routine sample is positive, and each check sample is negative; and]

[c. The original positive routine sample is reported to the cabinet and recorded by the supplier pursuant to the provisions of 401 KAR 8:020, Section 2(8), the supplier reports to the cabinet its compliance with the conditions specified in this paragraph, and reports the action taken to correct the prior positive sample result. If a positive routine sample is not used for the monthly calculation, another routine sample shall be analyzed for compliance purposes. This provision shall be used only once during two (2) consecutive compliance periods;]

[2. Three (3) or more tubes in more than one (1) sample when less than twenty (20) samples are examined per month; or]

[3. Three (3) or more tubes in more than five (5) percent of the samples when twenty (20) or more samples are examined per month.]

[(b) 100 milliliter standard sample. When the fermentation tube method and 100 milliliter standard samples are used, coliform bacteria shall not be present in any of the following:]

[1. More than sixty (60) percent of the tubes in any month;]

[2. Five (5) tubes in more than one (1) sample, when less than five (5) samples are examined per month; or]

[3. Five (5) tubes in more than twenty (20) percent of the samples, when five (5) or more samples are examined per month.]

[(11) Bacteriological check sampling. Check sampling shall begin within twenty-four (24) hours of the time of notification of sample analysis and is the responsibility of the public water system. The following check sampling levels are established:]

[(a) Membrane filter technique. When coliform bacteria occur in a single sample, at least two (2) consecutive daily check samples shall be collected and examined from the same sampling point. Additional check samples shall be collected daily, or at a frequency established by the cabinet, until the results obtained from at least two (2) consecutive check samples show less than one (1) coliform bacterium per 100 milliliters.]

[(b) Multiple tube fermentation technique:]

[1. Ten (10) milliliter tubes. When coliform bacteria occur in three (3) or more ten (10) milliliter tubes of a single sample, at least two (2) consecutive daily check samples shall be collected and examined from the same sampling point. Additional check samples shall be collected daily, or at a frequency established by the cabinet, until the results obtained from at least two (2) consecutive check samples show no positive tubes.]

[2. 100 milliliter tubes. When coliform bacteria occur in all five (5) of the 100 milliliter tubes of a single sample, at least two (2) consecutive daily check samples shall be collected and examined from the same sampling point. Additional check samples shall be collected daily, or at a frequency established by the cabinet, until the results obtained from at least two (2) consecutive daily check samples show no positive tubes.]

[(12) Check sample locations. The location at

which the check samples were taken pursuant to this section shall not be eliminated from future sampling without written approval of the cabinet. The results from all coliform bacterial analyses performed pursuant to this section, except those obtained from check samples and special purpose samples, shall be used to determine compliance with the maximum contaminant level for coliform bacteria. Check samples shall not be included in calculating the total number of samples taken each month to determine compliance with subsection (1) of this section.]

[(13) Check sample reporting. When the presence of coliform bacteria in water taken from a particular sampling point has been confirmed by any check samples examined as directed by this section, the supplier of water shall report that to the cabinet within twenty-four (24) hours pursuant to the provisions of 401 KAR 8:020, Section 2(8)(b).]

[(14) When a maximum contaminant level set forth in this section is exceeded, the supplier of water shall report that to the cabinet and notify the public as prescribed in 401 KAR 8:070, Section 1. The cabinet may conduct an on-site inspection to assist the operator in determining the cause of the contamination and may issue an order which includes a time period during which all causes of the contamination shall be corrected.]

[(15) Special purpose samples. Special purpose samples, such as those taken to determine whether disinfection practices following pipe placement, replacement, or repair have been sufficient, shall not be used to determine compliance with subsection (1) of this section.]

Section 2. Maximum Contaminant Levels (MCLs) for Microbiological Contaminants. (1) The MCL is based on the presence or absence of total coliforms in a sample.

(a) If a public water system collects at least forty (40) samples per month and no more than five and zero-tenths (5.0) percent of the samples collected during a month are total coliform-positive, the system is in compliance with the MCL for total coliforms.

(b) If a public water system collects fewer than forty (40) samples per month, and no more than one (1) sample collected during a month is total coliform-positive, the system is in compliance with the MCL for total coliforms.

(2) A fecal coliform-positive repeat sample or E. coli-positive repeat sample, or a total coliform-positive repeat sample following a fecal coliform-positive or E. coli-positive routine sample constitutes a violation of the MCL for total coliforms. For purposes of the public notification requirements in 401 KAR 8:070, this violation may pose an acute risk to health.

(3) A public water system shall determine compliance with the maximum contaminant level for total coliforms set forth in subsections (1) and (2) of this section for each month in which it is required to monitor for total coliforms.

(4) The following technologies are the best technology, treatment techniques, or other means available for achieving compliance with the maximum contaminant level for total coliforms set forth in subsections (1) and (2) of this section:

(a) Protection of wells from contamination by coliforms by appropriate placement and construction;

(b) Maintenance of a disinfectant residual throughout the distribution system;

(c) Proper maintenance of the distribution system including appropriate pipe replacement and repair procedures, main flushing programs, proper operation and maintenance of storage tanks and reservoirs, and continual maintenance of positive water pressure in all parts of the distribution system;

(d) Filtration or disinfection of surface water, as described in 401 KAR 8:150, or disinfection of groundwater using strong oxidants such as chlorine, chlorine dioxide, or ozone; or

(e) The development and implementation of an EPA-approved State Wellhead Protection Program under **42 USCA 300h-7, state programs to establish wellhead protection areas** [section 1428 of the Safe Drinking Water Act, as amended, PL 93-523].

Section 3. Variances and Exemptions. Variances or exemptions from the maximum contaminant level for total coliform set forth in Section 2 of this regulation shall not be permitted unless the public water system demonstrates to the cabinet's satisfaction that the violation of the total coliform maximum contaminant level is due to a persistent growth of total coliforms in the distribution system rather than fecal or pathogenic contamination, a treatment lapse or deficiency, or a problem in the operation or maintenance of the distribution system. In making the demonstration, the public water system shall meet all the requirements of 401 KAR 8:060, including submission of a compliance schedule acceptable to the cabinet. In addition, the public water system shall demonstrate to the cabinet's satisfaction that the following criteria have been met before the cabinet may consider a variance:

(1) Over the past thirty (30) days, water entering the distribution system:

(a) Is free from fecal coliform or E. coli occurrence based on at least daily sampling;

(b) Contains less than one (1) total coliform per 100 milliliters of influent water in at least ninety-five (95) percent of all samples based on at least daily sampling;

(c) Complies with the total turbidity requirements of 401 KAR 8:150, Section 2; and

(d) Contains a continuous disinfection residual consistent with 401 KAR 8:150, Section 1;

(2) The public water system has had no waterborne disease outbreak while being operated in its present configuration;

(3) The public water system maintains biweekly contact with the cabinet and local health departments to assess illness possibly attributable to microbial occurrence in the public drinking water system;

(4) The public water system has evaluated, on a monthly basis, at least the number of samples specified in Section 1(2) of this regulation and has not had an E. coli-positive compliance sample within the last six (6) months, unless the system demonstrates to the cabinet that the occurrence is not due to contamination entering the distribution system;

(5) The public water system has undergone a sanitary survey conducted by a party approved by the cabinet within the past twelve (12) months;

(6) The public water system has a cross

connection control program acceptable to the cabinet and performs an audit of the effectiveness of the program;

(7) The public water system agrees to submit a biofilm control plan to the cabinet within twelve (12) months of the granting of the first request for a variance;

(8) The public water system monitors general distribution system bacterial quality by conducting heterotrophic bacteria plate counts on at least a weekly basis at a minimum of ten (10) percent of the number of total coliform sites specified for that system's size in Section 1(2) of this regulation preferably using the R2A medium in Method 907A, 907B, or 907C, as set forth in the 16th edition of Standard Methods for the Examination of Water and Wastewater, 1985, American Public Health Association, et al; and

(9) The public water system conducts daily monitoring at distribution system sites approved by the cabinet and maintains a detectable disinfectant residual (measured as specified in 401 KAR 8:150, Section 3(1)(e)) at a minimum of ninety-five (95) percent of those points and a heterotrophic plate count of less than 500 colonies per ml (measured as specified in 401 KAR 8:150, Section 3(1)(c)) at sites without a disinfectant residual.

Section 4. [2.] Turbidity Sampling, Analytical Techniques and Maximum Contaminant Levels. **Beginning on** [This section is effective until] July 1, 1992, **public water systems** [when monitoring] shall **monitor** [be] in accordance with 401 KAR 8:150, Section 3(2)(a), and report[ing shall be] in accordance with 401 KAR 8:020, Section 2(7)(a)1, although maximum turbidity limits and measurement techniques contained in subsections (4) and (5) of this section shall remain in effect until June 29, 1993, **when the requirements of 401 KAR 8:150, Sections 2 and 3 shall be met** [after which the provisions of this section are totally repealed].

(1) Who shall [must] sample. [All] Producers of water for public water systems who use surface water sources, in whole or in part, and those groundwater sources which demonstrate a variable turbidity, shall comply with this section. Semipublic systems and systems that purchase water from other systems or obtain their water from turbidity free groundwater sources are not subject to this section.

(2) Sampling frequency. At least one (1) sample per day for the determination of turbidity shall be taken at the producing facility. Turbidity level determinations shall be made within one (1) hour after sample collection.

(3) Sampling point. Samples for the determination of turbidity shall be taken at a representative entry point to the distribution system. Where water is produced by more than one (1) treatment plant for a single system, each plant shall be considered a separate sampling point.

(4) Maximum turbidity limit. The maximum contaminant level for turbidity is one (1) turbidity unit (TU), as determined by a monthly average of daily samples, and no more than five (5) turbidity units, based on an average for two (2) consecutive days.

(5) Measurement technique. The measurement for turbidity shall be by the Nephelometric Method, as set forth in "Standard Methods," or by an alternate method approved in writing by the cabinet.

(6) Excessive turbidity. If the result of a turbidity analysis indicates that the maximum allowable limit has been exceeded, the sampling and measurement shall be confirmed by resampling as soon as practicable and no later than one (1) hour thereafter. If the repeat sample exceeds the maximum allowable limit, the supplier shall report the excess to the cabinet within twenty-four (24) hours. The repeat sample shall be the sample used for the purpose of calculating the monthly average. If the monthly average of the daily samples exceeds the maximum allowable limit, or if the average of two (2) samples taken on consecutive days exceeds five (5) TU, the supplier of water shall report the excess to the cabinet within twenty-four (24) hours and notify the public pursuant to 401 KAR 8:070.

(7) Exceptions. Up to five (5) turbidity units may be allowed, if the supplier of water demonstrates to the cabinet that the higher turbidity does not:

(a) Interfere with disinfection;

(b) Prevent the maintenance of an effective disinfectant agent throughout the distribution system; or

(c) Interfere with microbiological determinations.

Section 5. [3.] Analysis for microbiological contamination and turbidity shall be in accordance with methods approved for drinking water by the U.S. Environmental Protection Agency or by the cabinet. The following documents are hereby incorporated by reference and are available for public inspection and copying between 8 a.m. and 4:30 p.m., Monday through Friday, at the Division of Water, 18 Reilly Road, Frankfort Office Park, Frankfort, Kentucky 40601:

(1) Standard Methods for the Examination of Water and Wastewater, 16th edition, 1985, prepared and jointly published by the American Public Health Association, the American Water Works Association, and the Water Pollution Control Federation. This publication is printed, distributed and may be obtained by contacting the Publication Office, American Public Health Association, 1015 15th Street NW, Washington, D.C. 20005.

(2) "Manual for the Certification of Laboratories Analyzing Drinking Water," EPA 570/9-90/008, April 1990, may be obtained by contacting U.S. EPA, Office of Drinking Water, Washington, D.C., 20460.

(3) Microbiological Methods for Monitoring the Environment, Water and Wastes may be obtained from ORD Publications, December 1978, U.S. EPA, 26 W. Martin Luther King Drive, Cincinnati, Ohio 45268.

(4) Copies of the MMO-MUG Test as set forth in the article "National Field Evaluation of a Defined Substrate Method for the Simultaneous Enumeration of Total Coliforms and Escherichia coli from Drinking Water: Comparison with the Standard Multiple-Tube Fermentation Method: (Edberg, et al), **June 1988** may be obtained from the American Water Works Association Research Foundation, 6666 West Quincy Avenue, Denver, CO 80235.

[Section 6. [4.] Severability. If any provision of this regulation is set aside by a court of competent jurisdiction, the remainder of this regulation remains in effect.]

FRANK DICKERSON, Commissioner
CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: September 12, 1991
FILED WITH LRC: September 12, 1991 at 9 a.m.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(As Amended)

405 KAR 7:035. Exemption for coal extraction incidental to the extraction of other minerals.

RELATES TO: KRS 350.010, 350.028, 350.060, 350.151, 350.465, 30 CFR Parts 702, 730-733, 735, 917, 30 USC 1253, 1255, 1291
STATUTORY AUTHORITY: KRS Chapter 13A, 350.020, 350.028, 350.465, 30 CFR Parts 702, 730-733, 735, 917, 30 USC 1253, 1255, 1291
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate regulations pertaining to surface coal mining and reclamation operations. KRS Chapter 350 also recognizes exemptions from regulation for certain types of operations. This regulation recognizes a regulatory exemption for operations in which coal is extracted incidental to the extraction of other minerals. The regulation sets forth application requirements and procedures for obtaining approval of these exemptions, requirements for public notice and disclosure of information concerning the exemption, standards for cabinet approval of the exemption, conditions for maintaining the exemption, rights of entry and inspection to the site for which the exemption was granted, and enforcement procedures and reporting requirements applicable to the exemption.

Section 1. **Measurement and Reporting Period.** [Definitions. (1) "Cumulative measurement period" means the period of time over which both cumulative production and cumulative revenue are measured.]

(1) [(a)] The beginning of the **cumulative measurement** period **shall be** [is]:

(a) [1.] For mining areas where extraction of coal or other minerals commenced on or after August 3, 1977, the date extraction of coal or other minerals commenced at that mining area; and

(b) [2.] For mining areas where coal or other minerals were extracted prior to August 3, 1977, the operator shall select and consistently use one (1) of the following, subject to cabinet approval: the date extraction of coal or other minerals commenced at that mining area or August 3, 1977.

(2) [(b)] The end of the **cumulative measurement** period **and the end of the twelve (12) month period** [is] (for annual reporting purposes pursuant to Section 9 of this regulation) **shall be**:

(a) [1.] For mining areas where extraction of coal or other minerals commenced on or after the effective date of this regulation, the last day of the calendar quarter during which coal extraction commenced, and each anniversary of that day thereafter; and

(b) [2.] For mining areas where coal or other minerals were extracted prior to the effective date of this regulation, December 31, 1992 and each anniversary of that day thereafter.

[(2) "Cumulative production" means the total tonnage of coal or other minerals extracted from a mining area during the cumulative measurement period. The inclusion of stockpiled coal and other mineral tonnages in this total shall be governed by Section 7 of this regulation.]

[(3) "Cumulative revenue" means the total revenue derived from the sale of coal or other minerals and the fair market value of coal or other minerals transferred or used, but not sold, during the cumulative measurement period.]

[(4) "Mining area" means an individual excavation site or pit from which coal, other minerals, and overburden are removed.]

[(5) "Other mineral" means any commercially valuable substance mined for its mineral value, excluding coal, topsoil, waste, and fill material.]

Section 2. Application Requirements and Procedures. (1)(a) Any person who plans to commence or continue coal extraction after the effective date of this regulation, in reliance on the incidental mining exemption, shall file a complete application for exemption with the cabinet for each mining area.

(b) Following the effective date of this regulation, a person shall not commence coal extraction based upon the exemption until the cabinet approves the application for exemption, except as provided in subsection (5)(c) of this section.

(2) Existing operations. Any person who has commenced coal extraction at a mining area, prior to the effective date of this regulation, in reliance upon the incidental mining exemption, may continue mining operations for sixty (60) days after the effective date of this regulation. Coal extraction shall not continue after this sixty (60) day period unless that person files an administratively complete application for exemption with the cabinet. If an administratively complete application is filed within sixty (60) days, the person may continue extracting coal in reliance on the exemption beyond the sixty (60) day period until the cabinet makes an administrative decision on the application.

(3) Additional information. The cabinet shall notify the applicant if the application for exemption is incomplete and may at any time require submittal of additional information.

(4) Public comment period. Following publication of the newspaper notice required by Section 3(9) of this regulation, the cabinet shall provide a period of no less than thirty (30) days during which any person having an interest that is or may be adversely affected by a decision on the application may submit written comments or objections.

(5) Exemption determination.

(a) No later than ninety (90) days after filing of an administratively complete application, the cabinet shall make a written determination whether, and under what conditions, the persons claiming the exemption are exempt under this regulation, and shall notify the applicant and persons submitting comments on the application of the determination and the basis for the determination.

(b) The determination of exemption shall be based upon information contained in the application and any other information available to the cabinet at that time.

(c) If the cabinet fails to provide an applicant with the determination specified in paragraph (a) of this subsection, an applicant who has not begun may commence coal extraction pending a determination on the application unless the cabinet issues an interim finding, together with reasons therefore, that the applicant shall not begin coal extraction.

(6) Administrative review.

(a) In accordance with the procedures established under 405 KAR 7:090, Section 5, within thirty (30) days of the notification of a determination under subsection (5) of this section, any person adversely affected by the determination may request a formal hearing to review the determination.

(b) A request for formal hearing filed under 405 KAR 7:090, Section 5 shall not suspend the effect of a determination under subsection (5) of this section.

Section 3. Contents of Application for Exemption. An application for exemption shall include at a minimum:

(1) The name and address of the applicant;

(2) A list of the minerals sought to be extracted;

(3) Estimates of annual production of coal and the other minerals within each mining area over the anticipated life of the mining operation;

(4) Estimated annual revenues to be derived from bona fide sales of coal and other minerals to be extracted within the mining area;

(5) If coal or the other minerals are to be used rather than sold, estimated annual fair market values at the time of projected use of the coal and other minerals to be extracted from the mining area;

(6) The basis for all annual production, revenue, and fair market value estimates;

(7) A description, including county, city if within municipal boundaries, and boundaries of the land, of sufficient certainty that the mining areas can be located and distinguished from other mining areas;

(8) An estimate to the nearest acre of the number of acres that will compose the mining area over the anticipated life of the mining operation;

(9) Evidence of publication, in the newspaper of largest bona fide circulation (according to the definition in KRS 424.110 to 424.120) in the county of the mining area, of a public notice that an application for exemption has been filed with the cabinet. The public notice shall identify the persons claiming the exemption and shall contain a description of the proposed operation and its locality sufficient for interested persons to identify the operation;

(10) Representative stratigraphic cross-section(s) based on test borings or other information identifying and showing:

(a) The relative position, approximate thickness, and density of the coal and each other mineral to be extracted for commercial use or sale; and

(b) The relative position and thickness of any material, not classified as other minerals, that will also be extracted during the conduct of mining activities;

(11) A map of appropriate scale that clearly identifies the mining area;

(12) A general description of mining and mineral processing activities for the mining area;

(13) A summary of sale commitments and agreements, if any, that the applicant has received for future delivery of other minerals to be extracted from the mining area, or a description of potential markets for the other minerals;

(14) If the other minerals are to be commercially used by the applicant, a description specifying the use;

(15) For operations having extracted coal or other minerals prior to filing an application for exemption, in addition to the information required above, the following information:

(a) Any relevant documents the operator has received from the cabinet documenting the operation's exemption from the requirements of the SMCRA, KRS Chapter 350, and KAR Title 405;

(b) The cumulative production of the coal and other minerals from the mining area; and

(c) Estimated tonnages of stockpiled coal and other minerals; and

(16) Any other information pertinent to the qualification of the operation as exempt.

Section 4. Public Availability of Information. (1) Except as provided in subsection (2) of this section, all information submitted to the cabinet under this regulation shall be made immediately available for public inspection and copying at the department's regional office with jurisdiction over coal mining in the locality of the subject exempt operation, until at least three (3) years after expiration of the period during which the subject mining area is active.

(2) The cabinet may keep information submitted to the cabinet under this regulation confidential if the person submitting it requests in writing, at the time of submission, that it be kept confidential and if the information concerns trade secrets or is privileged commercial or financial information of the persons intending to conduct operations under this regulation.

(3) Information requested to be held as confidential under subsection (2) of this section shall not be made publicly available until after notice and opportunity to be heard is afforded persons both seeking and opposing disclosure of the information.

Section 5. Requirements for Exemption. (1) Activities are exempt from the requirements of SMCRA, KRS Chapter 350, and KAR Title 405 (excluding this regulation) if all of the following are satisfied:

(a) The cumulative production of coal extracted from the mining area does not exceed sixteen and two-thirds (16 2/3) percent of the total cumulative production of coal and other minerals removed for purposes of bona fide sale or reasonable commercial use, determined annually.

(b) The coal is produced from one (1) or more seams lying above the deepest stratum from which other minerals are extracted for purposes of bona fide sale or reasonable commercial use, or from a seam immediately below this deepest stratum.

(c) The cumulative revenue derived from the coal extracted from the mining area does not exceed fifty (50) percent of the total

cumulative revenue derived from the coal and other minerals removed for purposes of bona fide sale or reasonable commercial use, determined annually. If the coal extracted or the minerals removed are used by the operator or transferred to a related entity for use instead of being sold in a bona fide sale, then the fair market value of the coal or other minerals shall be calculated at the time of use or transfer and shall be considered rather than revenue.

(2) Persons that are seeking or have obtained an exemption under this regulation from the requirements of SMCRA, KRS Chapter 350, and 405 KAR Chapters 7 through 24 (excluding this regulation) shall comply with the following:

(a) Each other mineral upon which an exemption under this regulation is based shall be a commercially valuable mineral for which a market exists or which is mined in bona fide anticipation that a market will exist for the mineral in the reasonably foreseeable future, not to exceed twelve (12) months from the end of the current period for which cumulative production is calculated. A legally binding agreement for the future sale of other minerals shall be sufficient to demonstrate this standard.

(b) If either coal or other minerals are transferred or sold by the operator to a related entity for its use or sale, the transaction shall be made for legitimate business purposes.

Section 6. Conditions of Exemption and Right of Inspection and Entry. (1) A person conducting activities covered by this regulation shall:

(a) Maintain on-site, or at other locations available to authorized representatives of the cabinet and the Secretary of the U.S. Department of the Interior, information necessary to verify the exemption including, but not limited to, commercial use and sales information, extraction tonnages, and a copy of the exemption application and exemption approved by the cabinet;

(b) Notify the cabinet upon completion of the mining operations or permanent cessation of all coal extraction activities; and

(c) Conduct operations in accordance with the approved application or, if authorized to extract coal under Section 2(2) or (5)(c) of this regulation prior to submittal or approval of an exemption application, in accordance with the standards of this regulation.

(2) Authorized representatives of the cabinet and the Secretary of the U.S. Department of the Interior shall have the right to conduct inspections of operations claiming exemption under this regulation.

(3) Each authorized representative of the cabinet and the Secretary of the U.S. Department of the Interior conducting an inspection under this regulation shall:

(a) Have a right of entry to, upon, and through any mining and reclamation operations without advance notice or a search warrant, upon presentation of appropriate credentials;

(b) At reasonable times and without delay, have access to and copy any records relevant to the exemption; and

(c) Have a right to gather physical and photographic evidence to document conditions, practices, or violations at a site.

(4) No search warrant shall be required with respect to any activity under subsections (2) and (3) of this section, except that a search warrant may be required for entry into a building.

Section 7. Stockpiling of Minerals. (1) Coal. Coal extracted and stockpiled may be excluded from the calculation of cumulative production until the time of its sale, transfer to a related entity, or use:

(a) Up to an amount equaling a twelve (12) month supply of the coal required for future sale, transfer, or use as calculated based upon the average annual sales, transfer, and use from the mining area over the two (2) preceding years; or

(b) For a mining area where coal has been extracted for a period of less than two (2) years, up to an amount that would represent a twelve (12) month supply of the coal required for future sales, transfer, or use as calculated based on the average amount of coal sold, transferred, or used each month.

(2) Other minerals.

(a) The cabinet shall disallow all or part of an operator's tonnages of stockpiled other minerals for purposes of meeting the requirements of this regulation if the operator fails to maintain adequate and verifiable records of the mining area of origin or the disposition of stockpiles, or if the disposition of the stockpiles indicates the lack of commercial use or market for the minerals.

(b) The cabinet shall only allow an operator to utilize tonnages of stockpiled other minerals for purposes of meeting the requirements of this regulation if:

1. The stockpiling is necessary to meet market conditions or is consistent with generally accepted industry practices; and

2. Except as provided in paragraph (c) of this subsection, the stockpiled other minerals do not exceed a twelve (12) month supply of the mineral required for future sales as approved by the cabinet on the basis of the exemption application.

(c) The cabinet may allow an operator to utilize tonnages of stockpiled other minerals beyond the twelve (12) month limit established in paragraph (b) of this subsection if the operator can demonstrate to the cabinet's satisfaction that the additional tonnage is required to meet future business obligations of the operator, such as may be demonstrated by a legally binding agreement for future delivery of the minerals.

(d) The cabinet may periodically revise the other mineral stockpile tonnage limits in accordance with the criteria established by paragraphs (b) and (c) of this subsection based on additional information available to the cabinet.

Section 8. Revocation and Enforcement. (1) Cabinet responsibility. The cabinet shall conduct an annual compliance review of the mining area, utilizing:

(a) The annual report submitted pursuant to Section 9 of this regulation;

(b) An on-site inspection; and

(c) Any other information available to the cabinet.

(2) If the cabinet has reason to believe that a specific mining area was not exempt under the provisions of this regulation at the end of the previous reporting period, is not exempt, or will be unable to satisfy the exemption criteria

at the end of the current reporting period, the cabinet shall notify the operator that the exemption may be revoked and the reason(s) therefor[e]. The exemption shall be revoked unless the operator demonstrates to the cabinet within thirty (30) days that the mining area in question did meet and will continue to [does] meet the criteria for exemption.

(3)(a) If the cabinet finds that an operator has not demonstrated that activities conducted in the mining area qualify for the exemption, the cabinet shall revoke the exemption and immediately notify the operator and interveners. If a decision is made not to revoke an exemption, the cabinet shall immediately notify the operator and interveners.

(b) In accordance with the procedures established under 405 KAR 7:090, Section 5, within thirty (30) days of the notification of a decision whether to revoke an exemption, any person adversely affected by the decision may request a formal hearing to review the decision.

(c) A request for formal hearing filed under 405 KAR 7:090, Section 5 shall not suspend the effect of a decision whether to revoke an exemption.

(4) Direct enforcement.

(a) An operator mining in accordance with the terms of an approved exemption shall not be cited for violations of KRS Chapter 350 or 405 KAR Chapters 7 through 24 that occurred prior to the revocation of the exemption.

(b) An operator who does not conduct activities in accordance with the terms of an approved exemption and knows or ought to know that the activities are not in accordance with the approved exemption shall be subject to direct enforcement action for violations of KRS Chapter 350 and 405 KAR Chapters 7 through 24 that occur during the period of the activities.

(c) Upon revocation of an exemption or denial of an exemption application, an operator shall stop conducting surface coal mining operations until a permit is obtained, and shall comply with the reclamation standards of KRS Chapter 350 and 405 KAR Chapters 7 through 24 with regard to conditions, areas, and activities existing at the time of revocation or denial.

Section 9. Reporting Requirements. (1)(a) Following approval by the cabinet of an exemption for a mining area, the person receiving the exemption shall, for each mining area, file a written report annually with the cabinet containing the information specified in subsection (2) of this section.

(b) The report shall be filed no later than thirty (30) days after the end of the twelve (12) month period as determined in accordance with Section 1(2) [the definition of "cumulative measurement period" in Section 1(1)] of this regulation.

(c) The information in the report shall cover:

1. Annual production of coal and other minerals and annual revenue derived from coal and other minerals during the preceding twelve (12) month period; and

2. The cumulative production of coal and other minerals and the cumulative revenue derived from coal and other minerals.

(2) For each period and mining area covered by the report, the report shall specify:

(a) The number of tons of extracted coal sold in bona fide sales and the total revenue derived from these sales;

(b) The number of tons of coal extracted and used or transferred by the operator or related entity and the estimated total fair market value of this coal;

(c) The number of tons of coal stockpiled;

(d) The number of tons of other commercially valuable minerals extracted and sold in bona fide sales and total revenue derived from these sales;

(e) The number of tons of other commercially valuable minerals extracted and used or transferred by the operator or related entity and the estimated total fair market value of these minerals; and

(f) The number of tons of other commercially valuable minerals removed and stockpiled by the operator.

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

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(As Amended)

405 KAR 10:200. Kentucky bond pool.

RELATES TO: KRS Chapter 304, 350.020, 350.028, 350.060, 350.062, 350.064, 350.068, 350.085, 350.093, 350.095, 350.100, [350.110,] 350.113, 350.130, 350.135, 350.151, 350.260, 350.465, 350.700, 350.705, 350.710, 350.715, 350.720, 350.725, 350.730, 350.735, 350.740, 350.745, 350.750, 350.755, 350.990, 30 CFR Parts 730-733, 735, 800.11(e), 917, 30 USC 1253, 1255, 1259

STATUTORY AUTHORITY: KRS Chapter 13A, 350.020, 350.028, 350.060, 350.062, 350.064, 350.093, 350.130, 350.151, 350.465, 350.710, 350.715, 350.720, 350.725, 350.730, 350.735, 350.740, 350.750, 30 CFR Parts 730-733, 735, 800.11(e), 917, 30 USC 1253, 1255, 1259

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to regulate surface coal mining and reclamation operations, including requiring bond sufficient to ensure [insure] satisfactory reclamation. KRS Chapter 350 further authorizes the cabinet to establish alternative methods of meeting bonding requirements. This regulation implements an alternative bonding program known as a bond pool. This regulation establishes requirements for applications for membership in the bond pool; procedures for submittal of, review of, and decisions on applications, including determinations of financial standing and reclamation compliance records of applicants; procedures for acceptance of specific permit areas into coverage by the bond pool; and procedures for keeping of production records, reporting of production, and payment of fees based on coal production.

[Section 1. Definitions. (1) "Administrator" or "bond pool administrator" means the cabinet employee named by the secretary to assist the commission and to perform certain administrative functions in connection with the bond pool, as required by KRS 350.715.]

[(2) "Applicant," for purposes of this regulation, means a person who [or entity which]

has submitted an application form to the commission seeking membership in the bond pool.]

[(3) "Bond pool" or "Kentucky Bond Pool" means the voluntary alternative bonding program [as] established at KRS 350.700 through .755.]

[(4) "Commission" or "bond pool commission" means the seven (7) member body established at KRS 350.705.]

[(5) "Member" means a person who [or entity which] the bond pool commission has determined meets the minimum requirements of KRS 350.720 and this regulation for inclusion in the bond pool and upon whom the commission has formally conferred membership.]

[(6) "Month of operation," for the purposes of Section 7 of this regulation, means a calendar month in which a duty exists to reclaim a disturbed area for which a permit was issued under KRS Chapter 350. It is not necessary that coal extraction occur during the month.]

Section 1. [2. General. (1)] Applicability. This regulation applies only to the voluntary alternative bonding program known as the Kentucky Bond Pool, as established at KRS 350.700 through 350.755, and to permanent program permits or increments covered under that pool.

Section 2. [(2)] Forms.

(1) [(a)] The following forms, which are required to be submitted by applicants and members, are hereby incorporated by reference:

(a) [1.] Application for Membership, BP-01, revised September 1, 1988; and

(b) [2.] Monthly Production Report, BP-02.

(2) [(b)] These forms may be reviewed or obtained at the Department for Surface Mining Reclamation and Enforcement, #2 Hudson Hollow, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

Section 3. Review of Decisions. There shall be no administrative appeal under 405 KAR 7:090 from a decision of the commission. However, the applicant or member may within sixty (60) days after notice of the decision, request the commission to reconsider its decision. The commission may, at its discretion, grant or deny the request for reconsideration.

Section 4. Applications for Membership. (1) Any person desiring membership in the bond pool shall submit an application for membership to the commission at the address established by the administrator.

(2) The application shall be submitted on forms provided by the commission and shall be of the form, content, and number of originals and copies as the commission may require. [The application form is incorporated by reference in Section 2(2) of this regulation.] The application shall be typed or printed, and shall be legible throughout.

(3) Financial statements required with the application shall be prepared by a certified public accountant. Financial statements shall be kept confidential to the commission, the administrator, and cabinet personnel authorized by the administrator.

(4) The application shall include an application fee of $100 by cash or by certified check, cashier's check or money order made payable to "Kentucky State Treasurer." The fee shall not be refunded in any circumstances, but shall be applied toward the membership fee if the applicant is accepted for membership.

(5) The application shall be complete in all respects.

Section 5. Review of Applications. (1) As soon as practicable after the administrator receives the application, he shall determine whether the application is complete or incomplete.

(a) If the application is incomplete, the administrator shall so notify the applicant and shall identify the additional information which is needed to make the application complete. The applicant may submit the corrected application, in whole or in part, and no additional application fee shall be required.

(b) If the application is complete, the administrator shall so notify the applicant in writing. The administrator shall evaluate the complete application and any other relevant information available to the administrator, and shall submit the evaluation to the commission. The application, the administrator's evaluation, and any other relevant information available to the commission, shall form the factual basis for the commission's decision on the application.

(2) The commission shall act upon the application as soon as practicable.

(a) If the commission approves the application, the administrator shall provide written notice to the applicant. The notice shall specify the rating which the applicant will receive upon membership, and shall state the membership fee required. The applicant shall submit the required membership fee. As soon as practicable after receipt of the membership fee, the administrator shall provide the applicant with an official certificate of membership which shall confer actual membership as of the date of the certificate. The certificate shall state the rating assigned to the member and also shall assign the member a unique membership number. The certificate shall be signed by the chairman of the commission and by the administrator.

(b) If the commission denies the application, the administrator shall provide written notice to the applicant, setting forth the reasons for denial. The notice of denial shall be signed by the chairman of the commission.

(3) The commission may defer its decision on an application if the applicant, any person who owns or controls the applicant, any person who is owned or controlled by the applicant, or any person who is under common ownership or control with the applicant has appealed a notice of noncompliance and order for remedial measures or an order for cessation and immediate compliance [violation or cessation order] or has a notice or order [violation] pending a penalty assessment and the notice [violation] or [cessation] order pending an appeal or penalty assessment would affect the applicant's eligibility or rating.

Section 6. Determination of Financial Standing. (1) If the commission or administrator prepares summaries or analyses of information contained in the applicant or member's [applicant's] financial statements, the summaries or analyses [they] shall be kept confidential if [where] necessary to ensure [insure] the confidentiality of information contained in the financial statements.

(2) The financial standing of the applicant or

member shall be determined based upon the financial information required in the application and other information available to the commission and cabinet. The commission may consider, but shall not be limited to, the following financial ratios and related financial information:

(a) The ratio of current assets to current liabilities;

(b) The ratio of net income to net sales;

(c) The ratio of total liabilities to stockholders' equity;

(d) The ratio of net income to owners' equity;

(e) The ratio of owners' equity to total assets; and

(f) The ratio of the sum of cash, marketable securities, and net receivables, to current liabilities.

Section 7. Determination of Reclamation Compliance Record. (1) Excellent compliance record. The applicant or member shall be deemed to have an excellent compliance record if the applicant or member, each person who owns or controls the applicant or member, each person who is owned or controlled by the applicant or member, and each person who is under common ownership or control with the applicant or member, meet all the criteria in this subsection:

(a) Has never committed a violation for mining without having first obtained the required permit under KRS Chapter 350;

(b) Has never forfeited a bond or had a permit revoked under KRS Chapter 350;

(c) Has never avoided forfeiture of a bond under KRS Chapter 350 because a surety performed reclamation work in order to avoid forfeiture;

(d) Has never been determined to have demonstrated a pattern of [willful] violations pursuant to KRS 350.028(4), 350.130(3), or 350.465(3)(f);

(e) Has not been issued more than one (1) order for cessation and immediate compliance [failure-to-abate cessation order] pursuant to 405 KAR 12:020, Section 3(1)(a) in the most recent thirty-six (36) months of operation and the [cessation] order was abated as ordered by the cabinet in a timely manner and was not for a violation of contemporaneous reclamation requirements under 405 KAR 16:020 or 405 KAR 18:020;

(f) Has not been issued more than one (1) [cessation] order for cessation and immediate compliance under 405 KAR 12:020, Section 3(1)(b) in the most recent thirty-six (36) months of operation and the [cessation] order was abated as ordered by the cabinet in a timely manner;

(g) Has not committed more than one (1) violation of contemporaneous reclamation requirements under 405 KAR 16:020 or 405 KAR 18:020 in the most recent thirty-six (36) months of operation and the violation was abated as ordered by the cabinet in a timely manner, except the commission may for good cause and by unanimous vote exclude violations that have been terminated by the cabinet with no civil penalty;

(h) Has not committed more than three (3) violations of KRS Chapter 350 or 405 KAR Chapters 7 through 24 on any one (1) permit in any twelve (12) month period of the most recent thirty-six (36) months of operation, except the commission may for good cause and by unanimous vote exclude the twelve (12) month period on one (1) permit during which the largest number of violations occurred and may for good cause and by unanimous vote exclude violations that were timely abated and terminated by the cabinet with no civil penalty; or

(i) Has not had civil penalties under KRS 350.990 or [,] 405 KAR 7:090 or 405 KAR 7:095 remaining unpaid more than thirty (30) days after they were due and payable, within the most recent thirty-six (36) months of operation.

(j) To the extent information is available, the commission may take into account the [applicant's] performance of the applicant or member and each person who owns or controls, is owned or controlled by, or is under common ownership or control with the applicant or member, in other states and on federal lands and Indian lands under criteria similar or equivalent to those in this subsection.

(2) Acceptable compliance record. The applicant or member shall be deemed to have an acceptable compliance record if the applicant or member, each person who owns or controls the applicant or member, each person who is owned or controlled by the applicant or member, and each person who is under common ownership or control with the applicant or member, meet all the criteria in this subsection:

(a) Has never committed a violation for mining without having first obtained the required permit under KRS Chapter 350;

(b) Has never forfeited a bond or had a permit revoked under KRS Chapter 350;

(c) Has never avoided forfeiture of a bond under KRS Chapter 350 because a surety performed reclamation work to avoid forfeiture;

(d) Has never been determined to have demonstrated a pattern of [willful] violations pursuant to KRS 350.028(4), 350.130(3), or 350.465(3)(f);

(e) Has not been issued more than four (4) [cessation] orders for cessation and immediate compliance under 405 KAR 12:020, Section 3, in the most recent thirty-six (36) months of operation and each [cessation] order was abated as ordered by the cabinet in a timely manner and not more than one (1) was for a violation of contemporaneous reclamation requirements under 405 KAR 16:020 or 405 KAR 18:020;

(f) Has not committed more than three (3) violations of contemporaneous reclamation requirements under 405 KAR 16:020 or 405 KAR 18:020 in the most recent thirty-six (36) months of operation, except the commission may for good cause and by unanimous vote exclude violations that were timely abated and terminated by the cabinet with no civil penalty;

(g) Has not committed more than eight (8) violations of KRS Chapter 350 or 405 KAR Chapters 7 through 24 on any one (1) permit in any twelve (12) month period of the most recent thirty-six (36) months of operation, except the commission may for good cause and by unanimous vote exclude the twelve (12) month period on one (1) permit during which the largest number of violations occurred and may for good cause and by unanimous vote exclude violations that were timely abated and terminated by the cabinet with no civil penalty; or

(h) Has not had civil penalties under KRS 350.990 or [,] 405 KAR 7:090 or 405 KAR 7:095 remaining unpaid more than ninety (90) days after they were due and payable, within the most recent thirty-six (36) months of operation.

(i) To the extent information is available, the commission may take into account the [applicant's] performance of the applicant or

member and each person who owns or controls, is owned or controlled by, or is under common ownership or control with the applicant or member, in other states and on federal lands and Indian lands under criteria similar or equivalent to those in this subsection.

Section 8. Acceptance of Permit Areas Into Bond Pool. (1) The commission shall specifically set forth those permits, increments, or portions thereof, which have been accepted for coverage under the bond pool. Coverage shall not be effective unless so identified by the commission.

(2) Eligible portions of all permits issued to the member after the date of membership shall be covered by the bond pool.

(3) If a permit was issued to the member prior to the date of membership but has not been disturbed as of the date of membership, eligible portions of the permit shall be covered by the bond pool. The member shall substitute the appropriate rating based bond under KRS 350.735 for the bond originally posted for the permit area or increment.

(4) For existing permits or increments which have been disturbed as of the date of membership, the bond pool shall cover all eligible undisturbed portions of the permits or increments in accordance with this subsection.

(a) A permit area or increment shall not be accepted for coverage if coal removal has been completed or substantially completed on the permit area or increment. In determining whether coal removal has been substantially completed, the commission shall consider factors such as the amount or percentage of coal yet to be extracted from the permit area or increment, the acreage or percentage of the permit area or increment yet to be disturbed, and the amount of time which likely would be required to complete coal extraction from the permit area or increment.

(b) Within thirty (30) days after the date of membership the member shall, for each existing permit, designate to the cabinet in writing a date, which shall be not later than ninety (90) days after the date of membership, on which eligible portions of the permit shall be covered by the bond pool. With the designation, the member shall also submit maps as required by the cabinet which clearly identify those portions of the permit area which the member expects to have disturbed as of the designated date and those portions which are expected to remain undisturbed as of that date. The cabinet may, on a case-by-case basis and for good cause, grant extensions to the thirty (30) and ninety (90) day periods in this paragraph.

(c) The cabinet shall recalculate the bond amount for the permit area or increment as two (2) bond amounts for two (2) new increments. One (1) new increment shall include the portion expected to be disturbed as of the designated date, and one (1) shall include the portion expected to remain undisturbed as of the designated date.

(d) The member shall, on or before the designated date, post a new bond in the amount determined by the cabinet for the increment containing the areas expected to be disturbed as of the designated date. This increment shall not be covered by the bond pool.

(e) The member shall, on or before the designated date, post a new rating based bond in the amount determined by the cabinet pursuant to KRS 350.735 for the increment containing the areas expected to remain undisturbed as of the designated date. This increment shall be covered by the bond pool. This increment shall not be disturbed until the bond required under this paragraph has been posted.

(f) Upon receipt and approval of acceptable bonds as required by paragraphs (d) and (e) of this subsection, and upon verification by the cabinet that the increment to be covered by the bond pool has not been disturbed, the cabinet shall release the bond originally posted for the permit area or increment.

(5) Any member that submits a preliminary permit application to the cabinet shall notify the bond pool administrator in writing within fourteen (14) calendar days of the submittal date.

Section 9. Production Records, Reporting, and Payment of Fees. (1)(a) Authorized representatives of the commission and administrator shall have access to all permit areas of the member for purposes of determining compliance with the requirements of this section.

(b) Each member shall make any book or record necessary to substantiate the accuracy of reports and payments available at reasonable times for inspection and copying by authorized representatives of the commission and administrator. The books and records shall include, but not be limited to, those required under subsection (2) of this section, books and records related to federal reclamation fees as required under 30 CFR Part 870, and books and records related to Kentucky coal severance tax as required under KRS Chapter 143. All information copied shall be kept confidential to the administrator and commission and their authorized representatives.

(c) Each member shall retain books and records for a period of six (6) years from the end of the calendar month in which a report was due.

(d) Authorized representatives of the administrator and commission shall have authority to examine records of second parties involved in the sale or transfer of the ownership of coal by the member, and shall have authority to examine the records of any party selling or transferring coal to the member.

(2) Each member shall maintain current books and records that separately contain the tonnage [tons] of coal extracted for each permit covered by the bond pool.

(3) Determination of fees. Fees shall be determined by the weight of the coal the first time the coal is weighed.

(a) The weight of the coal shall be the actual gross weight of the coal. Impurities, including water, that have not been removed prior to the first time the coal is weighed shall not be deducted from the gross weight.

(b) If the member combines surface mined coal and underground mined coal before the coal is weighed, the rate for surface mined coal shall apply unless the member can substantiate the tonnage produced by surface and underground mining by acceptable engineering calculations or other procedures which the cabinet may require.

(4) Reporting of tonnage and payment of fees.

(a) On forms provided by the cabinet each member shall report, for each permit covered by the bond pool, all coal tonnage extracted during the reporting period. [The reporting form is incorporated by reference in Section 2(2) of

this regulation.] Payment of fees shall accompany the report.

(b) The reporting and payment period shall be monthly. The report shall be submitted, and fees shall be paid, not later than the 20th day of the month which follows the reporting period. The report shall be submitted even if the member has zero production during the reporting period.

(c) Late report or payment. If a member fails to submit a report or payment on or before the due date, five (5) percent of the original fee due shall be added to the fee for each month or fraction thereof elapsing between the due date and the date on which the report or payment is submitted. In no case shall the penalty be less than ten (10) dollars.

(5) As soon as practicable after each report is received, the administrator shall examine it and shall notify the member of any underpayment or overpayment.

(a) If the amount of required fee as computed by the administrator is greater than the amount submitted by the member, the administrator shall notify the member, within thirty (30) days from the date the payment was received, of the additional amount to be paid; except that in the case of a failure to submit a report or of a fraudulent report, the examination and notification may occur at any time. Additional fee payments under this paragraph shall include a penalty of five (5) percent of the amount of the deficiency for each month or fraction thereof elapsing between the original due date and the date on which the payment is submitted.

(b) If the amount of required fee as computed by the administrator is less than the amount submitted by the member, the administrator shall notify the member, within thirty (30) days from the date the payment was received, of the amount of the overpayment. The member may receive credit for the overpayment against the next monthly payment or any subsequent payment.

FRANK DICKERSON, Commissioner
CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: July 12, 1991
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NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(As Amended)

405 KAR 16:190. Backfilling and grading.

RELATES TO: KRS 350.020, 350.093, 350.100, 350.405, 350.410, 350.450, 350.465, 30 CFR Parts 730-733, 735, 816.102-.106, 917, 30 USC 1253, 1255, 1265

STATUTORY AUTHORITY: KRS Chapter 13A, 350.028, 350.100, 350.465, 30 CFR Parts 730-733, 735, 816.102-.106, 917, 30 USC 1253, 1255, 1265

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during surface mining activities and for restoration and reclamation of surface areas affected by mining activities. This regulation sets forth requirements for backfilling and grading, including requirements for highwall elimination, return to approximate original contour, timing of backfilling and grading, use of terraces, thick and thin overburden conditions, covering coal and acid and toxic materials, and regrading or stabilizing rills and gullies.

Section 1. Timing of Backfilling and Grading. Backfilling and grading shall be conducted in accordance with the requirements for contemporaneous reclamation as set forth in 405 KAR 16:020.

Section 2. General Backfilling and Grading Requirements. (1) Except as provided in subsection (9) of this section, all disturbed areas shall be returned to their approximate original contour. All spoil shall be transported, placed in a controlled manner, backfilled, compacted (where advisable to ensure stability or to prevent leaching of toxic materials), and graded to:

(a) Eliminate all highwalls (except as otherwise provided in Section 7 of this regulation), spoil piles, and depressions (excluding depressions and impoundments approved pursuant to subsection (5) or (6) of this section);

(b) Ensure a long-term static factor of safety of at least one and three-tenths (1.3) for all portions of the reclaimed land;

(c) Achieve a postmining slope which does not exceed the angle of repose and which does prevent slides;

(d) Minimize erosion and adverse effects on surface and ground water both on and off the site; and

(e) Support the approved postmining land use.

(2) Spoil, except excess spoil disposed of in accordance with 405 KAR 16:130, shall be returned to the excavated areas.

(3) Disposal of coal processing waste and underground development waste in the mined-out area shall be in accordance with 405 KAR 16:140, except that a long-term static safety factor of one and three-tenths (1.3) shall be achieved.

(4) On approval by the cabinet in order to conserve soil moisture, ensure stability, and control erosion on final graded slopes, cut-and-fill terraces may be allowed, if the terraces are compatible with the approved postmining land use and are appropriate substitutes for construction of lower grades on the reclaimed lands. The terraces shall meet the following requirements:

(a) The width of the individual terrace bench shall not exceed twenty (20) feet, unless specifically approved by the cabinet as necessary for stability, erosion control, or roads included in the approved postmining land use plan.

(b) The vertical distance between terraces shall be as specified by the cabinet, to prevent excessive erosion and to provide long-term stability.

(c) The slope of the terrace outslope shall not exceed 1v:2h (fifty (50) percent). Outslopes which exceed 1v:2h (fifty (50) percent) may be approved, if they have a minimum static safety factor of more than 1.3, provide adequate control over erosion, and closely resemble the surface configuration of the land prior to mining. In no case may highwalls be left as part of terraces.

(d) Culverts and underground rock drains shall be used on the terrace only if [when] approved

by the cabinet.

(5) Small depressions may be constructed on backfilled areas, if the depressions:

(a) Are needed to minimize erosion, conserve soil moisture, create or enhance wildlife habitat, or promote vegetation;

(b) Are not disapproved by the cabinet;

(c) Are not substitutes for compliance with approximate original contour requirements;

(d) Do not adversely affect the stability of the backfilled area; and

(e) Are not located on steep-slope outslopes.

(6) Impoundments on backfilled areas may be approved, if the impoundments:

(a) Meet the applicable requirements of 405 KAR 16:060, Section 10 and 405 KAR 16:100;

(b) Are demonstrated, to the satisfaction of the cabinet in the permit application, to have no adverse effect on the stability of the backfilled area;

(c) Are consistent with and suitable for the approved postmining land use;

(d) Are specifically approved by the cabinet in the permit application; and

(e) Are not located on steep-slope outslopes.

(7) All surface mining activities on slopes above twenty (20) degrees, or on lesser slopes that the cabinet defines as steep slopes, shall comply with the requirements of 405 KAR 20:060.

(8) All final grading; preparation of overburden before replacement of topsoil, topsoil substitutes, and topsoil supplements; and placement of topsoil, topsoil substitutes, and topsoil supplements shall be done along the contour to minimize subsequent erosion and instability. If [such] grading, preparation, or placement along the contour is hazardous to equipment operators, then grading, preparation, and placement in a direction other than generally parallel to the contour may be used. In all cases, grading, preparation, or placement shall be conducted in a manner which minimizes erosion and provides a surface for placement of topsoil, topsoil substitutes, and topsoil supplements which will minimize slippage.

(9) The postmining slope may vary from the approximate original contour <u>if</u> [when] approval is obtained from the cabinet for:

(a) The provisions for thin overburden in Section 4 of this regulation;

(b) The provisions for thick overburden in Section 5 of this regulation;

(c) Mountaintop removal operations in accordance with 405 KAR 8:050, Section 4;

(d) A variance from approximate original contour requirements in accordance with 405 KAR 8:050, Section 6; or

(e) Incomplete elimination of highwalls in previously mined areas in accordance with Section 7 of this regulation.

Section 3. Disposal of Acid-forming, Toxic-forming, and Combustible Materials and Coverage of Coal Seams. (1) General. Exposed coal seams, acid-forming materials, toxic-forming materials, and combustible materials which are used, produced, or exposed during surface coal mining and reclamation operations shall be handled; disposed of; treated; and covered with nontoxic-forming, nonacid-forming, and noncombustible materials in a manner which:

(a) Minimizes adverse impacts on surface and ground water, minimizes disturbances to the hydrologic balance, and prevents material damage to the hydrologic balance;

(b) Ensures compliance with 405 KAR 16:060;

(c) Prevents sustained combustion;

(d) Minimizes adverse impacts on plant growth and the approved postmining land use;

(e) Ensures that the affected area is capable of sustaining sufficient vegetation to meet the revegetation requirements of 405 KAR 16:200; and

(f) Ensures that the affected area is capable of meeting the postmining land use requirements of 405 KAR 16:210.

(2) Coverage and treatment. All exposed coal seams, acid-forming materials, toxic-forming materials, and combustible materials which are used, produced, or exposed during surface coal mining and reclamation operations shall be covered and treated as necessary to neutralize toxicity, acidity, and combustibility, in order to ensure long-term and short-term compliance with subsection (1) of this section.

(a) All exposed coal seams shall be covered with a minimum of four (4) feet of nontoxic-forming, nonacid-forming, and noncombustible materials. The cabinet shall require thicker amounts of cover, special compaction of cover, treatment, or other measures as necessary to ensure compliance with subsection (1) of this section and to prevent exposure of the coal seams by erosion.

(b) Excluding exposed coal seams, all acid-forming materials, toxic-forming materials, and combustible materials which are used, produced, or exposed during surface coal mining and reclamation operations shall be:

1. Selectively blended with nontoxic-forming, nonacid-forming, and noncombustible materials; treated; or selectively handled, or an appropriate combination of <u>those</u> [such] measures shall be used, as necessary to ensure compliance with subsection (1) of this section; and

2. Covered with a minimum of four (4) feet of nontoxic-forming, nonacid-forming, and noncombustible materials. The cabinet shall require thicker amounts of cover, special compaction of cover, treatment, or other measures as necessary to ensure compliance with subsection (1) of this section and to prevent exposure of the toxic-forming, acid-forming, or combustible materials by erosion. The cabinet may approve lesser amounts of cover, or no cover (other than topsoil, topsoil substitutes, or topsoil supplements), if the applicant demonstrates, to the satisfaction of the cabinet in the permit application, that the lesser amounts are sufficient to ensure compliance with subsection (1) of this section and to maintain coverage of the toxic-forming, acid-forming, and combustible materials;

3. If required or approved by the cabinet, compacted and placed in an environment which minimizes the oxidation potential of the toxic-forming materials, acid-forming materials, and combustible materials; and

4. If required or approved by the cabinet, disposed so as to minimize surface and ground water contact with acid-forming materials, toxic-forming materials, and combustible materials. <u>Water</u> [Such] contact may be minimized by the encasement of <u>those</u> [such] materials in low-permeability substances and by the compaction and selective placement of <u>those</u> [such] materials in locations other than surface drainage courses, ground water recharge areas, or areas of significant ground water flow. As an alternative to minimizing contact with surface

and ground water and if feasible based on site conditions, the cabinet may allow acid-forming materials, toxic-forming materials, and combustible materials to be placed below the permanent water table.

(3) The cabinet shall require measures in addition to those identified in subsection (2) of this section if necessary to ensure protection of the environment or the health or safety of the public.

Section 4. Thin Overburden. (1) The provisions of this section apply only where the final thickness is less than eight-tenths (0.8) of the initial thickness. Initial thickness is the sum of the overburden thickness and coal thickness prior to removal of coal. Final thickness is the product of the overburden thickness prior to removal of coal times the bulking factor to be determined for each permit area. The provisions of this section apply only if [when] surface mining activities cannot be carried out to comply with Section 2 of this regulation to achieve the approximate original contour.

(2) In surface mining activities carried out continuously in the same limited pit area for more than one (1) year from the day coal removal operations begin and where the volume of all available spoil and suitable waste materials over the permit area is demonstrated to be insufficient to achieve the approximate original contour of the lands disturbed, surface mining activities shall be conducted to meet, at a minimum, the following standards:

(a) Transport, backfill, and grade, using all available spoil and suitable waste materials from the entire mine area, to attain the lowest practicable stable grade, to achieve a static safety factor of 1.3, and to provide adequate drainage and long-term stability of the regraded areas and cover all acid-forming and toxic-forming materials;

(b) Eliminate highwalls by grading or backfilling to stable slopes not exceeding 1v:2h (fifty (50) percent), or to [such] lesser slopes as the cabinet may specify to reduce erosion, maintain the hydrologic balance, or allow the approved postmining land use;

(c) Transport, backfill, grade, and revegetate in accordance with 405 KAR 16:200, to achieve an ecologically sound land use compatible with the prevailing use in unmined areas surrounding the permit area; and

(d) Transport, backfill, and grade, to ensure impoundments are constructed only if [where]:

1. It has been demonstrated to the cabinet's satisfaction that all requirements of 405 KAR 16:060, 405 KAR 16:070, 405 KAR 16:080, 405 KAR 16:090, 405 KAR 16:100 and 405 KAR 16:110 have been met; and

2. The impoundments have been approved by the cabinet as suitable for the approved postmining land use and as meeting the requirements of this chapter and all other applicable federal and state laws and regulations.

Section 5. Thick Overburden. (1) The provisions of this section apply only where the final thickness is greater than one and two-tenths (1.2) of the initial thickness. Initial thickness is the sum of the overburden thickness and coal thickness prior to removal of coal. Final thickness is the product of the overburden thickness prior to removal of coal times the bulking factor to be determined for each permit area. The provisions of this section apply only if [when] surface mining activities cannot be carried out to comply with Section 2 of this regulation to achieve the approximate original contour.

(2) In surface mining activities where the volume of spoil over the permit area is demonstrated to be more than sufficient to achieve the approximate original contour, surface mining activities shall be conducted to meet, at a minimum, the following standards:

(a) Transport, backfill, and grade all spoil and wastes, not required to achieve the approximate original contour of the permit area, to the lowest practicable grade, to achieve a static factor of safety of one and three-tenths (1.3) and cover all acid-forming and other toxic-forming materials;

(b) Transport, backfill and grade excess spoil and wastes only within the permit area and dispose of those [such] materials in accordance with 405 KAR 16:130;

(c) Transport, backfill, and grade excess spoil and wastes to maintain the hydrologic balance, in accordance with 405 KAR 16:060, 405 KAR 16:070, 405 KAR 16:080, 405 KAR 16:090, 405 KAR 16:100 and 405 KAR 16:110 and to provide long-term stability by preventing slides, erosion and water pollution;

(d) Transport, backfill, grade, and revegetate wastes and excess spoil to achieve an ecologically sound land use approved by the cabinet as compatible with the prevailing land uses in unmined areas surrounding the permit area;

(e) Eliminate all highwalls and depressions by backfilling with spoil and suitable waste materials; and

(f) Meet the revegetation requirements of 405 KAR 16:200 for all disturbed areas.

Section 6. Regrading or Stabilizing Rills and Gullies. Except as provided in subsections (a) and (b) of this section, if [when] rills or gullies deeper than nine (9) inches form in areas that have been regraded and topsoiled, the rills and gullies shall be filled, graded, or otherwise stabilized and the area reseeded and [/or] replanted according to 405 KAR 16:200.

(a) Rills or gullies less than nine (9) inches deep shall be stabilized and the area reseeded and [/or] replanted, if the rills or gullies are disruptive to the approved postmining land use or to the establishment of vegetation, may result in additional erosion and sedimentation, or may cause or contribute to the violation of a water quality standard.

(b) Rills and gullies deeper than nine (9) inches need not be filled, regraded, and revegetated if all of the following criteria are met:

1. They are incised to solid bedrock or are otherwise stable and not likely to further erode;

2. They are not disruptive to the approved postmining land use or to the establishment of the vegetative cover; and

3. They neither cause nor contribute to the violation of water quality standards.

Section 7. Remining Previously Mined Areas. (1) General requirements. Remining operations on previously mined areas, including steep slope areas, that contain a preexisting highwall shall comply with Sections 1 through 6 of this regulation except as provided in this section.

[(2) The terms "highwall remnant", "modified highwall", "previously mined area", "reasonably available spoil", and "remining" are defined in 405 KAR 7:020.] [Definitions.]

[(a) "Highwall remnant" means that portion of highwall that remains after backfilling and grading of a remining permit area.]

[(b) "Modified highwall" means either:]

[1. The highwall resulting from remining where the preexisting highwall face is removed; or]

[2. The highwall resulting from remining where the preexisting highwall is vertically enlarged.]

[(c) "Previously mined area" means land disturbed by earlier activities related to coal mining on which none of the earlier disturbances were subject to any of the standards of SMCRA.]

[(d) "Reasonably available spoil" means spoil and suitable coal mine waste material generated by the remining operation and other spoil or suitable coal mine waste material located in the permit area that is accessible and available for use and that when rehandled will not cause a hazard to public safety or significant damage to the environment. For this purpose, the permit area shall include all such spoil in the immediate vicinity of the mining operation.]

[(e) "Remining" means conducting surface coal mining and reclamation operations which affect previously mined areas.]

(2) [(3)] Variances to backfilling and grading requirements for remining operations. The requirements within Section 2(1)(a) of this regulation to completely eliminate highwalls shall apply to remining operations, except for situations in which the volume of all reasonably available spoil is demonstrated, to the satisfaction of the cabinet in the permit application, to be insufficient to completely backfill and eliminate the preexisting or modified highwall. The highwall shall be eliminated to the maximum extent technically practicable in accordance with the following criteria:

(a) All reasonably available spoil shall be used to backfill the area.

(b) The backfill shall be graded to a slope which is compatible with the approved postmining land use and which provides adequate drainage and long-term stability (one and three-tenths (1.3) long-term static factor of safety). [, provided, however, that] The exposed coal seam shall be covered in accordance with Section 3 of this regulation.

(c) Spoil generated or handled by the remining operation shall not be placed on the fill section of any existing or new bench.

(d) Any highwall remnant shall be stable and not pose a hazard to the public health and safety or to the environment. The permittee shall demonstrate, to the satisfaction of the cabinet in the permit application, that the postmining highwall remnant will be stable. If the highwall remnant is determined by the cabinet to be unstable or potentially unstable, the permittee shall perform any corrective measures required by the cabinet to stabilize the highwall remnant.

(e) Spoil placed on the outslope during previous mining operations shall not be disturbed if the [such] disturbance will cause instability of the remaining spoil or otherwise increase the hazard to the public health or safety or to the environment.

FRANK DICKERSON, Commissioner
CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: July 12, 1991
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NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(As Amended)

405 KAR 16:210. Postmining land use capability.

RELATES TO: KRS 350.093, 350.095, 350.100, 350.405, 350.410, 350.450, 350.465, 30 CFR Parts 730-733, 735, 816.133, 917, 30 USC 1253, 1255, 1265

STATUTORY AUTHORITY: KRS Chapter 13A, 350.020, 350.028, 350.465, 30 CFR Parts 730-733, 735, 816.133, 917, 30 USC 1253, 1255, 1265

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during surface mining activities and for restoration and reclamation of surface areas affected by mining activities. This regulation sets forth requirements for restoring land use capability after completion of surface mining activities, and specific criteria for approval of postmining land uses which differ from the premining land use.

Section 1. General. (1) Prior to the final release of performance bond, [liability for] affected areas[, the areas] shall be restored in a timely manner:

(a) [(1)] To conditions capable of supporting the uses which the areas were capable of supporting before any mining; or

(b) [(2)] To conditions capable of supporting higher or better alternative uses [of which there is reasonable likelihood,] as approved by the cabinet under Section 4 of this regulation.

(2) The following land uses shall apply under this regulation[. Definitions of these uses, and definitions of "land use" and "higher or better use", are given in 405 KAR 7:020]:

(a) Cropland;
(b) Pastureland;
(c) Forest land;
(d) Residential;
(e) Industrial/commercial;
(f) Recreation;
(g) Fish and wildlife;
(h) Developed water resources;
(i) Undeveloped land or no current use or land management.

Section 2. Premining and Postmining Land Use. (1) The premining uses of land to which the postmining land use is compared shall be those uses which the land previously supported if the land has not been previously mined. The premining land use for a specific area shall be determined based on the prevalent or dominant use, vegetative types, and features present at that area; however, more than one (1) land use can exist within a proposed permit boundary.

(2) The postmining land use for land that has been previously mined, and not reclaimed in

compliance with 405 KAR Chapter 1 or 3 or Chapters 7 through 24, shall be judged on the basis of the land use that existed prior to any mining; except if the land cannot be reclaimed to the land use that existed prior to any mining because of the previously mined condition, the postmining land use shall be judged on the basis of the highest and best use that can be achieved which is compatible with surrounding areas and does not require the disturbance of areas previously unaffected by mining.

(3) Prime farmland that has been historically used for cropland that is not exempted by 405 KAR 8:050, Section 3 shall have a postmining land use of cropland.

(4)(a) The land use category of "undeveloped land or no current use or land management" shall not be used to designate a postmining land use.

(b) If the premining land use is "undeveloped land or no current use or land management", and if consistent with subsection (2) of this section and Section 3 of this regulation:

1. If trees are dominant on the area prior to mining, the area may be designated as forestland for the postmining land use without compliance with the procedures and criteria for an alternative postmining land use.

2. For all other cases, the area may be designated as fish and wildlife for the postmining land use without compliance with the procedures and criteria for an alternative postmining land use.

(5) Slope limitations for specific postmining land uses. These limitations shall apply to permits issued after the effective date of this amendment.

(a) Portions of the permit area with slopes greater than twenty (20) percent (eleven and three-tenths (11.3) degrees) shall not be designated as cropland, including hay production; and

(b) Portions of the permit area with slopes greater than thirty-three (33) percent (eighteen and five-tenths (18.5) degrees) shall not be designated as pastureland; except the cabinet may, on a case-by-case basis, approve pastureland for slopes greater than thirty-three (33) percent if the permittee submits a detailed management plan specific to the special circumstances of steep slopes clearly demonstrating that the land use of pastureland is practical and reasonable, and the management plan is supported by the surface owner comments submitted under 405 KAR 8:030, Section 37.

(6) Steep slope operations with variances from approximate original contour shall comply with the requirements of 405 KAR 20:060, Section 3(2), and mountaintop removal operations shall comply with 405 KAR 8:050, Section 493).

[Determining Minimum Acceptable Postmining Land Use Capability for Lands to be Restored to the Premining Land Use. (1) Unmined lands. On lands which have not been previously mined and have received proper management, the postmining land use capability shall equal or exceed the premining capability of the land to support the actual premining uses and a variety of other feasible uses.]

[(2) Previously mined lands. On lands which have been previously mined, the postmining land use capability shall equal or exceed the capability of the land prior to any mining to support the actual uses and a variety of other feasible uses, except that allowances shall be made for any irreparable damages to the land which have resulted from the previous mining.]

[(3) Improperly managed lands. On lands which have received improper management as compared to similar lands in surrounding areas, the postmining land use capability shall equal or exceed the capability of the land under proper levels of management to support the actual premining uses or a variety of other feasible uses, except that allowances shall be made for any irreparable damages to the land which have resulted from improper management.]

Section 3. Historical Land Use. If the premining use of the land was changed within five (5) years of the date of application for a permit to conduct surface coal mining and reclamation operations, the historical use of the land as well as the land use immediately preceding the date of application shall be considered in establishing the premining capability of the land to support a variety of feasible uses. [The determination of minimum acceptable postmining land use capability shall be based upon the potential utility of the land to support a variety of feasible uses, and not only upon premining land uses which may have resulted from under utilization.]

Section 4. Alternative Postmining Land Use. Higher or better alternative postmining land uses may be approved by the cabinet [after consultation with the landowner or the land management agency having jurisdiction over the lands,] if the following criteria [of this section] are met:

(1) There is a reasonable likelihood that the land use will be achieved;

(2) The use will not be impractical or unreasonable;

(3) The landowner or the land management agency having jurisdiction over the lands has been consulted, and [(1)(a)] the proposed alternative postmining land use is consistent [compatible with adjacent land use and, where applicable,] with applicable [existing local, state, or federal] land use policies and plans;

[(b) Authorities with statutory responsibilities for land use policies and plans shall have been provided opportunity to submit written statements of their views to the cabinet within sixty (60) days of notice by the cabinet.]

(4) The proposed use will not present an actual or probable hazard to public health or safety or threat of water pollution or diminution of water availability;

(5) The proposed use will not involve unreasonable delays in implementation; and

(6) The proposed use will not cause or contribute to violation of federal, state, or local law.

[(c) Any required approval of local, state, or federal land management agencies, including any necessary zoning or other changes required for the proposed alternative land use, shall be obtained and remain valid throughout surface mining activities.]

[(2) Specific plans are prepared and submitted to the cabinet which show the feasibility of the postmining land use as related to projected land use trends and markets, and that include a schedule showing how the proposed use will be developed and achieved within a reasonable time after mining. The cabinet may require appropriate demonstrations to show that the planned procedures are feasible, reasonable, and

integrated with mining and reclamation, and that the plans will result in successful reclamation.]

[(3) The applicant has demonstrated that there is reasonable likelihood that any necessary public facilities will be provided.]

[(4) Specific and feasible plans are submitted to the cabinet which show that financing, attainment and maintenance of the postmining land use are feasible.]

[(5) Plans for the postmining land use are designed and certified by a qualified registered professional engineer to assure land stability, drainage, and site configuration necessary for the intended postmining use of the site.]

[(6) The proposed use or uses will neither present actual or probable hazard to public health or safety nor will they pose any actual or probable threat of water pollution or diminution of water availability.]

[(7) The proposed use will not involve unreasonable delays in reclamation.]

[(8) Necessary approval of measures to prevent or mitigate adverse effects on fish, wildlife, and related environmental values and threatened or endangered plants is obtained from the cabinet, and appropriate state and federal fish and wildlife management agencies have been provided a sixty (60) day period in which to review the plan.]

[(9) Proposals to change premining land uses of fish and wildlife habitat, forest land, hayland, or pasture to a postmining cropland use, where the cropland would require continuous maintenance such as seeding, plowing, cultivation, fertilization, or other similar practices to be practicable or to comply with applicable federal, state, and local laws, have been reviewed by the cabinet to ensure that:]

[(a) The applicant has demonstrated that there is reasonable likelihood that the landowner or land manager will provide sufficient crop management after release of applicable performance bonds under Title 405, Chapter 10, in order that the proposed postmining cropland use will remain practical and reasonable;]

[(b) There is sufficient water available and committed to maintain crop production; and]

[(c) Topsoil quality and depth are sufficient to support the proposed use.]

[Section 5. Land Use Categories. The following is the list of land use categories to be applied under this regulation. These uses are defined in 405 KAR 7:020. Also see the definition of "land use."]

[(1) Cropland.]
[(2) Pastureland.]
[(3) Grazing land.]
[(4) Forestry.]
[(5) Residential.]
[(6) Industrial/commercial.]
[(7) Recreation.]
[(8) Fish and wildlife habitat.]
[(9) Developed water resources.]
[(10) Undeveloped land or no current land use or land management.]

FRANK DICKERSON, Commissioner
CARL H. BRADLEY, Secretary
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NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(As Amended)

405 KAR 18:190. Backfilling and grading.

RELATES TO: KRS 350.020, 350.093, 350.100, 350.151, 350.405, 350.410, 350.450, 350.465, 30 CFR Parts 730-733, 735, 817.102-.106, 917, 30 USC 1253, 1255, 1266

STATUTORY AUTHORITY: KRS Chapter 13A, 350.028, 350.100, 350.151, 350.465, 30 CFR Parts 730-733, 735, 817.102-.106, 917, 30 USC 1253, 1255, 1266

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during underground mining activities and for restoration and reclamation of surface areas affected by underground mining activities. This regulation sets forth requirements for backfilling and grading of areas affected by surface operations, including requirements for backfilling and grading of face-up areas and other cut slopes and limited exemptions, timing of backfilling and grading, covering coal and acid and toxic materials, and regrading or stabilizing rills and gullies.

Section 1. Timing of Backfilling and Grading. Surface areas disturbed incident to underground mining activities shall be backfilled and graded in accordance with a relative time-schedule approved by the cabinet in accordance with 405 KAR 18:020.

Section 2. General Backfilling and Grading Requirements. (1) Except as provided in subsection (8) of this section, all disturbed areas shall be returned to their approximate original contour. All spoil shall be transported, placed in a controlled manner, backfilled, compacted (where advisable to ensure stability or to prevent leaching of toxic materials), and graded to:

(a) Eliminate all highwalls (except as otherwise provided in Section 5 of this regulation), spoil piles, and depressions (excluding depressions and impoundments approved pursuant to subsection (4) or (5) of this section);

(b) Ensure a long-term static factor of safety of at least one and three-tenths (1.3) for all portions of the reclaimed land;

(c) Achieve a postmining slope which does not exceed the angle of repose and which does prevent slides;

(d) Minimize erosion and adverse effects on surface and ground water both on and off the site; and

(e) Support the approved postmining land use.

(2) Spoil, except excess spoil disposed of in accordance with 405 KAR 18:130, shall be returned to the excavated surface areas.

(3) Disposal of coal processing waste and underground development waste in the mined-out surface area shall be in accordance with 405 KAR 18:140, except that a long-term static safety factor of one and three-tenths (1.3) shall be achieved.

(4) Small depressions may be constructed on

backfilled areas, if the depressions:
(a) Are needed to minimize erosion, conserve soil moisture, create or enhance wildlife habitat, or promote vegetation;
(b) Are not disapproved by the cabinet;
(c) Are not substitutes for compliance with approximate original contour requirements;
(d) Do not adversely affect the stability of the backfilled area; and
(e) Are not located on steep-slope outslopes.
(5) Impoundments on backfilled areas may be approved, if the impoundments:
(a) Meet the applicable requirements of 405 KAR 18:060, Section 10 and 405 KAR 18:100;
(b) Are demonstrated, to the satisfaction of the cabinet in the permit application, to have no adverse effect on the stability of the backfilled area;
(c) Are consistent with and suitable for the approved postmining land use;
(d) Are specifically approved by the cabinet in the permit application; and
(e) Are not located on steep-slope outslopes.
(6) All underground mining activities on slopes above twenty (20) degrees, or on lesser slopes that the cabinet defines as steep slopes, shall comply with the requirements of 405 KAR 20:060.
(7) All final grading; preparation of overburden before replacement of topsoil, topsoil substitutes, and topsoil supplements; and placement of topsoil, topsoil substitutes, and topsoil supplements shall be done along the contour to minimize subsequent erosion and instability. If [such] grading, preparation, or placement along the contour is hazardous to equipment operators, then grading, preparation, or placement in a direction other than generally parallel to the contour may be used. In all cases, grading, preparation, and placement shall be conducted in a manner which minimizes erosion and provides a surface for placement of topsoil, topsoil substitutes, and topsoil supplements which will minimize slippage.
(8) The postmining slope may vary from the approximate original contour <u>if</u> [when] approval is obtained from the cabinet for:
(a) A variance from approximate original contour requirements in accordance with 405 KAR 8:050, Section 6;
(b) Incomplete elimination of highwalls in previously mined areas in accordance with Section 5 of this regulation; or
(c) Incomplete elimination of face-up areas and similar cut slopes pursuant to subsection (9) of this section.
(9) Face-up areas and similar cut slopes created prior to the effective date of SMCRA, as defined at Section 502(a), (b), and (c) therein, that are associated with underground mining activities which were started prior to the effective date of SMCRA and which have continued as existing and ongoing operations pursuant to permits issued under the interim and permanent regulatory programs shall be backfilled and graded in accordance with the requirements of Section 5 of this regulation; <u>except</u> [provided, however,] that for the purposes of this subsection "reasonably available spoil" shall not include spoil generated by the operation prior to the effective date of SMCRA which is not accessible and available for use or which would cause a hazard to public safety or significant damage to the environment if rehandled.

Section 3. Disposal of Acid-forming, Toxic-forming, and Combustible Materials and Coverage of Coal Seams. (1) General. Exposed coal seams, acid-forming materials, toxic-forming materials, and combustible materials which are used, produced, or exposed during surface coal mining and reclamation operations shall be handled; disposed of; treated; and covered with nontoxic-forming, nonacid-forming, and noncombustible materials in a manner which:
(a) Minimizes adverse impacts on surface and ground water, minimizes disturbances to the hydrologic balance, and prevents material damage to the hydrologic balance;
(b) Ensures compliance with 405 KAR 18:060;
(c) Prevents sustained combustion;
(d) Minimizes adverse impacts on plant growth and the approved postmining land use;
(e) Ensures that the affected area is capable of sustaining sufficient vegetation to meet the revegetation requirements of 405 KAR 18:200; and
(f) Ensures that the affected area is capable of meeting the postmining land use requirements of 405 KAR 18:220.
(2) Coverage and treatment. All exposed coal seams, acid-forming materials, toxic-forming materials, and combustible materials which are used, produced, or exposed during surface coal mining and reclamation operations shall be covered and treated as necessary to neutralize toxicity, acidity, and combustibility, in order to ensure long-term and short-term compliance with subsection (1) of this section.
(a) All exposed coal seams shall be covered with a minimum of four (4) feet of nontoxic-forming, nonacid-forming, and noncombustible materials. The cabinet shall require thicker amounts of cover, special compaction of cover, treatment, or other measures as necessary to ensure compliance with subsection (1) of this section and to prevent exposure of the coal seams by erosion.
(b) Excluding exposed coal seams, all acid-forming materials, toxic-forming materials, and combustible materials which are used, produced, or exposed during surface coal mining and reclamation operations shall be:
1. Selectively blended with nontoxic-forming, nonacid-forming, and noncombustible materials; treated; or selectively handled, or an appropriate combination of <u>those</u> [such] measures shall be used, as necessary to ensure compliance with subsection (1) of this section; and
2. Covered with a minimum of four (4) feet of nontoxic-forming, nonacid-forming, and noncombustible materials. The cabinet shall require thicker amounts of cover, special compaction of cover, treatment, or other measures as necessary to ensure compliance with subsection (1) of this section and to prevent exposure of the toxic-forming, acid-forming, or combustible materials by erosion. The cabinet may approve lesser amounts of cover, or no cover (other than topsoil, topsoil substitutes, or topsoil supplements), if the applicant demonstrates, to the satisfaction of the cabinet in the permit application, that the lesser amounts are sufficient to ensure compliance with subsection (1) of this section and to maintain coverage of the toxic-forming, acid-forming, and combustible materials;
3. If required or approved by the cabinet, compacted and placed in an environment which minimizes the oxidation potential of the

toxic-forming materials, acid-forming materials, and combustible materials; and

4. If required or approved by the cabinet, disposed so as to minimize surface and ground water contact with acid-forming materials, toxic-forming materials, and combustible materials. Water [Such] contact may be minimized by the encasement of those [such] materials in low-permeability substances and by the compaction and selective placement of those [such] materials in locations other than surface drainage courses, ground water recharge areas, or areas of significant ground water flow. As an alternative to minimizing contact with surface and ground water and if feasible based on site conditions, the cabinet may allow acid-forming materials, toxic-forming materials, and combustible materials be placed below the permanent water table.

(3) The cabinet shall require measures in addition to those identified in subsection (2) of this section if necessary to ensure protection of the environment or the health or safety of the public.

Section 4. Regrading or Stabilizing Rills and Gullies. Except as provided in subsections (1) and (2) of this section, if [when] rills or gullies deeper than nine (9) inches form in areas that have been regraded and topsoiled, the rills and gullies shall be filled, graded, or otherwise stabilized and the area reseeded and [/or] replanted according to 405 KAR 18:200.

(1) Rills or gullies less than nine (9) inches deep shall be stabilized and the area reseeded and [/or] replanted, if the rills or gullies are disruptive to the approved postmining land use or to the establishment of vegetation, may result in additional erosion and sedimentation, or may cause or contribute to the violation of a water quality standard.

(2) Rills and gullies deeper than nine (9) inches need not be filled, regraded, and revegetated if all of the following criteria are met:

(a) They are incised to solid bedrock or are otherwise stable and not likely to further erode;

(b) They are not disruptive to the approved postmining land use or to the establishment of the vegetative cover; and

(c) They neither cause nor contribute to the violation of water quality standards.

Section 5. Remining Previously Mined Areas. (1) General requirements. Remining operations on previously mined areas, including steep slope areas, that contain a preexisting highwall shall comply with Sections 1 through 4 of this regulation except as provided in this section.

[(2) The terms "highwall remnant", "modified highwall", "previously mined area", "reasonably available spoil", and "remining" are defined in 405 KAR 7:020.] [Definitions.]

[(a) "Highwall remnant" means that portion of highwall that remains after backfilling and grading of a remining permit area.]

[(b) "Modified highwall" means either:]

[1. The highwall resulting from remining where the preexisting highwall face is removed; or]

[2. The highwall resulting from remining where the preexisting highwall is vertically enlarged.]

[(c) "Previously mined area" means land disturbed by earlier activities related to coal mining on which none of the earlier disturbances were subject to any of the standards of SMCRA.]

[(d) "Reasonably available spoil" means spoil and suitable coal mine waste material generated by the remining operation and other spoil or suitable coal mine waste material located in the permit area that is accessible and available for use and that when rehandled will not cause a hazard to public safety or significant damage to the environment. For this purpose, the permit area shall include all such spoil in the immediate vicinity of the mining operation.]

[(e) "Remining" means conducting surface coal mining and reclamation operations which affect previously mined areas.]

(2) [(3)] Variances to backfilling and grading requirements for remining operations. The requirements within Section 2(1)(a) of this regulation to completely eliminate highwalls shall apply to remining operations, except for situations in which the volume of all reasonably available spoil is demonstrated, to the satisfaction of the cabinet in the permit application, to be insufficient to completely backfill and eliminate the preexisting or modified highwall. The highwall shall be eliminated to the maximum extent technically practicable in accordance with the following criteria:

(a) All reasonably available spoil shall be used to backfill the area.

(b) The backfill shall be graded to a slope which is compatible with the approved postmining land use and which provides adequate drainage and long-term stability (one and three-tenths (1.3) long-term static factor of safety). [, provided, however, that] The exposed coal seam shall be covered in accordance with Section 3 of this regulation.

(c) Spoil generated or handled by the remining operation shall not be placed on the fill section of any existing or new bench.

(d) Any highwall remnant shall be stable and not pose a hazard to the public health and safety or to the environment. The permittee shall demonstrate, to the satisfaction of the cabinet in the permit application, that the postmining highwall remnant will be stable. If the highwall remnant is determined by the cabinet to be unstable or potentially unstable, the permittee shall perform any corrective measures required by the cabinet to stabilize the highwall remnant.

(e) Spoil placed on the outslope during previous mining operations shall not be disturbed if the [such] disturbance will cause instability of the remaining spoil or otherwise increase the hazard to the public health or safety or to the environment.

Section 6. Temporary Storage of Materials. (1) After excavation, materials to be used for backfilling in compliance with this regulation shall be returned, for backfilling purposes in accordance with this regulation, to a mined-out area within the permit area or shall be temporarily stored in designated storage areas designs of which have been provided in the permit application and thereby approved by the cabinet.

(2) Temporary storage areas shall be designed and constructed in accordance with the requirements of 405 KAR 18:130 or 405 KAR 18:140, depending on the type of material, except as specified in the following:

(a) If the temporary storage area is to exist for six (6) months or longer, the storage area

shall be protected by establishment of an effective cover of nonnoxious, quick-growing, annual and perennial plants seeded or planted during the first normal seeding or planting period following placement of the fill material and resown as necessary thereafter.

(b) Topsoil, topsoil substitute, and topsoil supplement materials to be used in final reclamation of the temporary storage area shall either be stockpiled in accordance with 405 KAR 18:050, Section 3(1) through (3) or temporarily redistributed on areas in accordance with 405 KAR 18:050, Section 3(4). The applicant shall submit, in the permit application, a discussion from a qualified soil scientist or qualified agronomist which indicates, to the satisfaction of the cabinet, that the topsoil stockpile or temporary redistribution plan will minimize adverse effects on the quality and quantity of the topsoil, topsoil substitute, and topsoil supplement materials.

(3) Fills designed and constructed in accordance with this section may be retained as permanent structures if:

(a) The cabinet approves a permit revision submitted in accordance with 405 KAR 8:010, Section 20 for retention of the fill as a permanent structure and for the use of alternate materials to backfill areas and return the disturbed areas to their approximate original contour, in accordance with the requirements of this regulation;

(b) Topsoil, topsoil substitute, and topsoil supplement materials are redistributed on the fill in accordance with 405 KAR 18:050;

(c) The fill is revegetated and reclaimed in accordance with 405 KAR 18:200, 405 KAR 18:220, and all other applicable requirements of KRS Chapter 350 and this Title; and

(d) The borrow area or other area from which the alternate backfill material is obtained is permitted under a valid permit from OSMRE and is reclaimed in accordance with the requirements of KRS Chapter 350 and this Title.

FRANK DICKERSON, Commissioner
CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: July 12, 1991
FILED WITH LRC: July 15, 1991 at 10 a.m.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(As Amended)

405 KAR 18:220. Postmining land use capability.

RELATES TO: KRS 350.093, 350.095, 350.100, 350.151, 350.410, 350.450, 350.465, 30 CFR Parts 730-733, 735, 817.133, 917, 30 USC 1253, 1255, 1266

STATUTORY AUTHORITY: KRS Chapter 13A, 350.020, 350.028, 350.151, 350.465, 30 CFR Parts 730-733, 735, 817.133, 917, 30 USC 1253, 1255, 1266

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during underground mining activities and for restoration and reclamation of surface areas affected by underground mining activities. This regulation sets forth requirements for restoring surface land use capability after completion of underground mining activities, and specific criteria for approval of postmining land uses which differ from the premining land use.

Section 1. General. (1) Prior to the final release of the performance bond, [liability for] affected areas[, the areas] shall be restored in a timely manner:

(a) [(1)] To conditions capable of supporting the uses which the areas were capable of supporting before any mining; or

(b) [(2)] To conditions capable of supporting higher or better alternative uses [of which there is reasonable likelihood,] as approved by the cabinet under Section 4 of this regulation.

(2) The following land uses shall apply under this regulation[. Definitions of these uses, and definitions of "land use" and "higher or better use", are given in 405 KAR 7:020]:

(a) Cropland;
(b) Pastureland;
(c) Forest land;
(d) Residential;
(e) Industrial/commercial;
(f) Recreation;
(g) Fish and wildlife;
(h) Developed water resources;
(i) Undeveloped land or no current use or land management.

Section 2. Premining and Postmining Land Use. (1) The premining uses of land to which the postmining land use is compared shall be those uses which the land previously supported if the land has not been previously mined. The premining land use for a specific area shall be determined based on the prevalent or dominant use, vegetative types, and features present at that area; however, more than one (1) land use can exist within an area to be affected by surface operations and facilities.

(2) The postmining land use for land that has been previously mined, and not reclaimed in compliance with 405 KAR Chapter 1 or 3 or Chapters 7 through 24, shall be judged on the basis of the land use that existed prior to any mining; except if the land cannot be reclaimed to the land use that existed prior to any mining because of the previously mined condition, the postmining land use shall be judged on the basis of the highest and best use that can be achieved which is compatible with surrounding areas and does not require the disturbance of areas previously unaffected by mining.

(3) Prime farmland that has been historically used for cropland that is not exempted by 405 KAR 8:050, Section 3 shall have a postmining land use of cropland.

(4)(a) The land use category of "undeveloped land or no current use or land management" shall not be used to designate a postmining land use.

(b) If the premining land use is "undeveloped land or no current use or land management", and if consistent with subsection (2) of this section and Section 3 of this regulation:

1. If trees are dominant on the area prior to mining, the area may be designated as forestland for the postmining land use without compliance with the procedures and criteria for an alternative postmining land use.

2. For all other cases, the area may be designated as fish and wildlife for the

postmining land use without compliance with the procedures and criteria for an alternative postmining land use.

(5) Slope limitations for specific postmining land uses. These limitations shall apply to permits issued after the effective date of this amendment.

(a) Portions of the area affected by surface operations and facilities with slopes greater than twenty (20) percent (eleven and three-tenths (11.3) degrees) shall not be designated as cropland, including hay production; and

(b) Portions of the area affected by surface operations and facilities with slopes greater than thirty-three (33) percent (eighteen and five-tenths (18.5) degrees) shall not be designated as pastureland; except the cabinet may, on a case-by-case basis, approve pastureland for slopes greater than thirty-three (33) percent if the permittee submits a detailed management plan specific to the special circumstances of steep slopes clearly demonstrating that the land use of pastureland is practical and reasonable, and the management plan is supported by the surface owner comments submitted under 405 KAR 8:040, Section 37.

(6) Steep slope operations with variances from approximate original contour shall comply with the requirements of 405 KAR 20:060, Section 3(2). [Determining Minimum Acceptable Postmining Land Use Capability for Lands to be Restored to the Premining Land Use. (1) Unmined lands. On lands which have not been previously mined and have received proper management, the postmining land use capability shall equal or exceed the premining capability of the land to support the actual premining uses and a variety of other feasible uses.]

[(2) Previously mined lands. On lands which have been previously mined, the postmining land use capability shall equal or exceed the capability of the land prior to any mining to support the actual uses and a variety of other feasible uses, except that allowances shall be made for any irreparable damages to the land which have resulted from the previous mining.]

[(3) Improperly managed lands. On lands which have received improper management as compared to similar lands in surrounding areas, the postmining land use capability shall equal or exceed the capability of the land under proper levels of management to support the actual premining uses or a variety of other feasible uses, except that allowances shall be made for any irreparable damages to the land which have resulted from improper management.]

Section 3. Historical Land Use. If the premining use of the land was changed within five (5) years of the date of application for a permit to conduct surface coal mining and reclamation operations, the historical use of the land as well as the land use immediately preceding the date of application shall be considered in establishing the premining capability of the land to support a variety of feasible uses. [The determination of minimum acceptable postmining land use capability shall be based upon the potential utility of the land to support a variety of feasible uses, and not only upon premining land uses which may have resulted from underutilization.]

Section 4. Alternative Postmining Land Use. Higher or better alternative postmining land uses may be approved by the cabinet [after consultation with the landowner or the land management agency having jurisdiction over the lands,] if the following criteria [of this section] are met:

(1) There is a reasonable likelihood that the land use will be achieved;

(2) The use will not be impractical or unreasonable;

(3) The landowner or the land management agency having jurisdiction over the lands has been consulted, and [(1)(a)] the proposed alternative postmining land use is consistent [compatible with adjacent land use and, where applicable,] with applicable [existing local, state, or federal] land use policies and plans;

[(b) Authorities with statutory responsibilities for land use policies and plans shall have been provided opportunity to submit written statements of their views to the cabinet within sixty (60) days of notice by the cabinet.]

(4) The proposed use will not present an actual or probable hazard to public health or safety or threat of water pollution or diminution of water availability;

(5) The proposed use will not involve unreasonable delays in implementation; and

(6) The proposed use will not cause or contribute to violation of federal, state, or local law.

[(c) Any required approval of local, state, or federal land management agencies, including any necessary zoning or other changes required for the proposed alternative land use, shall be obtained prior to the final release of bond liability for the permit area.]

[(2) Specific plans shall be prepared and submitted to the cabinet which show the feasibility of the proposed postmining land use as related to projected land use trends and markets, and which include a schedule showing how the proposed use will be developed and achieved within a reasonable time after mining. The cabinet may require appropriate demonstrations to show that the planned procedures are feasible, reasonable, and integrated with mining and reclamation, and that the plans will result in successful reclamation.]

[(3) The applicant has demonstrated that there is reasonable likelihood that any necessary public facilities will be provided.]

[(4) Specific and feasible plans are submitted to the cabinet which show that financing, attainment and maintenance of the postmining land use are feasible.]

[(5) Plans for the postmining land use are designed and certified by a qualified registered professional engineer to assure land stability, drainage, and site configuration necessary for the intended postmining use of the site.]

[(6) The proposed use or uses will neither present actual or probable hazard to public health or safety nor will they pose any actual or probable threat of water pollution or diminution of water availability.]

[(7) The proposed use or uses will not involve unreasonable delays in reclamation.]

[(8) Necessary approval of measures to prevent or mitigate adverse effects on fish, wildlife, and related environmental values and threatened or endangered plants shall have been obtained from the cabinet, and appropriate state and federal fish and wildlife management agencies

have been provided a sixty (60) day period in which to review the plan.]

[(9) Proposals to change premining land uses of fish and wildlife habitat, forest land, hayland, or pasture to a postmining cropland use, where the cropland would require continuous maintenance such as seeding, plowing cultivation, fertilization, or other similar practices to be practicable or to comply with applicable federal, state, and local laws, have been reviewed by the cabinet to ensure that:]

[(a) The applicant has demonstrated that there is reasonable likelihood that the landowner or land manager will provide sufficient crop management after release of applicable performance bonds under Title 405, Chapter 10 and 405 KAR 18:200, in order that the proposed postmining cropland use will remain practical and reasonable;]

[(b) There is sufficient water available and committed to maintain crop production; and]

[(c) Topsoil quality and depth are sufficient to support the proposed use.[

[Section 5. Land Use Categories. The following is the list of land use categories to be applied under this regulation. These uses are defined in 405 KAR 7:020. Also see the definition of "land use."]

[(1) Cropland.]
[(2) Pastureland.]
[(3) Grazing land.]
[(4) Forestry.]
[(5) Residential.]
[(6) Industrial/commercial.]
[(7) Recreation.]
[(8) Fish and wildlife habitat.]
[(9) Developed water resources.]
[(10) Underdeveloped land or no current land use or land management.]

FRANK DICKERSON, Commissioner
CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: July 12, 1991
FILED WITH LRC: July 15, 1991 at 10 a.m.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Chief State School Officer
(As Amended)

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

RELATES TO: KRS [156.031,] 156.070
STATUTORY AUTHORITY: KRS 156.070
NECESSITY AND FUNCTION: [KRS 156.031 requires that regulations relating to statutes amended by the 1990 Kentucky Education Reform Act be reviewed, amended if necessary, and resubmitted to the Legislative Research Commission prior to December 30, 1990; and] KRS 156.070 requires the State Board for Elementary and Secondary Education to provide for appeals from decisions of the Kentucky High School Athletic Association. This regulation establishes relevant hearing procedures.

[Section 1. There is hereby established within the Department of Education the position of hearing officer for the State Board for Elementary and Secondary Education. The State Board for Elementary and Secondary Education shall appoint, upon the recommendation of the chief state school officer, a person or persons to serve at the pleasure of the board in that capacity.]

Section 1. [2.] A [The] hearing officer, **who shall be a member of the board,** shall conduct a hearing, or a review on the law as appropriate, of all appeals from the Kentucky High School Athletic Association.

Section 2. [3.] Any aggrieved party may appeal the [written] ruling of the Kentucky High School Athletic Association within ten (10) days of the date of the Kentucky High School Athletic Association hearing, or its written decision if no ruling is made at the hearing, [such ruling] to the State Board for Elementary and Secondary Education, by filing notice with [by certified mail to] the Secretary of the State Board for Elementary and Secondary Education and by mailing a copy of the same [by certified mail to] the Commissioner of the Kentucky High School Athletic Association. Appeals not timely filed shall not be heard. The secretary of the board shall immediately notify the commissioner of the Kentucky High School Athletic Association of the appeal and the commissioner shall forthwith send the record of the matter, including a transcript or tape recording of the hearing before the association [Board of Control], to the secretary.

(1) The notice of appeal need not be in any prescribed form, but shall clearly state reasons for the appeal. If the appellant requests to present additional evidence to a hearing officer, the notice also shall set forth the nature of such evidence and reasons it has not been previously introduced.

(2) The notice of appeal may also request oral argument before a hearing officer, and if it does, it shall also state the reasons for such request.

(3) Written arguments (or briefs) may [shall] be filed [by certified mail] with the secretary within ten (10) days after notice of the appeal has been filed, with a copy sent by [certified] mail to the Commissioner of the Kentucky High School Athletic Association.

(4) The Commissioner of the Kentucky High School Athletic Association may [shall] respond to the written argument within five (5) days but may have one (1) extension of an additional five (5) days for good cause shown. The response shall be made by [certified] mail to the appellant with a copy sent [by certified mail] to the secretary of the state board.

(5) Unless the hearing officer grants the motion to introduce additional evidence or the request for an oral argument, the appeal shall be considered on the written record alone. Only in extraordinary cases where additional evidence is allowed to be introduced shall the appeal be considered de novo in nature.

Section 3. [4.] The hearing officer shall make findings of fact, conclusions of law and recommendations to the parties and to the State Board for Elementary and Secondary Education, and such[, if practicable,] shall allow ten (10) days [sufficient time] for written exceptions and responses to the state board. Except in cases of clear and compelling justification, [If time for written exceptions and responses cannot be allowed,] the parties shall not have a right to make oral argument [such] in person to the state board.

Section 4. [5.] The board may accept or reject the submission of the hearing officer in total or in part, may return the matter to the hearing officer for further proceedings or may have the parties appear before the board for further proceedings and ultimate decision. In any event, the board, in making its final decision, shall adopt or incorporate appropriate findings and conclusions.

Section 5. [6.] Because of the varied nature of the matters that may from time to time be assigned to a [the] hearing officer, and because time may be of the essence, in order for the submission of the hearing officer to be presented to the board at a scheduled meeting of the board, the hearing officer is hereby authorized, consistent with the limitations of the assignment, to set such time frames and other procedural matters as will assure due process to the parties and allow the submission to the board within the time prescribed.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the State Board for Elementary and Secondary Education, as required by KRS 156.070(4).

THOMAS C. BOYSEN, Commissioner

JOSEPH W. KELLY, Chairman
APPROVED BY AGENCY: September 12, 1991
FILED WITH LRC: September 12, 1991 at 4 p.m.

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

815 KAR 7:080 Licensing of fire protection sprinkler contractors.

RELATES TO: KRS Chapter 198B
STATUTORY AUTHORITY: KRS 198B.555
NECESSITY AND FUNCTION: The Commissioner of the Department of Housing, Buildings and Construction is required to adopt regulations for the administration of a Fire Protection Sprinkler Contractor's Law. This regulation establishes the qualifications, responsibilities, procedures and fees for licensing those [such] contractors. This amendment is to specify certain equivalent examinations for chemical systems. [This amendment is necessary to bring the regulation into technical compliance with KRS Chapter 13A and to more fully define the term "inspection".]

Section 1. Definitions. (1) "Department" as defined by KRS 198B.550(1).
(2) "Certificate of competency" means [is] the certificate of registration issued by the department to an individual who has satisfied the requirements of the department as set forth in KRS 198B.550 through 198B.605 which authorizes a fire protection sprinkler contractor to obtain a license to engage in business pursuant to KRS 198B.550(3).
(3) "Certificate holder" as defined by KRS 198B.550(5).
(4) "Commissioner" as defined by KRS 198B.550(2).
(5) "Fire protection sprinkler contractor" as defined by KRS 198B.550(3).
(6) "Fire protection sprinkler system" as defined by KRS 198B.550(6).
(7) "Inspection" means a physical and visual examination of a sprinkler system or portion thereof to verify that it conforms with the Kentucky Building Code and the standards adopted thereunder. Examinations of existing systems, including the actual operation of valves, devices or appliances and returning them to their normal service condition for purposes of determining whether a system is operating properly are not covered by this definition, although any certificate holder shall be [is] deemed qualified to make these examinations.
(8) "Installation" means the initial placement of a system or its extension or alteration after initial placement.

Section 2. Responsibilities of the Commissioner. The commissioner shall review applications, accept fees and issue certificates and licenses to qualified persons and firms pursuant to this regulation. He shall conduct investigations upon complaints which allege that a certificate holder or licensed fire protection sprinkler contractor has acted in violation of KRS Chapter 198B or this regulation.

Section 3. Applicability. (1) This regulation applies to all firms and persons who engage in he business of design and preparation of technical drawings, installation, repair, alteration, extension, maintenance or inspection of any fire protection sprinkler system.
(2) Exceptions. This regulation shall not apply to:
(a) Professional engineers in the preparation of plans or construction inspections pursuant to KRS Chapter 322;
(b) Building officials, fire marshals or fire inspectors and insurance inspectors;
(c) Persons installing limited area sprinkler systems served by a domestic water supply consisting of ten (10) sprinkler heads or less in one (1) structure;
(d) Persons working under the direct supervision of a certificate holder.
(e) Persons performing routine examination of existing suppression systems for purposes of determining if the system is operational.

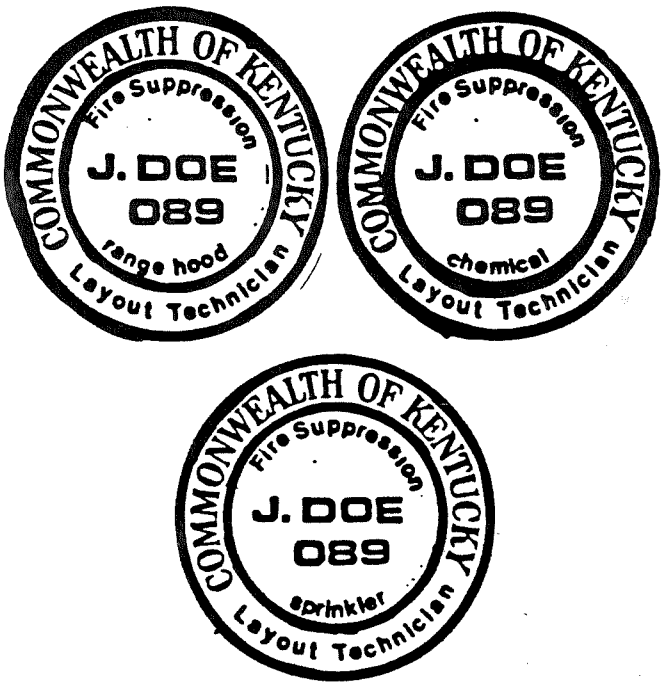
Section 4. Application for Certificate of Competency. (1) All persons seeking to become certificate holders shall comply with the examination requirements set forth in KRS 198B.570[(2)] for the [particular] type of system for which the applicant wishes to be certified competent. **Certificates** shall also be issued as follows: [.]
(a) For range hood suppression system competency, a manufacturer's current certification shall be acceptable as an alternative to the foregoing test.
(b) For pre-engineered chemical system competency, the manufacturer's current certification for the particular system(s) shall be acceptable as an alternative to the foregoing test.
(c) The National Institute for Certification in Engineering Technologies (NICET) examination entitled, "Fire Protection Special Hazards System Layout Level III" shall be acceptable for certification to install all types of chemical systems.

(2) Each application for a certificate of competency shall be made on the department's form entitled "Application for Certificate of Competency." The application shall be accompanied by all required documents and a nonrefundable certificate fee of $100, which shall be prorated on a quarterly basis upon the first renewal.

Section 5. Application for Licensed Fire Protection Sprinkler Contractors. (1) An [Any] applicant for licensure shall have a certificate holder in his employ and shall show proof of financial responsibility as required by KRS 198B.595.

(2) The applicant shall submit a license fee in the amount of $200. The initial license fee shall be prorated on a quarterly basis upon the first renewal.

Section 6. Certificate Holder Seal. Each certificate holder shall obtain and use a seal for all work prepared by him or under his direct supervision. The design shall be as follows:



Section 7. Certification/Licensure. (1) Upon completion of the requirements of KRS 198B.595, the certificate of competency shall be issued by the commissioner in the name of the certificate holder applicant.

(2) All fire protection sprinkler contractor licenses shall be issued in the name of the firm as set forth on the application and state the name of certificate holder on the face of the license.

(3) Each license and certificate shall expire on June 30 of each year and shall be renewed by refiling the necessary application together with a fee of $100 for each certificate and $200 for each license, prior to June 30.

Section 8. Duties and Responsibilities of Licensed Contractor and Certificate Holder. (1) A [No] person shall not represent himself [oneself] as a fire protection sprinkler contractor without first being licensed by the department in accordance with this regulation.

(2) The design of systems shall be prepared and submitted by either a licensed professional engineer or licensed fire protection sprinkler contractor as required by KRS 198B.565.

(3) A [No] person other than a certificate holder shall not engage in any activity listed in Section 3(1) of this regulation unless he is supervised by or has in his employ a lawfully authorized certificate holder.

Section 9. Procedures for Administrative Disciplinary Hearings. Disciplinary action authorized by KRS 198B.620 shall conform to the following procedures:

(1) Upon written complaint that a licensee or certificate holder has engaged in any prohibited behavior or failed to satisfy his responsibilities as set forth in this regulation, the commissioner shall cause an investigation to be made of the matter.

(2) If the commissioner determines that there is probable cause to believe the charges alleged, the commissioner or his designated representative, acting for the department, shall conduct a hearing as provided herein.

(3) In conducting the hearing, the commissioner or his designee shall have the authority to administer oaths and affirmatives, issue subpoenas authorized by law, rule upon offers of proof and receive relevant evidence, take or cause depositions to be taken, regulate the course of any hearings they may schedule and hold conferences for the settlement or simplification of the issues by consent of the parties.

(4) Any order to suspend or revoke a license or certificate and any order firing a licensee or certificate holder shall be signed by the commissioner or approved by him. The commissioner shall issue an order within thirty (30) days of the completion of any hearing subject to this regulation.

CHARLES A. COTTON, Commissioner
THEODORE T. COLLEY, Secretary
APPROVED BY AGENCY: September 12, 1991
FILED WITH LRC: September 13, 1991 at 11 a.m.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings & Construction
Division of Plumbing
(As Amended)

815 KAR 20:020. Parts or materials list.

RELATES TO: KRS Chapter 318
STATUTORY AUTHORITY: KRS Chapter 13A, 318.130
NECESSITY AND FUNCTION: The department is directed by KRS 318.130 through the State Plumbing Code Committee to adopt and put into effect a State Plumbing Code. This regulation will allow the department to permit the use of new parts and materials without amending specific regulations for each new item. This regulation will eliminate the repetitious amending of the Plumbing Code now required to include new materials item by item. This amendment adds new products approved by the Plumbing Code Committee on July 17, 1991 [March 13, 1991].

Section 1. Definitions as used in this regulation. (1) "APML" shall mean the "Approved

Parts or Materials List."
(2) "ABS" means acrylonitrile-butadiene-styrene pipe.
(3) "ASTM" means American Society for Testing Materials.
(4) "Parts or materials" shall mean all types of fittings and piping used in the soil, waste and vent systems, house sewers, potable water supply, plumbing fixtures, appurtenances, and mechanical sewage systems in plumbing systems.
(5) "Committee" shall mean the State Plumbing Code Committee.
(6) "Code" **as defined by KRS 318.010(11).** [shall mean the State Plumbing Code.]
(7) "Department" **as defined by KRS 318.010(1).** [shall mean the Department of Housing, Buildings and Construction.]
(8) "Person" **as defined by KRS 318.010(9).** [shall mean any individual, public or private corporation, political subdivision, government agency, municipality, copartnership, association, firm, trust, estate, or other entity.]
(9) "PVC" means polyvinyl chloride pipe.

Section 2. Approved Parts or Materials List (APML). The use of any part or material in any drainage or plumbing system, other than those currently authorized by the code, is prohibited unless the use of the part or material has been considered by the committee and approved by the department as being equal to or better than other similarly approved items for inclusion in the APML. The APML may also specify methods of installation or restrictions applicable to a particular part or material.

Section 3. Amending the APML. (1) A person **may** [desiring to have the APML amended shall] petition **the committee**, in writing, [for an opportunity to be heard by the committee] no later than fourteen (14) days prior to the **committee's** next scheduled meeting **for the purpose of amending the APML** [of the committee]. The request shall include a description of the part or material for which approval is sought, available technical data, and a listing of other authorities which have approved the use of the part or material, and any other pertinent information requested by the committee.
(2) The committee **shall** [will] consider all parts or materials for which approval is sought and **shall** [will] forward thirty (30) days thereafter its recommended disposition to the department. A hearing shall be held before the committee if requested, within thirty (30) days following the determination of the committee, by a person having an interest in the subject matter. Upon approval of a recommendation by the department, the APML shall be amended by listing the new part or material in Section 5 of this regulation.

Section 4. Custody of the APML. It shall be the responsibility of the Director, Division of Plumbing, to maintain an up-to-date APML and to make it available for inspection during regular office hours. Copies of the APML may be obtained by mailing a self-addressed stamped envelope to the Division of Plumbing, Department of Housing, Buildings and Construction, Frankfort, Kentucky 40601. The cost of reproduction shall not exceed ten (10) cents per page.

Section 5. Content of Approved Parts or Materials List. The following list of parts or materials have been approved by the Kentucky Plumbing Code Committee and the Division of Plumbing and shall be allowed for installation in Kentucky.
(1) Flexible three-fourths (3/4) inch hot and cold water connectors for hot water heaters, minimum wall thickness, .032.
(2)(a) Flushmate water closet tank.
(b) Microphor company. Two (2) quart flush toilets.
(c) Jomar 3 and 4 water conserver water closets to operate efficiently on three and one-half (3 1/2) gallons of water per flush.
(d) Superinse toilet that operates on one (1) gallon of water per flush as manufactured by Universal Rundle for the Thetford Wastewater Treatment Systems.
(e) IFO Sanitar AB Model-3160 and 3180 China Water Closet equipped with a Fluidmaster 4003A-F77 Ballcock.
(f) Cashsaver MX (quantum 150-1) Water Closet Combination and Flushmate II Flushometer/Tank as manufactured by Mansfield Plumbing Products.
(3) Tubular traps with gasket in trap seal.
(4)(a) Polyethylene sump pump basin. Polyethylene sump pump basin shall be constructed of polyethylene material and **shall** be provided with a sump cover.
(b) Liberty Pump Model 402, Laundry Tray Pump for pipe size one and one-half (1 1/2) inch for light commercial and household usage.
(c) Zoeller Drain pump and HiLo Industries Power Drain for pipe sizes one and one-half (1 1/2) inch and two (2) inch for light commercial and household usage.
(d) Sewage ejector pit - eighteen (18) inch by twenty-two (22) inch with steel cover pit and eighteen (18) inch by thirty (30) inch with steel cover sump pit as manufactured by Lunsford and Associates, Inc.
(e) Little Giant Pump Company, Drainosaur Water Removal System, Model #WRS-6. This approval **shall be** [is] limited to two (2) drainage fixture units since it has a one and one-half (1 1/2) inch drain.
(5)(a) No-caulk roof flashing. No-caulk roof flashing shall be eighteen (18) inch by eighteen (18) inch galvanized iron base with a neoprene boot forming a water tight seal with the stack that it serves.
(b) Polyethylene roof flashing. Polyethylene roof flashing shall have a base which shall extend six (6) inches in all directions from the base of a stack and shall have a boot with a preformed thermoplastic rubber gasket.
(c) Dektite pipe flashing system to be used on metal building decks for plumbing vent stacks as manufactured by Buildex Corporation.
(d) Oatey eighteen (18) inch by eighteen (18) inch no caulk thermoplastic flashing, one (1) piece construction, positive double seal in three (3) inch only.
(e) Carlisle syntec systems. Vent flashings for sureseal and Brite-Ply roofing systems as required by Carlisle Corporation.
(f) Trocal roofing systems. Vent flashings for Trocal roofing systems as required by Dynamit Nobel of American, Inc.
(g) Masterflash Pipe Flashing system for plumbing vent stacks as manufactured by Aztec Washer Company.
(h) Hi-Tuff Roofing Systems pipe flashing system for plumbing vent stacks as required by

J.P. Stevens and Company, Inc.

(6)(a) Kitchen sink faucet. Kitchen sink faucets may have corrugated supply piping if the piping has a wall thickness equal to Type M copper pipe.

(b) Sink and lavatory faucets and pop-up lavatory assembly parts manufactured by CPVC plastic as manufactured by Nibco Co.

(c) Series 1000 Automatic Faucets as Manufactured by Hydrotek USA, Inc.

(7) Lab-Line Enfield L-E acid waste systems, one and one-half (1 1/2) through four (4) inch inside measurement for above and below ground installation on acid waste only. Underground shall be laid on six (6) inches of sand grillage and shall be backfilled by hand and tamped six (6) inches around piping or may be surrounded by six (6) inches of sand grillage.

(8) Floor drains, shower drains, urinal drains and clean-outs manufactured by Plastic Oddities, Inc.

(9) Tubular plastic components conforming to ASTM F409-75, bathtub waste and overflow, traps, continuous sink wastes and extension tubes as manufactured by J & B Products Corporation.

(10)(a) Water heaters. Heat pump water heaters as manufactured by Dec International, Inc., Therma-Stor Products Group.

(b) Water heaters, point of use or instantaneous.

1. In-Sink-Erator's Ultra System. For instant hot water to serve individual fixtures, Model #777W, W, WH, WA and WHA, W-152 and W-154.

2. Eemax Electric Tankless water heaters - nonpressure type without the requirement of a temperature and pressure relief valve; the pressure type with the requirement that the temperature and pressure relief valve be of a one-half (1/2) inch short shank valve and shall be installed with the product.

3. Vitaclimate Control Systems, Inc. - Heatrae Instantaneous Water Heaters Models 7000 and 9000, pressure type, point of use water heater and shall be equipped with an approved temperature and pressure relief valve installed so that the thermo couple of the relief valve extends into the heat chamber discharge.

4. Paloma Automatic Instantaneous Gas Water Heaters Numbers PH-6DN, PH-6DP, PH-12A-DN, PH-12A-DP, PH-12M-DN, PH-12M-DP, PH-16A-DN, PH-16A-DP, PH-16M-DN, PH-16M-DP, PH-24A-DN, PH-24A-DP, PH-24M-DN and PH-24M-DP.

5. Rinnai Gas Fired Instantaneous Water Heaters Model Numbers REU-95GS-2R, REU-95GS-3R, REU-90, REU-130 pressure type and shall be equipped with an approved temperature and pressure relief valve.

6. Elkay Aqua-Temp tankless water heaters - nonpressure type without the requirement of a temperature and pressure relief valve.

7. International Technology Sales Corporation AEG Telefunken MDT instantaneous water heater and shall be equipped with an approved temperature and pressure relief valve.

8. International Technology Sales Corporation Zanker Faucet Model W05U without a temperature and pressure relief valve.

9. Amtrol hot water maker model numbers WH7P, WH7 and WH7C with a minimum three-fourths (3/4) inch inlet and outlet.

10. Chronomite Laboratories, Inc. - instantaneous water heater and shall be equipped with an approved temperature and pressure relief valve. Chronomite Instant-Flow Tankless Water Heater without a temperature and pressure relief valve.

11. Nova Hot Water Generator Models: VES5/10, VES6/12, VES7/14, VES8/16, VES9/18 and VES11/22 as manufactured by Hot Water Generators, Inc.

12. Aqua Star tankless gas water heaters, model numbers 125 VP and 80 VP and shall be equipped with an approved temperature and pressure relief valve.

13. Ariston electric water heaters, model numbers P-15S and P-10S and shall be equipped with an approved temperature and pressure relief valve.

14. Vaillant Corporation gas fired point of use water heater.

15. Trinom Hot Man Tankless Water Heater as manufactured by Siemens.

16. Field Controls Company Power Venter - Models PVAE and SWG for use in conjunction with gas and oil fired water heaters.

(11) Compression joints. Fail-safe hot and cold water systems.

(12) Orion fittings for acid waste piping systems for above and below ground.

(13) R & G Slone Manufacturing Company. Fuseal mechanical joint for the connection of polypropylene and waste piping.

(14) Johns Manville Flex I drain roof drain system.

(15) Hydrocide liquid membrane (HLM) to be used as a shower pan material conforming to ASTM C836-76. The density of the material shall be at least one-sixteenth (1/16) inch thick.

(16) Scotch-Clad brand waterproofing system as manufactured by the 3M Company for thin-set installation of ceramic and quarry tile in shower stalls, bathrooms, janitorial closets limited to those applications on concrete floors and using metallic soil and waste piping.

(17) Elkay Aqua-chill water dispensers.

(18) Flexible connectors for hot and cold potable water supply in plumbing fixture connections as manufactured by Aqua-Flo Corporation limited to thirty (30) inch length except dishwashers which shall be forty-eight (48) inches maximum.

(19)(a) Delta Faucet Company's quick-connect fitting known as "grabber" to be used with hot and cold potable water installations above ground only.

(b) REMCO Angle Stop Quick connect valve for use with hot and cold potable water installations above ground only.

(20) Interceptors.

(a) Town and Country plastic interceptors to be used as a grease trap.

(b) Grease recovery unit (GRU) as manufactured by Lowe Engineering, Lincoln Park, NJ.

(c) Scienco, Inc., models SI-101-20G, SI-104-35G, SI-102-50G and SI-103-100G with PVC solvent connections only.

(d) Rockford separators for grease, oil, hair and solids in various styles and sizes and being more specifically model series G, G LO, G M, G LOM, GF, GFE, GAS, GPS, GSS, OS, RHS, GSC, RMS, RSD, SD, SDE, GTD, and RTD that are used for their intended purpose and installed in accordance to the manufacturer's specification and the plumbing code.

(e) Grease interceptors as manufactured by Enpoco, Inc. of St. Charles, IL.

(21) Plastic Oddities Srv (sewer relief vent) clean-out.

(22) Contech A-2000 - a PVC corrugated pipe with smooth interior meeting or exceeding all the material and service test requirements of

ASTM D-3034-74 except dimensions at the time of manufacture.

(23) Nonchemical water treatment to control lime scale and corrosion buildup superior water conditioners as manufactured by Kemtune, Inc.

(24) Eljer plumbing ware – Elgers ultra one/G water closet.

(25) "Power Flush" and "Quik Jon" as manufactured by Zoeller Company; shall have a three (3) inch vent; alternate additional waste openings to be located in pump chamber above top of base chamber.

(26) Exemplar Energy garden solar water heater.

(27) ProSet systems for pipe penetrations in fire rated structures. System A for copper and steel pipe. System C using solvent weld joints only. ProSet E-Z flex coupling is approved for similar or dissimilar materials.

(28) ABS and PVC backwater valves, Models 3281, 3282, 3283 and 3284 for solvent cement joints only as manufactured by Canplas Industries.

(29) Clamp-All Corporation Pipe Coupling Systems is approved size for size on dissimilar materials on new or existing installations. Snap-All Increaser/Reducer transition bushings are approved only for repairs using dissimilar materials or sizes.

(30) Mission Rubber Company "Band-Seal Specialty Coupling" is approved as a transition between any combination of the following materials: cast iron, copper, galvanized steel, schedule 40 PVC and ABS and SDR 35.

(31)(a) Laticrete 9235 Waterproof Membrane to be used as a safing material for floors and walls in showers, bathtubs and floor drain pans.

(b) Ultra-Set as manufactured by Bostik Construction Products to be used as a water proofing material.

(32) DFW Elastomeric PVC coupling manufactured by DFW Plastics, Inc. for use on building sewers only.

(33) Fernco Lowflex Shielded Couplings, approved for connecting extra heavy, no-hub and service weight cast iron pipe, DWV PVC and ABS pipe, SDR 35 sewer pipe, galvanized steel pipe and copper pipe or as a transition between any of these materials in soil waste and vent systems above or below grade.

CHARLES A. COTTON, Commissioner
THEODORE T. COLLEY, Secretary
APPROVED BY AGENCY: August 7, 1991
FILED WITH LRC: September 13, 1991 at 11 a.m.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings & Construction
Division of Plumbing
(As Amended)

815 KAR 20:050. Installation permits.

RELATES TO: KRS Chapter 318
STATUTORY AUTHORITY: KRS 318.**030** [010], 318.134
NECESSITY AND FUNCTION: The department is directed by KRS 318.134 to adopt a reasonable schedule of fees and charges to be paid for plumbing installation permits and the necessary inspections incident thereto. This regulation is to assure uniformity of fees and charges for plumbing installation permits throughout the state. This amendment is necessary to clarify the fee requirements as they relate to new plumbing installation permits. [This amendment is necessary to bring the regulation into technical compliance with KRS Chapter 13A. No other substantive changes were made.]

Section 1. Issuance of Permits. (1) Permits to construct, install or alter plumbing, sewerage or drainage shall be issued only to licensed master plumbers except as provided by subsection (3) of this section.

(2) Journeyman plumbers shall not construct, install or alter plumbing, sewerage or drainage unless the work is performed under the supervision of a licensed master plumber.

(3) Permits to construct, install or alter plumbing, sewerage or drainage may be issued to homeowners who desire to install plumbing in homes actually occupied by them or in a home to be constructed by them for their own personal residential use, if all the following requirements are met:

(a) Application is made for the permit prior to the beginning of the work; and

(b) The homeowner files with his application an affidavit stating that he **shall** [will] abide by the terms of this section; and

(c) All work shall be performed in compliance with the state plumbing code; and

(d) All the work shall be personally performed by the owner; and

(e) Only one (1) homeowner permit for construction of a new home shall be issued to an individual in a five (5) year period. This requirement may be waived by the department if the applicant is actually installing the plumbing for his own use.

(4) **A** [No] permit shall **not** be required for the repairing of leaks, cocks, valves, or for cleaning out waste or sewer pipes; however, a permit shall be required for the addition of a backflow prevention device to an existing potable water supply.

Section 2. When a Permit is Required. A plumbing installation permit shall be required for the following:

(1) For all new plumbing installations.

(2) For all existing plumbing installations if a fixture, soil or waste opening or conductor is to be moved or relocated.

(3) For each individual unit of a multistory building if there is more than one (1) unit.

(4) For each individual building. (Buildings shall be deemed separate if the connection between them is not a necessary part of the structure of either building, or if they are not under a continuous roof.)

(5) For a new house sewer and for a house sewer that is to be replaced.

(6) For a new water service and for a water service that is to be replaced, or for the addition of a backflow prevention device to an existing water service.

(7) For a new water heater installation and for a water heater installation that is to be replaced.

(8) For taking over a plumbing installation originally permitted to another master plumber or for assuming responsibility to correct and test an installation made by someone else. [For any other installation which constitutes "plumbing" within the meaning of KRS Chapter 318 and the state plumbing code.]

Section 3. Plumbing Installation Permit Fees. (1) The base fee for each plumbing installation permit for residential, one (1) and two (2) family units, shall be fifteen (15) dollars plus:

(a) Four (4) dollars for each plumbing fixture or appliance or plumbing fixture opening or appliance opening left in the soil or waste pipe system including openings left for future fixtures or appliances.

(b) Four (4) dollars for each domestic water heater.

(c) Four (4) dollars for each separately metered water and sewer service if more than one (1) water or sewer service is to be installed.

(2) The base fee for each plumbing installation permit for other than residential, one (1) and two (2) family units, shall be fifteen (15) dollars plus;

(a) Five (5) dollars for each plumbing fixture or appliance or plumbing fixture opening or appliance opening left in the soil or waste pipe system including openings left for future fixtures or appliances;

(b) Five (5) dollars for each domestic water heater.

(c) Five (5) dollars for each conductor opening.

(d) Five (5) dollars for each separately metered water and sewer service if more than one (1) water or sewer service is to be installed.

(3) If only one (1) [a] new domestic water heater is installed or replaced within a single building, the only fee for the plumbing installation permit shall be ten (10) dollars. Alternatively, if more than one (1) water heater is replaced within a building, a permit shall be issued under Sections 1 or 2 of this regulation.

(4) If the application for permit does not include any new installation but is to make corrections to or provide testing for an installation made by someone else, the permit fee shall be the base fee of fifteen (15) dollars only. [If only a new water service is constructed or replaced, the fee for the plumbing installation permit shall be fifteen (15) dollars.]

[(5) If only a new house sewer is constructed or replaced, the fee for a plumbing installation permit shall be fifteen (15) dollars.]

(5) [(6)] All persons securing plumbing permits shall be entitled to three (3) plumbing inspections at no additional cost. All plumbing inspections in excess of three (3), shall be charged at the rate of three (3) dollars per inspection.

(6) [(7)] All plumbing installation permits issued under this regulation shall expire one (1) year after date of issuance. If construction is begun within one (1) year after date of issuance, the permit shall not expire until completion of the planned plumbing installation.

[(8) Plumbing fixtures may be replaced without procuring a plumbing installation permit if the county plumbing inspector is notified of the installation.]

Section 4. Plumbing Inspection Fees for Public Buildings. The schedule of fees for inspection of the construction, installation or alteration of plumbing in public buildings shall be the same as specified in Section 3 of this regulation.

CHARLES A. COTTON, Commissioner
THEODORE T. COLLEY, Secretary

APPROVED BY AGENCY: September 10, 1991
FILED WITH LRC: September 13, 1991 at 11 a.m.

COMPILER'S NOTE: This administrative regulation, 902 KAR 10:140, was amended by the Administrative Regulation Review Subcommittee and the promulgating agency at its November 7, 1991 meeting. However, the agency and the Subcommittee agreed to defer this regulation, as amended, to its December 6, 1991 meeting.

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

902 KAR 10:140. On-site sewage disposal system installer certification program standards.

RELATES TO: KRS Chapter 211.350 to 211.380, 211.990(2)

STATUTORY AUTHORITY: KRS 194.050, 211.090(3), 211.180(3), 211.357

NECESSITY AND FUNCTION: KRS 211.350 to 211.380 directs the cabinet to regulate the construction, installation, or alteration of on-site sewage disposal systems except for systems with a surface discharge: KRS 211.357 directs the cabinet to establish a program of certification for installers of on-site sewage disposal systems. The purpose of this regulation is to fulfill the requirement to establish a certification program including competency testing, training, continuing education, and enforcement procedures relative to maintenance of an acceptable standard of competency for installers.

Section 1. Definitions. As used in this regulation the following terms shall have the meanings set forth below:

(1) "Approved" means that which has been considered acceptable to the cabinet.

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

(3) "Certification level" means the level of technical skills and knowledge attained by an installer as categorized below:

(a) "Probationary level" means the certification entry level for an installer as specified in KRS 221.357(2). Installers at this level may possess minimal technical knowledge and require additional training and frequent technical assistance in design and installation procedures; and

(b) "Full level" means the certification level attained by an installer as specified in KRS 211.357(2). Installers at this level are expected to possess competency in design and installation of conventional and modified conventional on-site systems but may require additional training and occasional technical assistance for alternative systems or complex designs;

(4) "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 211.357.

(5) "Certified installer" means a specific individual person who has met the requirements for certification contained in KRS 211.357 and the certification maintenance requirements contained in this regulation.

(6) "Competency" means an acceptable level of professional conduct, workmanship, and technical

knowledge in the design and installation of on-site sewage disposal systems.

(7) "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 a 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.

(8) "Person" means any individual, firm, corporation, association, organization, partnership, business trust, company or governmental unit.

Section 2. Application for Certification. (1) Any person proposing to offer services to construct, install, alter or repair on-site sewage disposal systems shall first have met the application requirements of the cabinet for certification and have obtained a valid certificate from the cabinet. Applications shall be made on form DFS-233 – Application for Certification to Install On-site Sewage Disposal Systems provided by the cabinet and shall include necessary information about the applicant, and shall be accompanied by an applicable fee as established in KRS 211.357(3).

(2) For probationary certification applicant's qualifications shall be as follows:

(a) Applicant shall be a specific individual person of legal age to conduct business in Kentucky;

(b) Applicant shall have sufficient skills and knowledge of regulations and construction techniques to pass a minimum competency examination;

(c) Applicant shall possess or have ready access to use of necessary construction equipment including a backhoe, dump truck, hand tools, transit or level and leveling rod; and

(d) **Applicant shall submit proof of liability insurance.** [Applicant shall submit proof of business bonding in the amount of $5,000 payable to the Cabinet for Human Resources.]

(3) Applicant's qualifications for full certification shall be as follows:

(a) As specified in subsection (2)(a) through (d) of this section; and

(b) As specified in KRS 211.357(2).

(4) Applicants meeting the qualifications listed above shall be issued the appropriate certificate by the cabinet.

(5) Certification shall be valid only for the specific individual person to which it was issued and is not transferable to another person. Certification shall remain in effect and be valid statewide subject to the provisions of this regulation and KRS 211.357.

Section 3. Maintenance of Certification. (1) All persons holding valid certification under KRS 211.357 shall be required to attend training workshops offered by the cabinet to maintain certification and improve competency.

(2) Attendance at a minimum of two (2) training workshops per year with passing scores on workshop tests shall meet certification maintenance requirements.

(3) Attendance at workshops, seminars, or conferences not sponsored by the cabinet may be substituted on a one (1) for one (1) basis to meet certification maintenance requirements at the discretion of the cabinet. Requests for consideration of other training for substitution shall be based upon the following:

(a) Submission of a copy of the training agenda and course outlines; and

(b) Submission of proof of attendance and results of any testing or other performance measurement with verification by the training sponsor.

(4) Upon receipt of a request for training substitution the cabinet shall compare that training for equivalency with similar training it provides. If equivalency is demonstrated, the cabinet shall accept that training for substitution as specified in subsection (3) of this section.

(5) Any person failing to meet certification maintenance requirements shall be subject to administration action under Section 7 of this regulation and KRS 211.357(4).

Section 4. Training. (1) The cabinet shall develop and implement a series of training workshops for certified installers in the areas of on-site sewage disposal system design, technology, application and function.

(2) Training workshops shall be conducted throughout the state at frequencies, times, and locations necessary to provide all certified installers a reasonable opportunity to attend a number of workshops sufficient to maintain certification.

(3) A schedule of training workshops, including dates, times, location, topics, and registration forms shall be prepared and made available to all certified installers to notify them of training opportunities and allow for scheduling attendance.

(4) A series of training courses shall be developed including instructor and student manuals, and other audiovisual and written materials.

(5) The cabinet may charge a reasonable fee at each training workshop to support program costs.

(6) The cabinet shall establish, through grants or contracts, a training staff composed of local health department certified inspectors

to conduct training workshops on a regional basis. These local instructors shall serve as supplemental staff to the cabinet and act under the direct supervision of the cabinet.

(7) Training workshops for staff and supplemental staff instructors shall be conducted to assure uniformity of training for certified installers.

(8) The cabinet may contract with other governmental agencies, private consultants, or professional organizations for specialized instructor services.

Section 5. Materials and Equipment. (1) Each training course shall be developed into a training materials packet consisting of the following:

(a) Course outline.
(b) Instructor script.
(c) Trainee guide.
(d) Audiovisual materials.
(e) Trainee worksheets and reference sheets.
(f) Test.
(g) Instructor comment sheet.
(h) Trainee comment sheet.

(2) A complete training materials packet, assembled in a loose-leaf, three (3) ring binder, shall be provided to each instructor for each course.

(3) A training material packet, excluding subsection (1)(b), (d) and (g) of this section, shall be provided to each trainee for each course.

(4) A loose-leaf, three (3) ring binder shall be provided to each trainee at the first workshop attended. This binder shall be used by the trainee to assemble a reference manual for the first course and all subsequent courses attended.

(5) Sufficient stocks of instructor and trainee material packets shall be maintained for each course to meet demand.

(6) Audiovisual equipment, including an overhead projector, slide projector, projection screen, videocassette player, and television monitor shall be available to each instructor.

Section 6. Enforcement. (1) Failure of any certified installer to comply with the requirements of KRS 211.350, 211.357(4) and (5), 902 KAR 10:081, 902 KAR 10:085, or this regulation shall result in administrative action being taken.

(2) A minimum six (6) months probationary period shall be assigned to any certified installer who:

(a) Fails final inspection on any two (2) consecutive systems which require follow-up inspections before approval is granted;

(b) Backfills any system before final inspection is conducted and approval to backfill is given;

(c) Fails final inspection on any system which results in reconstruction of the system before approval can be given;

(d) Fails to place, cause to be placed, or fails to supervise placement of any required additional fill soil over an installed system;

(e) Fails to call for final inspection of any system;

(f) Fails to be present on the site anytime work is being performed on the system under construction.

(3) Probation may be assigned to a certified installer by the cabinet or by the certified inspector having local jurisdiction. Terms of the probationary period shall stipulate any restrictions, requirements, or additional training deemed necessary to correct performance.

(4) For other violations, the provisions of KRS 211.357(4) and (5) relating to suspension or revocation of certification shall apply. In addition, if necessary to correct damaged or abandoned systems or sites, surrender of business bond shall be required.

(5) In all instances of administrative ation being taken for probation, suspension or revocation, a certified installer shall have the right to request an administrative hearing. The request shall be submitted in writing on form DFS-212 - Request for Hearing to the local health department having jurisdiction or to the cabinet. The local health department or cabinet shall establish a time, date, and location for the hearing and notify the requestee in writing. At the conclusion of the hearing, the hearing officer shall make a finding of fact and conclusion of law with recommendations for action. A transcript of the hearing need not be made unless the requestee makes a request for a transcript at the time of the hearing request and assumes the cost of transportation.

(6) If immediate legal action is necessary to prevent the creation or continuance of a health hazard, damage to the environment, or compel compliance with KRS 211.350(2) and (3), 211.357(4) and (5) or regulations pursuant to those statutes, the cabinet or local health department concerned may maintain, in its own name, injunctive action against any person engaged in the construction, installation, or alteration of an on-site sewage disposal system.

(7) The cabinet shall be notified in writing of any administrative action taken by a local health department against any certified installer, so that other local health departments can be alerted to that installer's status.

C. HERNANDEZ, M.D., Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 18, 1991
FILED WITH LRC: June 27, 1991 at 3 p.m.

CABINET FOR HUMAN RESOURCES
Department for Health Services
Division of Community Safety
(As Amended)

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

RELATES TO: KRS Chapter 218A
STATUTORY AUTHORITY: KRS 194.050, 218A.250
NECESSITY AND FUNCTION: KRS 218A.250 directs the Cabinet for Human Resources to adopt rules and regulations for carrying out the provisions of KRS Chapter 218A relating to controlled substances. KRS 218A.170(2) provides that all sales and distributions of controlled substances shall be in accordance with the federal controlled substances laws, including the requirements governing the use of order forms. The purpose of this regulation is to provide for the distribution of small amounts of controlled substances by pharmacies to practitioners or other pharmacies, without the necessity of obtaining a state license as a manufacturer or a

wholesaler, in accordance with applicable federal laws and regulations.

Section 1. Distribution of Controlled Substances by Pharmacy to Practitioner or other Pharmacy. A pharmacy licensed in Kentucky and registered with the U.S. Drug Enforcement Administration may distribute, without being licensed as a manufacturer or wholesaler in Kentucky, a quantity of a controlled substance to a practitioner or another pharmacy if [provided that]:

(1) The practitioner or pharmacy to whom the controlled substance is to be distributed is registered with the U.S. Drug Enforcement Administration;

(2) The distribution is recorded by the distributing pharmacy and by the receiving practitioner or pharmacy in accordance with KRS 218A.200;

(3) If the substance is listed in Schedule II, DEA Order Form 222C shall be utilized and copy one [thereof] shall be completed **and maintained in a readily retrievable manner** [and filed in the Schedule II prescription file] and copy two (2) [thereof] shall be completed and forwarded to U.S. Drug Enforcement Administration;

(4) If the substance is listed in Schedule III, IV or V, a written record of the substance distributed shall be maintained **in a readily retrievable manner** [in the appropriate prescription file] showing: the date of the transaction, the name, form and quantity of the substance, the name, address and registration number of the purchaser;

(5) The total number of dosage units of all controlled substances distributed by the pharmacy pursuant to this regulation during a twelve (12) month period shall not exceed five (5) percent of the total number of dosage units of all controlled substances distributed and dispensed by the [such] pharmacy during the twelve (12) month period. In the event the five (5) percent limitation is expected to be exceeded, the pharmacy shall obtain a license to distribute controlled substances in accordance with KRS 218A.160 and 218A.170;

(6) No prescription shall be issued by a practitioner to obtain any controlled substance for the purpose of general dispensing, administering or office use; and

(7) All distributions shall be in accordance with applicable federal and state laws and regulations.

C. HERNANDEZ, M.D., Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: September 10, 1991
FILED WITH LRC: September 13, 1991 at 11 a.m.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management and Development
(As Amended)

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

RELATES TO: 45 CFR 256, 257
STATUTORY AUTHORITY: KRS 194.050
NECESSITY AND FUNCTION: The Cabinet for Human Resources is required to administer the transitional and at-risk child care programs. This regulation sets forth the technical and financial requirements of these child care programs.

Section 1. Definitions. (1) "At-risk" means a family that has income at or below sixty (60) percent of the state median income and is therefore at risk of welfare dependency. Recipients of at-risk services may remain eligible for services with an income up to seventy-five (75) percent of the state median income.

(2) "Caregiver" means parent, step-parent or legally responsible guardian of an eligible child.

Section 2. Transitional Child Care (TCC). (1) Child care assistance shall be provided to a family whose eligibility for AFDC assistance has ceased:

(a) Due to increased hours of, or earnings from, employment; or

(b) As a result of the loss of income disregards due to the expiration of the time limits at Section 4(3)(b) of 904 KAR 2:016.

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

(3) Technical eligibility. The following requirements shall be met during any month for which TCC is paid:

(a) The child is under age thirteen (13); or

1. A dependent child who is physically or mentally incapable of caring for himself, as verified by the written determination of:

a. A physician; or

b. A licensed or certified psychologist; or

2. A needy dependent child under court supervision; or

3. Would be a dependent child except for the receipt of benefits under Supplemental Security Income (SSI) under 42 USC 1382 or foster care under 42 USC 672.

(b) Child care must be necessary in order to permit a member of an AFDC family to accept or retain employment;

(c) Payments are not made for care provided by:

1. Parents;

2. Legal guardians; or

3. Members of the assistance group;

(d) The family shall have ceased to be eligible for AFDC as a result of:

1. Increased hours of, or increased income from, employment; or

2. The loss of income disregards due to the time limitations at Section 4(3)(b) of 904 KAR 2:016;

(e) The family shall have received AFDC:

1. In at least three (3) of the six (6) months preceding the first month of ineligibility; and

2. At least one (1) of the three (3) months was received in the state of Kentucky.

(f) The family:

1. Requests TCC benefits;

2. Provides the information necessary for determining eligibility and fees; and

3. Meets application requirements.

(4) Time limitations.

(a) Eligibility for TCC:

1. Begins with the first month that the family is ineligible for AFDC; and

2. Continues for a period of twelve (12) consecutive months.

(b) A family may begin to receive child care in any month during the twelve (12) month

eligibility period.
(5) Notification of eligibility. A family shall be notified of its potential eligibility for TCC when its AFDC benefits are terminated.
(6) Sanctions. The family is not eligible for TCC for any remaining portion of the twelve (12) month period if the caretaker relative:
(a) Terminates employment, unless good cause exists as follows:
1. The individual:
a. Is personally providing care for a child under age six (6); and
b. Employment will require the individual to work more than twenty (20) hours per week.
2. Child care:
a. Is necessary for the individual to participate in the program or accept employment; and
b. Is not available; or
c. The available child care does not meet the special needs of the child, e.g., handicapped or retarded child.
3. The individual is unable to engage in employment or training for mental or physical reasons, including participation in a drug and alcohol rehabilitation program.
4. Transportation is unavailable and there is no readily accessible alternative means of transportation available.
5. Travel time to work site exceeds two (2) hours daily.
6. Illness of another household member requiring the presence of the participant at home.
7. Temporary incarceration.
8. Discrimination by an employer based on:
a. Age;
b. Race;
c. Sex;
d. Color;
e. Handicap;
f. Religious beliefs;
g. National origin; or
h. Political beliefs.
9. Work demands or conditions that render continued employment unreasonable. Examples are:
a. Consistently not being paid on schedule; or
b. The work presents a risk to the individual's health or safety.
10. Wage rates are decreased subsequent to acceptance of employment.
11. Acceptance of a better job which, because of circumstances beyond the control of the recipient, does not materialize.
12. Employment would result in a net loss of cash income.
(b) Fails to cooperate with the State IV-A agency in establishing payments and enforcing child support obligations, per 904 KAR 2:006, Section 11.
(7) Notices and hearings. Notices of adverse action, hearings, and appeals shall comply with the provisions of 904 KAR 2:046 and 904 KAR 2:055.
(8) Fee requirements. A family receiving TCC shall be required to contribute toward the payment based on the family's income as described in Section 3(10) of this regulation.
(9) Recoupment. The following provisions apply to overpayment in TCC:
(a) Necessary action shall be taken promptly by the department to correct and recoup an overpayment.
(b) An overpayment, including assistance paid pending a hearing decision, shall be recovered from:
1. The responsible party;
2. The family unit which was overpaid;
3. The provider who was responsible for the overpayment;
4. Individuals who were members of the family when overpaid; or
5. A family that includes a member of a previously overpaid family.
(c) An overpayment shall be recovered through:
1. Repayment by the individual or child care provider to the cabinet;
2. Reduction in child care payments; or
3. Reduction of AFDC benefits, only upon a voluntary request of the recipient family.
(d) Repayment by the individual shall allow the recipient family to retain, for any month, a reasonable amount of funds.
(e) An underpayment and an overpayment may be offset against each other in adjusting an incorrect payment.
(f) Benefits shall not be suspended, reduced, discontinued or terminated until a decision is rendered after a hearing, as specified in 904 KAR 2:055, when requested within the timely notice period.

Section 3. At-risk Child Care (ARCC). (1) Child care assistance shall be provided by the department to a family that:
(a) Is not receiving AFDC;
(b) Needs child care in order for a parent to accept or retain employment;
(c) Is at-risk of becoming eligible for AFDC as defined in Section 1 of this regulation; and
(d) Has no caregiver in the home to provide care for the child while a parent is working unless:
1. The caregiver is mentally or physically incapable of providing care; or
2. Is attending:
a. Job training; or
b. An educational program.
(2) In the event that a waiting list occurs, a family that loses eligibility in another child care program shall be given priority.
(3) ARCC shall be administered by the Cabinet for Human Resources, Department for Social Insurance through an Interagency Agreement with the Department for Social Services.
(4) Technical eligibility. The following requirements shall be met during any month for which ARCC is paid:
(a) The child is under age thirteen (13); or
1. Under age eighteen (18) and physically or mentally incapable of caring for himself as verified by the written determination of:
a. A physician; or
b. A licensed or certified psychologist; or
2. Under age eighteen (18) and under court supervision.
(b) The family:
1. Is at risk of becoming eligible for AFDC as defined in Section 1 of this regulation;
2. Is not receiving AFDC; and
3. Needs child care in order to accept employment and remain employed.
(5) Child care limitations.
(a) Child care payments shall be provided:
1. Directly to the provider;
2. In an amount equal to the actual cost up to a payment maximum based on local market rates described in Section 8 of 904 KAR 2:016; or
3. In an amount equal to the difference between subparagraph 2 of this paragraph and the

amount allowed as a deduction for child care costs to recipients of statutory benefits; and

4. If child care arrangements would otherwise be lost:

a. For up to two (2) weeks prior to the start of employment; or

b. For up to one (1) month during a break in employment if subsequent employment is scheduled to begin within that period.

(b) Payments shall not be made to a provider if the provider is:

1. The parent;

2. The legal guardian;

3. Not meeting applicable standards of state and local law.

4. Not registered by the department, as required in subsection (6) of this section; or

5. Not allowing parental access.

(6) Registration.

(a) A provider shall be registered with the department prior to receiving payment if it is not:

1. Providing care solely to a member of the provider's family; and

2. Required to meet applicable standards of state and local law.

(b) Registration requirements shall be the provision, in writing, to the Department for Social Services of the provider's:

1. Name;

2. Mailing address; and

3. Social Security or tax identification number.

(7) Authorization of child care payment. ARCC payments shall be authorized when the following requirements are met:

(a) Application is made on form DSS-1A, which is incorporated by the Department for Social Services in 905 KAR **2:080** [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:

MIKE ROBINSON, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: September 5, 1991
FILED WITH LRC: September 12, 1991 at 3 p.m.

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.

REGULATIONS AMENDED AFTER PUBLIC HEARING OR WRITTEN COMMENTS RECEIVED

FINANCE AND ADMINISTRATION CABINET
Department for Administration
(Amended After Hearing)

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

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

Section 1. Definitions. As used in this regulation, unless the context indicates otherwise:

(1) "Recovered fly ash" means the component of coal which results from the combustion of coal, and is the finely divided mineral residue which is typically collected from boiler stack gases by electrostatic precipitator or mechanical collection devices.

(2) "Mill broke" means any paper generated in a paper mill prior to completion of the paper manufacturing process which is unsuitable for end use applications and is subsequently reused in the paper manufacturing process.

(3) "Postconsumer waste" means products or materials which have been discarded by a consumer.

(4) "Recovered material" means those materials which have been separated, diverted or removed from the solid waste stream after a manufacturing process.

(5) "Recovered paper material" means paper products and paper byproducts which, if not recovered, would otherwise be solid waste, and which are intended for sale, use, reuse, or recycling, whether such materials or byproducts require subsequent separation and processing, excluding the virgin content of mill broke and sawdust.

(6) "Rerefined oil" means used oils from which the physical and chemical contaminants acquired through previous use have been removed through a refining process.

(7) "Solid waste stream" means a path of discarded material from point of origin to ultimate disposition.

(8) "State agency" as used in this regulation, shall have the same definition as that provided in KRS 45A.505.

Section 2. Minimum Recycled Content For State Agency Purchases. Except as provided under KRS 45A.510, any goods, supplies, equipment, materials and printing purchased by a state agency shall contain the following minimum recycled content; products designated by an asterisk have the same minimum recycled content standards as products as listed in the Code of Federal Regulations promulgated by the United States Environmental Protection Agency pursuant to the Resource Conservation and Recovery Act of 1976, as amended:

*(1) Xerographic paper (all sizes and colors). Product shall contain fifty (50) percent recovered paper material of which ten (10) percent shall be postconsumer waste.

*(2) Carbonless printing paper (all sizes and colors). Product shall contain **ten (10)** [fifty (50)] percent recovered paper material [of which ten (10) percent shall be postconsumer waste].

(3) Flat sheet printing papers.

*(a) Paper, offset and opaque (all sizes and colors). Product shall contain fifty (50) percent recovered paper material of which **ten (10)** [fifteen (15)] percent shall be postconsumer waste.

*(b) Paper, text (all sizes and colors). Product shall contain fifty (50) percent recovered paper material of which **ten (10)** [fifteen (15)] percent shall be postconsumer waste.

*(c) Paper, parchtex (all sizes and colors). Product shall contain fifty (50) percent recovered paper material of which fifteen (15) percent shall be postconsumer waste.

*(d) Paper, cover, antique **or** [on] wove **or** [and] text (all sizes and colors). Product shall contain fifty (50) percent recovered paper material of which ten (10) percent shall be postconsumer waste.

*(e) Paper, index (all sizes and colors). Product shall contain fifty (50) percent recovered paper material of which ten (10) percent shall be postconsumer waste.

(4) Business papers.

*(a) Paper, mimeographic (all sizes and colors). Product shall contain fifty (50) percent recovered paper material of which ten (10) percent shall be postconsumer waste.

*(b) Paper, spirit process (all sizes and colors). Product shall contain fifty (50) percent recovered paper material of which ten (10) percent shall be postconsumer waste.

*(c) Paper, rag bond (all sizes). Product shall contain fifty (50) percent recovered paper material of which ten (10) percent shall be postconsumer waste.

*(d) Paper, sulfite bond (all sizes and colors). Product shall contain fifty (50) percent recovered paper material of which ten (10) percent shall be postconsumer waste.

(5) Computer paper.

*(a) Continuous stock paper, carbon interleaved (all sizes and colors). Product shall contain fifty (50) percent recovered paper material of which ten (10) percent is postconsumer waste.

*(b) Continuous stock paper, plain (all sizes and colors). Product must contain fifty (50) percent recovered paper material of which ten (10) percent shall be postconsumer waste.

(6) Miscellaneous office supplies.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(11) Building insulation.

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

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

*(c) Plastic rigid foam.

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

a. Rigid foam: nine (9) percent recovered

material.
b. Foam-in-place: five (5) percent recovered material.
c. Glass fiber reinforcer: six (6) percent recovered material.
*2. Phenolic rigid foam. Product shall contain five (5) percent recovered material.
*(d) Rock wool. Product shall contain fifty (50) percent recovered material.
*(12) Engine lubricating oils. Product shall contain twenty-five (25) percent rerefined oil.
*(13) Hydraulic fluid. Product shall contain twenty-five (25) percent rerefined oil.
*(14) Gear oils. Product shall contain twenty-five (25) percent rerefined oil.
*(15) Plastic sign blanks. Product shall contain 100 percent postconsumer waste.
*(16) Envelopes (all types, sizes and colors). Product shall contain fifty (50) percent **recovered material** [postconsumer waste].
*(17) Doilies (all types, sizes and colors). Product shall contain fifty (50) percent postconsumer waste.
*(18) Corrogated boxes (all types and sizes). Product shall contain thirty-five (35) percent postconsumer waste.
*(19) Fiber boxes (all types and sizes). Product shall contain thirty-five (35) percent postconsumer waste.
*(20) Recycled paperboard (all types and sizes). Product shall contain eighty (80) percent postconsumer waste.
*(21) Brown papers (all types and sizes). Product shall contain five (5) percent postconsumer waste.
*(22) Pad backing (all types and sizes). Product shall contain ninety (90) percent postconsumer waste.
(23) Aluminum bars. Product shall contain twelve (12) percent recovered material.
(24) Aluminum bolts and nuts. Product shall contain twelve (12) percent recovered material.
(25) Aluminum channels. Product shall contain twelve (12) percent recovered material.
(26) Aluminum handrail post. Product shall contain twelve (12) percent recovered material.
(27) Aluminum sign blanks. Product shall contain twelve (12) percent recovered material.
(28) Aluminum sign panels. Product shall contain twelve (12) percent recovered material.
(29) Aluminum pipe. Product shall contain twelve (12) percent recovered material.
(30) **Hot-mix asphalt** [Bituminous hot-mix]. Product shall contain **ten (10)** [fifteen (15)] percent postconsumer waste **or recovered material**.
*(31) Cement. Product shall contain **five (5) percent replacement of cement by weight with recovered fly ash** [twenty (20) percent recovered fly ash].
*(32) Concrete cribbing. Product shall contain **five (5) percent replacement of cement by weight with recovered fly ash** [twenty (20) percent recovered fly ash].
[*(33) Concrete pipe. Product shall contain twenty (20) percent recovered fly ash.]
(33) [(34)] Gabions. Products shall contain ten (10) percent postconsumer waste **or recovered material**.
(34) [(35)] Glass beads. Product shall contain fifty (50) percent postconsumer waste.
(35) [(36)] Guardrail, guardrail post, and component parts. Product shall contain twenty (20) percent postconsumer waste **or recovered material**.
(36) [(37)] Metal bridge planks. Product shall contain ten (10) percent postconsumer waste **or recovered material**.
(37) [(38)] Metal pipe. Product shall contain ten (10) percent postconsumer waste **or recovered material**.
[*(39) Precast concrete buffer, curbs and headwalls. Product shall contain twenty (20) percent recovered fly ash.]
[*(40) Precast concrete bridges. Product shall contain twenty (20) percent recovered fly ash.]
***(38)** [(41)] Ready-mix concrete. Product shall contain **five (5) percent replacement of cement by weight with recovered fly ash** [twenty (20) percent recovered fly ash].
(39) [(42)] Reflective powder. Product shall contain fifty (50) percent postconsumer waste.
(40) [(43)] Slag (boiler). Product shall contain 100 percent postconsumer waste **or recovered material**.
(41) [(44)] Sign brackets. Product shall contain ten (10) percent postconsumer waste **or recovered material**.
(42) [(45)] Steel cribbing. Product shall contain ten (10) percent postconsumer waste **or recovered material**.
(43) [(46)] Steel piling. Product shall contain ten (10) percent postconsumer waste **or recovered material**.
(44) [(47)] Steel post, sign and delineator. Product shall contain ten (10) percent postconsumer waste **or recovered material**.
(45) [(48)] Steel, open grid flooring. Product shall contain ten (10) percent postconsumer waste **or recovered material**.
(46) [(49)] Railroad rails. Product shall contain 100 percent postconsumer waste **or recovered material**.

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

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

L. ROGERS WELLS, JR., Secretary
APPROVED BY AGENCY: November 4, 1991
FILED WITH LRC: November 4, 1991 at 9 a.m.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Carriers
Office of General Counsel
(Amended After Hearing)

601 KAR 1:116. Restricted taxicab certificate.

RELATES TO: KRS [211.950-211.958,] Chapters 216B, 281
STATUTORY AUTHORITY: KRS 281.600
NECESSITY AND FUNCTION: The definition of taxicab and taxicab certificate specified in KRS 281.014(1) and the definitions of ambulance and ambulance provider specified in KRS 211.950 have caused conflict in the transportation of persons who are handicapped or incapacitated. The Human Resources Cabinet and the Transportation Cabinet have both in the past assumed responsibility for the licensure of some providers of transportation to handicapped or incapacitated persons. To eliminate the overlap between the authority of the cabinets and to provide adequate notice to transporters of the handicapped or incapacitated of the appropriate licensing agency and procedures, this administrative regulation is promulgated.

Section 1. Definitions. (1) "Nonhealth care transporter" means a person who provides taxicab transportation to handicapped or incapacitated persons when it is not expected that the passenger shall require health care while being transported. [The vehicle used by the nonhealth care transporter shall not be supplied or equipped with any medical equipment. The vehicle may be equipped to transport or hold wheelchairs, but not stretchers.]

(2) "Nonhealth care restricted taxicab certificate" means a taxicab certificate issued to a nonhealth care transporter who does not intend to provide full taxi service to a community.

Section 2. Prohibitions. (1) No vehicle operated under the auspices of either a taxicab or nonhealth care restricted taxicab certificate issued by the Transportation Cabinet shall be supplied or equipped with any medical equipment nor shall it be equipped with a **mobile bed unless the transporter under whose authority the vehicle is being operated has been licensed as a nonemergency health care transportation provider under the provisions of KRS Chapter 216B and is in compliance with its certificate of need.**

(2) A nonhealth care transporter, even though also licensed under the provisions of KRS Chapter 216B, shall not operate under the provisions of KRS Chapter 281 when any medical equipment, supplies, or mobile bed is in use in the vehicle [stretcher].

(3) [(2)] No nonhealth care transporter shall operate a taxi service for the commercial transportation of handicapped or incapacitated persons in the Commonwealth of Kentucky without first having been issued a taxicab certificate or restricted taxicab certificate by the Transportation Cabinet.

[Section 3. Cabinet for Human Resources. Any transporter of handicapped or incapacitated persons who supplies or equips his vehicle with medical equipment or a stretcher, shall apply for operational authority to the Cabinet for Human Resources in accordance with KRS Chapter 211.]

Section **3.** [4.] Wheelchairs. Any transporter of handicapped or incapacitated persons whether operating under the authority of KRS Chapter **216B** [211] or Chapter 281 may equip his vehicle to transport or hold wheelchairs.

JEROME L. LENTZ, Commissioner
MILO D. BRYANT, Secretary
APPROVED BY AGENCY: November 4, 1991
FILED WITH LRC: November 4, 1991 at 2 p.m.

PUBLIC PROTECTION AND REGULATION CABINET
Public Service Commission
(Amended After Hearing)

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

RELATES TO: KRS Chapter 278, 49 CFR Part 199, 49 USC §1674
STATUTORY AUTHORITY: KRS 278.280(2), 49 CFR Part 199, 49 USC §1674
NECESSITY AND FUNCTION: Section 5 of the Natural Gas Pipeline Safety Act of 1978 (49 USC §1674) requires each state participating in the federal/state pipeline safety program to certify that it has adopted each federal safety standard established under the Act that is applicable to interstate pipeline transportation under its jurisdiction. Pursuant to that requirement, this regulation adopts the standards set out in 49 CFR Part 199 for drug testing of employees of operators of natural gas pipeline facilities which are subject to 807 KAR 5:022.

Section 1. Definitions. (1) "Accident" means an incident reportable under 807 KAR 5:027, **Section 3(1)(a) through (f)** involving gas pipeline facilities **or any incident that is significant in the judgment of the operator even though it did not meet the reporting requirements of 807 KAR 5:027**.

(2) "Administrator" means the Administrator of the Research and Special Programs Administration (RSPA), or any person who has been delegated authority in the matter concerned.

(3) "DOT procedures" means the "Procedures for Transportation Workplace Drug Testing Programs" published by the Office of the U.S. Secretary of Transportation in 49 CFR Part 40.

(4) "Employee" means a person who performs on a pipeline an operating, maintenance, or emergency-response function regulated by 807 KAR 5:022. This does not include clerical, truck driving, accounting, or other functions not subject to 807 KAR 5:022. The person may be employed by the operator, be a contractor engaged by the operator, or be employed by such a contractor.

(5) "Fail a drug test" means that the confirmation test result shows positive evidence of the presence under DOT procedures of a prohibited drug in an employee's system.

(6) "Operator" means a person who owns or operates pipeline facilities subject to 807 KAR 5:022.

(7) "Pass a drug test" means that initial testing or confirmation testing under DOT procedures does not show evidence of the presence of a prohibited drug in a person's

system.
(8) "Prohibited drug" means any of the following substances specified in Schedule I or Schedule II of the Controlled Substances Act, 21 USC 801.812 (1981 & 1987 Cum.P.P.): marijuana, cocaine, opiates, amphetamines, and phencyclidine (PCP). In addition, for the purpose of reasonable cause testing, "prohibited drug" includes any substance in Schedule I or II if an operator has obtained prior approval from RSPA, pursuant to the "DOT procedures" in 49 CFR Part 40, to test for such substance, and if the U.S. Department of Health and Human Services has established an approved testing protocol and positive threshold for such substance.
(9) "Commission" means the Kentucky Public Service Commission.

Section 2. DOT Procedures. The anti-drug program required by this regulation shall be conducted according to the requirements of this regulation and the DOT procedures. In the event of conflict, the provisions of this regulation prevail. Terms and concepts used in this regulation have the same meaning as in the DOT procedures.

Section 3. Anti-drug Plan. Each operator shall maintain and follow a written anti-drug plan that conforms to the requirements of this regulation and the DOT procedures. The plan shall contain:
(1) Methods and procedures for compliance with all the requirements of this regulation, including the employee assistance program;
(2) The name and address of each laboratory that analyzes the specimens collected for drug testing; and
(3) The name and address of the operator's medical review officer; and
(4) Procedures for notifying employees of the coverage and provisions of the plan.

Section 4. Use of Persons Who Fail or Refuse a Drug Test. (1) An operator shall not knowingly use as an employee any person who:
(a) Fails a drug test required by this regulation and the medical review officer makes a determination under Section 7(4)(b) of this regulation; or
(b) Refuses to take a drug test required by this regulation.
(2) Subsection (1)(a) of this section does not apply to a person who has:
(a) Passed a drug test under DOT procedures;
(b) Been recommended by the medical review officer for return to duty in accordance with Section 7(3) of this regulation; and
(c) Not failed a drug test required by this regulation after returning to duty.

Section 5. Drug Tests Required. Each operator shall conduct the following drug tests for the presence of a prohibited drug:
(1) Preemployment testing. No operator shall hire or contract for the use of any person as an employee unless that person passes a drug test or is covered by an anti-drug program that conforms to the requirements of this regulation.
(2) Postaccident testing. As soon as possible but no later than thirty-two (32) hours after an accident, an operator shall drug test each employee whose performance either contributed to the accident or cannot be completely discounted as a contributing factor to the accident. If an employee is injured, unconscious, or otherwise unable to evidence consent to the drug test, all reasonable steps shall be taken to obtain a urine sample. An operator may decide not to test under this subsection but such a decision must be based on the best information available immediately after the accident that the employee's performance could not have contributed to the accident or that, because of the time between that performance and the accident, it is not likely that a drug test would reveal whether the performance was affected by drug use.
(3) Random testing. Each operator shall administer, every twelve (12) months, a number of random drug tests at a rate equal to fifty (50) percent of its employees. Each operator shall select employees for testing by using a random number table or a computer-based random number generator that is matched with an employee's social security number, payroll identification number, or other appropriate identification number. However, during the first twelve (12) months following the institution of random drug testing under this regulation, each operator shall meet the following conditions:
(a) The random drug testing is spread reasonably through the twelve (12) month period;
(b) The last test collection during the year is conducted at an annualized rate of fifty (50) percent; and
(c) The total number of tests conducted during the twelve (12) months is equal to at least twenty-five (25) percent of the covered population.
(4) Testing based on reasonable cause. Each operator shall drug test each employee when there is reasonable cause to believe the employee is using a prohibited drug. The decision to test shall be based on a reasonable and articulable belief that the employee is using a prohibited drug on the basis of specific, contemporaneous physical, behavioral, or performance indicators of probable drug use. At least two (2) of the employee's supervisors, one (1) of whom is trained in detection of the possible symptoms of drug use, shall substantiate and concur in the decision to test an employee. The concurrence between the two (2) supervisors may be by telephone. However, in the case of operators with fifty (50) or fewer employees subject to testing under this regulation, only one (1) supervisor of the employee trained in detecting possible drug use symptoms shall substantiate the decision to test.
(5) Return to duty testing. An employee who refuses to take or does not pass a drug test shall not return to duty until the employee passes a drug test administered under this regulation and the medical review officer has determined that the employee may return to duty. An employee who returns to duty shall be subject to a reasonable program of follow-up drug testing without prior notice for not more than sixty (60) months after his return to duty.

Section 6. Drug Testing Laboratory. (1) Each operator shall use for the drug testing required by this regulation only drug testing laboratories certified by the U.S. Department of Health and Human Services under the DOT procedures.
(2) The drug testing laboratory must permit:
(a) Inspections by the operator before the laboratory is awarded a testing contract; and

(b) Unannounced inspections, including examination of records, at any time, by the operator, the administrator or a commission representative.

Section 7. Review of Drug Testing Results. (1) MRO appointment. Each operator shall designate or appoint a medical review officer (MRO). If an operator does not have a qualified individual on staff to serve as MRO, the operator may contract for the provision of MRO services as part of its anti-drug program.

(2) MRO qualifications. The MRO shall be a licensed physician with knowledge of drug abuse disorders.

(3) MRO duties. The MRO shall perform the following functions for the operator:

(a) Review the results of drug testing before they are reported to the operator.

(b) Review and interpret each confirmed positive test result as follows to determine if there is an alternative medical explanation for the confirmed positive test result:

1. Conduct a medical interview with the individual tested.

2. Review the individual's medical history and any relevant biomedical factors.

3. Review all medical records made available by the individual tested to determine if a confirmed positive test resulted from legally prescribed medication.

4. If necessary, require that the original specimen be reanalyzed to determine the accuracy of the reported test result.

5. Verify that the laboratory report and assessment are correct.

(c) Determine whether and when an employee who refused to take or did not pass a drug test administered under DOT procedures may be returned to duty.

(d) Determine a schedule or unannounced testing, in consultation with the operator, for an employee who has returned to duty.

(e) Ensure that an employee has been drug tested in accordance with the DOT procedures before the employee returns to duty.

(4) MRO determinations. The following rules govern MRO determinations:

(a) If the MRO determines, after appropriate review, that there is a legitimate medical explanation for the confirmed positive test result other than the unauthorized use of a prohibited drug, the MRO is not required to take further action.

(b) If the MRO determines, after appropriate review, that there is no legitimate medical explanation for the confirmed positive test result other than the unauthorized use of a prohibited drug, the MRO shall refer the individual tested to an employee assistance program, or to a personnel or administrative officer for further proceedings in accordance with the operator's anti-drug program.

(c) Based on a review of laboratory inspection reports, quality assurance and quality control data, and other drug test results, the MRO may conclude that a particular drug test result is scientifically insufficient for further action. Under these circumstances, the MRO should conclude that the test is negative for the presence of a prohibited drug or drug metabolite in an individual's system.

Section 8. Retention of Samples and Retesting. (1) Samples that yield positive results on confirmation shall be retained by the laboratory in properly secured, long-term, frozen storage for at least 365 days as required by the DOT procedures. Within this 365-day period, the employee or his representative, the operator, the administrator, or a commission representative may request that the laboratory retain the sample for an additional period. If, within the 365-day period, the laboratory has not received a proper written request to retain the sample for a further reasonable period specified in the request, the sample may be discarded following the end of the 365-day period.

(2) If the medical review officer (MRO) determines there is no legitimate medical explanation for a confirmed positive test result other than the unauthorized use of a prohibited drug, the original sample shall be retested if the employee makes a written request for retesting within sixty (60) days of receipt of the final test result from the MRO. The employee may specify retesting by the original laboratory or by a second laboratory that is certified by the U.S. Department of Health and Human Services. The operator may require the employee to pay in advance the cost of shipment (if any) and reanalysis of the sample, but the employee shall be reimbursed for such expense if the retest is negative.

(3) If the employee specifies retesting by a second laboratory, the original laboratory shall follow approved chain-of-custody procedures in transferring a portion of the sample.

(4) Since some analytes may deteriorate during storage, detected levels of the drug below the detection limits established in the DOT procedures, but equal to or greater than the established sensitivity of the assay, shall, as technically appropriate, be reported and considered corroborative of the original positive results.

Section 9. Employee Assistance Program. (1) Each operator shall provide an employee assistance program (EAP) for its employees and supervisory personnel who will determine whether an employee must be drug tested based on reasonable cause. The operator may establish the EAP as a part of its internal personnel services or the operator may contract with an entity that provides EAP services. Each EAP shall include education and training on drug use. At the discretion of the operator, the EAP may include an opportunity for employee rehabilitation.

(2) Education under each EAP shall include at least the following elements: display and distribution of informational material; display and distribution of a community service hot-line telephone number for employee assistance; and display and distribution of the employer's policy regarding the use of prohibited drugs.

(3) Training under each EAP for supervisory personnel who will determine whether an employee must be drug tested based on reasonable cause shall include one (1) sixty (60) minute period of training on the specific, contemporaneous physical, behavioral, and performance indicators of probable drug use.

Section 10. Contractor Employees. With respect to those employees who are contractors or employed by a contractor, an operator may provide by contract that the drug testing, education, and training required by this

regulation be carried out by the contractor provided:

(1) The operator remains responsible for ensuring that the requirements of this regulation are complied with; and

(2) The contractor allows access to property and records by the operator, the administrator, and a commission representative for the purpose of monitoring the operator's compliance with the requirements of this regulation.

Section 11. Recordkeeping. (1) Each operator shall keep the following records for the periods specified and permit access to the records as provided by subsection (2) of this section:

(a) Records that demonstrate the collection process conforms to this regulation shall be kept for at least three (3) years.

(b) Records of employee drug test results that show employees failed a drug test, and the type of test failed (e.g., postaccident), and records that demonstrate rehabilitation, if any, shall be kept for at least five (5) years, and include the following information:

1. The functions performed by employees who failed a drug test.

2. The prohibited drugs which were used by employees who failed a drug test.

3. The disposition of employees who failed a drug test (e.g., termination, rehabilitation, leave without pay).

4. The age of each employee who failed a drug test.

(c) Records of employee drug test results that show employees passed a drug test shall be kept for at least one (1) year.

(d) A record of the number of employees tested, by type of test (e.g., postaccident), shall be kept for at least five (5) years.

(e) Records confirming that supervisors and employees have been trained as required by this regulation shall be kept for at least three (3) years.

(2) Information regarding an individual's drug testing results or rehabilitation may be released only upon the written consent of the individual, except that such information shall be released regardless of consent to the administrator or a commission representative upon request as part of an accident investigation. Statistical data related to drug testing and rehabilitation that is not name-specific and training records shall be made available to the administrator or a commission representative upon request.

GEORGE EDWARD OVERBEY, JR, Chairman
THEODORE T. COLLEY, Secretary
APPROVED BY AGENCY: November 5, 1991
FILED WITH LRC: November 5, 1991 at 3 p.m.

CABINET FOR HUMAN RESOURCES
Office of Inspector General
(Amended After Hearing)

902 KAR 20:117. Health care ground transportation services.

RELATES TO: KRS 216B.010 to 216B.130, 216B.990(1), (2)

STATUTORY AUTHORITY: KRS 211.950, 216B.040, 216B.105

NECESSITY AND FUNCTION: KRS 216B.040 and 216B.105 mandate that the Cabinet for Human Resources regulate health facilities and health services in Kentucky. This regulation provides for the minimum licensing requirements for ground health care transportation services.

Section 1. Definitions. (1) "Advanced life support (ALS) emergency care and ambulance transportation" means the provision of services that meet the minimal essential requirements as established by the cabinet for basic life support services by personnel trained in skills necessary for an advanced life support service. The minimum requirements established by the cabinet for the provision of advanced life support services are described in Section 12 of this regulation.

(2) "Ambulance" means a vehicle as defined in KRS 211.950(1) utilized for providing individuals with basic, advanced or specialized levels of emergency medical care. This unit may be used to provide emergency transportation or nonemergency runs for any individual who is sick, injured or otherwise incapacitated.

(3) "Ambulance service" means a provider as defined in KRS 211.950(2) and is licensed by the cabinet to supply basic, advanced or specialized levels of emergency medical care and emergency transportation, or nonemergency, convalescent runs.

(4) "Back-up ambulance" means a ground ambulance as defined in Section 5(3) of this regulation, and is licensed by the cabinet to provide emergency care and transportation when one (1) of the licensed primary ambulances is not in service, or on rare occasions when all of the primary ambulances are on runs and extreme circumstances dictate its use.

(5) "Basic life support emergency care and ambulance transportation" means health care and transportation provided on an emergency or scheduled basis to persons who are sick, injured, or otherwise incapacitated, and may require immediate stabilization and continued medical response and intervention during ground transit or upon arrival at the patient's destination to safeguard the patient's life or physical well being. The minimum requirements established by the cabinet for the provision of basic life support services are described in Section 1 through Section 8 of this regulation.

(6) "CPR" means cardiopulmonary resuscitation as conforming to the basic rescuer course of the American Heart Association or the basic life support for the professional rescuer course of the American Red Cross, either of which as a minimum shall include one (1) or two (2) person CPR; airway obstruction and airway adjuncts for adults, children and infants.

(7) "Dispatch center" means the location where incoming calls are initially received requesting an ambulance, and where contact is made with the ambulance for direction to the patient scene.

(8) "Emergency medical technician (EMT)" means a person certified pursuant to 902 KAR 13:010 through 902 KAR 13:100.

(9) "Emergency medical technicial-first responder" means a person certified pursuant to 902 KAR 13:110.

(10) "Paramedic (EMT-P)" means a person certified pursuant to 201 KAR 9:101 through 201 KAR 9:136.

(11) "Employee" means any ambulance service personnel who may be either paid or volunteer, full-time or part-time provider staff.

(12) "Interfacility" means emergency or NEHT

health care provided to a patient during ambulance transportation between two (2) hospitals or between a hospital and an extended care nursing facility, or vice versa.

(13) "Licensing agency" means the Division of Licensing and Regulation.

(14) "Nonconforming ambulance service" means an ambulance service that was licensed and incorporated into the emergency medical services system as nonconforming to laws and regulations governing ambulance services. The minimum requirements established by the cabinet for a nonconforming ambulance service, until it is able to meet the full criteria of an ambulance service, are described in Section 10 of this regulation.

(15) "Nonemergency health transportation (NEHT)" means convalescent health care transportation provided on a prearranged basis to individuals whose impaired health condition requires stretcher transportation or medical supervision or equipment but does not indicate a need for emergency medical treatment during transit or upon arrival at the final destination.

(16) "Nonemergency health transportation (NEHT) service" is the entity exclusively licensed by the cabinet to provide only NEHT services. The minimum requirements established by the cabinet for the provision of services exclusive to nonemergency health transportation are described in Section 11 of this regulation.

(17) "Nonemergency health transportation (NEHT) vehicle" means a vehicle licensed by the cabinet to be used exclusively for nonemergency health transportation. The minimum requirements established by the cabinet for a NEHT vehicle are described in Section 11 of this regulation.

(18) "Prehospital" means emergency health care provided to a patient before and during ambulance transportation to a hospital.

(19) "Primary ambulance" means a ground ambulance as defined in Section 5(3) of this regulation, and is licensed by the cabinet to be utilized by an ambulance service for the provision of emergency care and transportation or for the provision of nonemergency runs.

(20) "Response time" means the time from which a call is received at the dispatch center, until an ambulance arrives at the patient scene.

(21) "Sharps" means a portion of or the whole unit of medical supplies used in treatment procedures, that may puncture the skin (e.g., used needles, glass ampules, etc.)

(22) "Specialized emergency care and ambulance transportation" means the services that meet the minimal essential requirements as established by the cabinet for the provision of emergency health care and transportation that may be unavailable to the general public and that has either specialized or limited functions which may require exceptional consideration of equipment or personnel requirements or hours of operation. The minimum requirements established by the cabinet for the provision of specialized emergency care services are described in Section 9 of this regulation.

Section 2. Scope of Operation and Services. This regulation covers health care transportation as provided to an individual in a vehicle specially designed or modified for the purpose of providing health care whereby the individual is afforded supervision or treatment by medically trained personnel who staff the vehicle, and the vehicle is equipped with medical equipment for use by the trained staff as appropriate.

Section 3. Licensing Requirements. The following licensing requirements shall apply to all ambulance and nonemergency health transportation (NEHT) services:

(1) No person shall provide, advertise, or profess to engage in the provision of basic, advanced life support specialized or nonconforming emergency medical care and transportation, nor nonemergency health transportation that originates in the Commonwealth of Kentucky without having first obtained a license from the cabinet. The following situations shall be exempt from the provisions of this regulation:

(a) First aid or transportation provided in accordance with KRS 216B.020(3) [(2)] (f);

(b) Any vehicle serving as an ambulance during a major catastrophe;

(c) Any ambulance operated by the United States government; and

(d) Any ambulance from an out-of-state ambulance service making a run originating in Kentucky for the purpose of returning a patient to his out-of-state residence.

(2) The ambulance service shall comply with all local, state, and federal statutes and regulations.

(3) The license shall be displayed in a prominent place at the service base station. The following information shall be included on the license:

(a) Identity and location of the base station and the number and location of substations, if any, to be operated by the licensee;

(b) Designation of the geographic area to be served by the licensee, allowing for a maximum of thirty (30) minutes initial response time for ninety-five (95) percent of the population within the service area for all emergency calls. This does not preclude the service, in unusual circumstances, from providing mutual aid, disaster assistance, nonemergency health transportation or scheduled patient transfers outside the geographic service area;

(c) Designation of the levels of care which the service is authorized to provide (e.g., basic, advanced, specialized, nonemergency, etc.); and

(d) Designation of the number of primary and back-up ambulances to be operated by the service. If nonemergency runs are provided in other than the primary and back-up ambulances, the number of NEHT exclusive vehicles shall be designated separately on the license.

(4) Upon application for initial licensing or renewal of the license, the applicant or licensee shall specify the number of ambulances or NEHT vehicles to be operated and as a minimum provide the licensing agency with the ambulance or NEHT vehicle serial and license tag numbers.

(5) The licensee shall notify the licensing agency of any change in the number, type or use of the ambulances or NEHT vehicles to be operated and the licensee shall meet the following requirements:

(a) No ambulance or NEHT vehicle shall be operated until after the licensing agency has been notified and has verified that it meets requirements as applicable. If the ambulance or NEHT vehicle represents an expansion of service (e.g., an increase in the number of primary ambulances or NEHT vehicles), the licensing

agency shall verify that a certificate of need has been granted prior to the inspection; and

(b) The licensing agency shall be notified on the next licensing agency business day, following disposition of any prior approved ambulance or NEHT vehicle operated by the service (i.e., discontinued from service, change in use by the same ownership, or sale to another identified licensed ambulance or NEHT service).

(6) The licensing agency procedures shall not preclude the service from utilizing a replacement ambulance or NEHT vehicle on a temporary basis when a previously approved primary or back-up ambulance, or NEHT vehicle is out of service for maintenance. The following requirements shall apply:

(a) The licensing agency shall be immediately notified (or on the next working day) by phone of the ambulance service's need to operate a temporary replacement unit. Within five (5) days the ambulance service shall send the licensure agency written notice of the make, model, license number, and vehicle identification number and assurances that the temporary unit will be staffed and equipped in accordance with federal GSA specifications and this regulation;

(b) If the service plans to utilize the replacement for more than thirty (30) days, the service shall notify the licensing agency of the anticipated length of time the replacement will be in use; and

(c) The licensing agency shall be notified when the replaced unit is back in service.

(7) The cabinet shall maintain identifying records on all ambulances and NEHT exclusive vehicles according to established procedures.

Section 4. Management Requirements. All ambulance services shall:

(1) Establish lines of authority to include the designation of an administrator, and a designee who shall serve when necessary in the absence of the administrator, responsible for assuring compliance with all regulations during the daily operation of the service.

(2) Maintain adequate records and reports at the service base station to be made available for review as deemed necessary by the cabinet. Services shall:

(a) Complete the Kentucky emergency medical service ambulance run report form according to the guidelines established by the cabinet. They shall be maintained in a manner of confidentiality and safekeeping for a minimum of five (5) years from the last date of service, or in the case of a minor, until five (5) years beyond the age of majority (i.e., majority is eighteen (18) years of age). The form shall be completed for all runs that originate in Kentucky. The original, or a microfilm or similar copy procedure, may be utilized to meet the records retention requirement. A second copy stays with the patient record at the receiving facility. A third copy, or required data elements as approved by the cabinet, shall be forwarded to the cabinet in accordance with established procedures and submission dates.

(b) Maintain personnel files on each ambulance driver and attendant for a minimum of five (5) years, or longer if specified in local government archives approved schedules, following termination or retirement from employment; or five (5) years following the demise of the employee. Individual ambulance driver and attendant personnel files shall, as a minimum, contain evidence of training, experience, current credentials and health records to include:

1. A written statement from a physician that the employee is capable of performing assigned job duties; and

2. Maintenance of records for all known illnesses, accidents, physical or psychological impairments that may affect performance on duty. This shall include:

a. Follow-up activities relating to known exposure to communicable diseases or hazardous materials; and

b. Hepatitis B vaccination in accordance with OSHA regulation 29 CFR 1910.1030.

(3) Maintain and follow written administrative, personnel, medical and other operational policies and procedures, that are reviewed on an annual basis by the ambulance service in order to assess their effectiveness. The policies and procedures shall be developed to include at least the following areas:

(a) Organizational structure, staffing and allocation **of** [or] responsibility and accountability;

(b) Ambulance service mutual aid agreements, and agreements with other providers;

(c) Personnel performance guidelines; and

(d) A plan to assure that an in-service program is provided for its staff. The program shall include the following:

1. Evidence of in-service training for staff regarding the handling of infectious waste in accordance with the Centers for Diseases Control guidelines;

2. A plan for response to and the protection and decontamination of the patient, ambulance, equipment and its staff when called upon to transport a patient exposed to hazardous chemicals;

3. A plan for assessing all other staff in-service needs, with a coordinated development of methods to meet those needs; and

4. The maintenance of written records to support in-service conducted by the licensee.

(e) A plan for quality assessment of patient care and evaluation of staff performance related to patient care.

Section 5. Operating Requirements. (1) Each ambulance service shall provide emergency care and transportation on a twenty-four (24) hour, seven (7) days a week basis. This provision may be met through an adequate call system or by written mutual aid agreement with another licensed ambulance service.

(2) When a licensed emergency ambulance service also makes nonemergency convalescent runs, a minimum of one (1) ambulance shall be held in reserve by the licensee to respond to emergency calls within the licensee's geographic service area. The licensee may enter into a written mutual aid agreement with another licensed ambulance service as a means to meet this requirement when the licensee's only remaining ambulance is called upon for an emergency response within or outside its geographic service area.

(3) Ambulance design and maintenance.

(a) Following the effective date of these regulations, each primary and back-up ground ambulance used in the provision of ambulance services shall be designed to provide adequately for the medical care and transportation of patients, and shall comply fully with ambulance

design criteria contained in GSA federal specifications in effect at the time the ambulance is manufactured, except for color and provider identification. Ambulances shall comply with KRS 189.910 through 189.950 regarding the use of lights and siren.

(b) Following the effective date of these regulations, for newly purchased ambulances the ambulance service provider shall require that a certification decal or sticker be supplied by the manufacturer, indicating that the ambulance met GSA federal specifications on the date it was manufactured. The certification decal shall be located on a permanent surface, such as in the ambulance oxygen tank compartment, or as later identified in any GSA federal specification revisions. For units that are later modified, the ambulance service provider shall require that the conversation company supply a letter to verify that the modification meets or exceeds the GSA federal specification requirements, except for color or provider identification, as incorporated in the GSA federal specifications on the ambulance original date of manufacture.

(c) In addition to the GSA federal specifications, the following additional state licensing requirements shall be maintained:

1. The heating system shall maintain a temperature of not less than sixty-five (65) degrees Fahrenheit in the driver and patient compartments in winter weather conditions;

2. The air conditioning system shall maintain a temperature of not more than eighty-five (85) degrees Fahrenheit in the driver and patient compartments in summer weather conditions; and

3. The name of the ambulance service provider shall appear on the exterior surface of the ambulance.

(d) A preventive maintenance program for each ambulance and its equipment shall be developed and implemented for the purpose of keeping them in optimum working order to protect the health and safety of the patient and ambulance personnel. Documentation shall be maintained to support evidence of periodic inspections or calibrations as required for maintenance and operation of the ambulance and its equipment.

(e) The interior of the ambulance and its equipment shall be cleaned after each use, unless precluded by emergency conditions.

(4) Communications. A communications system shall be developed, coordinated and maintained by each ambulance and nonemergency health transportation service. The communication system shall meet the following requirements:

(a) All ambulances shall be equipped with two (2) way radio communications equipment, capable under normal conditions of contacting the ambulance dispatch center and the receiving hospital;

(b) A portable communication device, on the ambulance radio frequency, shall be provided for personnel when away from the ambulance;

(c) The ambulance service shall have an acceptable plan to assure that all calls are routinely answered, and runs dispatched in an expedient manner in accordance with subsection (1) of this section; and

(d) Each ambulance service shall provide orientation to all drivers and attendants related to communication protocols that have been established by the ambulance service.

(5) Each emergency ambulance service shall provide transportation to the nearest appropriate medical facility. For any run where the patient is not transported to the nearest facility, the ambulance service shall document that run to explain why another facility was more appropriate.

Section 6. Basic Life Support Personnel. (1) Number of personnel.

(a) Each ambulance service shall be staffed to provide, as a minimum, one (1) driver and one (1) attendant for each run involving emergency care and transportation or nonemergency runs. The attendant shall remain with the patient at all times during transport;

(b) There shall be no more patients, personnel and other persons than can be safely secured, by means of seat safety belts or similar devices, in the ambulance during transportation; and

(c) All personnel shall be capable of performing their job duties, and shall not cause the patient or other personnel any undue jeopardy.

(2) Qualifications of personnel.

(a) As a minimum, within six (6) months from the effective date of these regulations, the driver on each emergency care ambulance run shall:

1. Be at least eighteen (18) years of age, with current motor vehicle operator's license;

2. Have at least two (2) years of licensed driver/operator experience;

3. Complete a defensive driving training program that is developed by the ambulance service or in conjunction with another agency or organization. As a minimum, the training program shall consist of four (4) hours review of driving a vehicle under emergency conditions;

4. Documentation shall be available to support training in at least the following areas:

a. Review of KRS 189.910 through 189.950 regarding emergency vehicles.

b. Forward and back-up driving maneuvers in a controlled situation, such as in an obstacle course designed specifically for this purpose.

c. Review of defensive driving techniques and procedures by either hands-on experience, or exposure by visual aids, such as video tapes, slides or planned demonstrations.

5. The driver shall be capable of performing assigned duties.

(b) One (1) ambulance attendant on each prehospital emergency care ambulance run shall be certified or licensed for one (1) of the following levels:

1. Emergency medical technician (EMT);
2. Paramedic;
3. Registered nurse; or
4. Physician.

(c) The second ambulance attendant, who may also be the driver, as a minimum shall have certification or licensing within six (6) months after employment, for one (1) of the following levels:

1. American Red Cross advanced first aid and emergency care certification including supplemental cardiopulmonary-resuscitation (CPR) instruction approved by the American Red Cross or American Heart Association, until six (6) months after the effective date of this regulation, after which each shall become certified as an EMT first responder; or
2. EMT first responder;
3. EMT;
4. Paramedic;
5. Registered nurse; or

6. Physician.

(d) Personnel who on occasion may serve as either an attendant or a driver shall meet the qualifications for both roles. Personnel who serve as drivers only in a three (3) person crew and do not render any type of first aid or medical treatment, or personnel who serve as attendants only, shall have documentation of such in their personnel file.

(e) Ambulance personnel required to meet patient needs for interfacility or facility-to-home patient transports shall be determined by the attending physician and the initiating facility, in conjunction with the ambulance service staff.

Section 7. Each ambulance used in the provision of emergency care and ambulance transportation shall carry and maintain in full operational order the following minimum equipment and supplies:

(1) Suction, ventilation and blood pressure equipment.

(a) Suction apparatus (fixed and portable);

(b) Hand operated bag mask ventilation unit with adult and child size masks (capable of use with oxygen);

(c) Hand operated infant bag-mask ventilation unit with infant size masks (capable of use with oxygen);

(d) Oropharyngeal airways (adult, child, and infant sizes); and

(e) Adult, obese adult and pediatric sphygmomanometer cuffs and stethoscope (permanently mounted sphygmomanometer shall not satisfy this requirement).

(2) Oxygen equipment.

(a) Fixed and portable oxygen tanks with a filled, minimum size D, secured spare portable cylinder;

(b) Pressure gauge and flow rate regulator (range of zero to fifteen (15) liters per minute);

(c) Oxygen humidifier attachment for use on the fixed oxygen tank;

(d) Adaptor and tubing;

(e) Transparent masks (adult, and child); and

(f) Nasal cannulas.

(3) Bandages and tape.

(a) Minimum of two (2) sterile universal dressings at least ten (10) inches by thirty (30) inches, compactly folded and packaged;

(b) Minimum of twenty-five (25) sterile gauze pads, four (4) inches by four (4) inches;

(c) Minimum of ten (10) soft roller self-adhering bandages, various sizes;

(d) Minimum of four (4) rolls of adhesive tape, minimum of two (2) sizes;

(e) Minimum of ten (10) triangular bandages with large safety pins; and

(f) Minimum of two (2) sterile burn sheets.

(4) Miscellaneous supplies.

(a) Eye protector pads and shields;

(b) Minimum of one (1) roll of aluminum foil, or any acceptable occlusive substitute;

(c) Shears for bandages;

(d) Flashlight;

(e) Minimum of one (1) thermometer;

(f) Minimum of two (2) sterile obstetrical kits;

(g) A poison kit to contain at least one (1) bottle of syrup of ipecac (with current expiration date) and one (1) bottle of activated charcoal (if in suspension, shall have current expiration date); and

(h) Sterile irrigation fluids with current expiration date.

(5) Splints and immobilization devices.

(a) Lower extremity traction splint, or equivalent as approved by the cabinet for use in EMT training;

(b) Splints for arm, leg and foot (e.g., inflatable air splints, padded boards or ladder splints, or an acceptable substitute);

(c) Immobilization devices.

1. Short spine board or other acceptable extrication device, as determined by the cabinet; and

2. Long spine board with cervical immobilization accessories, and an orthopedic "scoop" stretcher or other fullbody immobilization device as determined by the cabinet.

(d) Rigid, stiff cervical collars in large, medium, small adult and pediatric sizes;

(e) A short spine board or an acceptable substitute, as determined by the cabinet, shall be provided for administering CPR.

(6) Safety supplies and equipment.

(a) Minimum of two (2) five (5) pound size, ABC multipurpose fire extinguishers, approved by Underwriters Laboratory, Coast Guard or Factory Mutual. One (1) shall be located in the driver compartment and the other located in the patient compartment;

(b) Multiposition stretcher with wheels and a mechanism to secure the stretcher while in transit;

(c) Minimum of one (1) pocket mask with oxygen inlet and isolation valve **per patient attendant**;

(d) Minimum of **one (1) kit** [two (2) kits] that include **a** clean scrub gown[s] (or substitute, such as disposable coveralls), disposable mask[s] and gloves **per patient attendant**;

(e) **When the patient or attendant is allergic to latex** [For instances when disposable gloves are not practical for use], a means of cleansing the hands shall be provided such as the provision of a solution or disposable towelettes;

(f) **Hospital type** disinfectants;

(g) Plastic bags for disposal of waste materials;

(h) If sharps are carried, puncture resistant containers shall be provided for disposal of the sharp objects;

(i) Clean linens; and

1. Sheets; and

2. Minimum of two (2) blankets.

(j) Personal supplies.

1. Tissues; and

2. Emesis.

(7) Additional medical supplies and equipment desired for storage in the ambulance for persons responding to the scene who are certified to provide higher level medical skills may be considered for approval by the cabinet. For eligibility, the ambulance service shall include documentation to assure a system of accountability for the storage and handling of the additional medical supplies and equipment. The cabinet shall have the authority to deny approval of the arrangement, if it is determined that such an arrangement is not in the best interest of quality patient medical care, or safety of the patient and personnel.

Section 8. Extrication Equipment. (1) For response to trauma scenes, each ambulance service shall provide and maintain in full operational order, the following minimum light access and extrication equipment on each ambulance:

(a) Minimum of two (2) pairs of eye protection goggles;

(b) Minimum of two (2) pairs of heavy work gloves;

(c) Minimum of two (2) hard hats;

(d) Minimum of one (1) spring loaded window punch or acceptable substitute; and

(e) A minimum of six (6) flares.

(2) For response to trauma scenes, each ambulance service shall as a minimum provide one (1) vehicle, which need not be an ambulance, equipped with the following fully operational, more extensive access and extrication equipment. Ambulance services that have written agreements for this provision by rescue squads, fire departments for any emergency service agency that meets the requirement established by the cabinet, shall not be required to provide the more extensive access and extrication equipment.

(a) Minimum of two (2) 50 ft. long seven-sixteenths (7/16) or one-half (1/2) inch static nylon dynamic ropes;

(b) Minimum of one (1) pair of pliers, vise grip;

(c) Minimum of one (1) wrench, with adjustable, stable open end;

(d) Minimum of one (1) set of screw drivers, four (4) sizes, regular blade;

(e) Minimum of one (1) set of screw drivers, four (4) sizes, Phillips type;

(f) Minimum of one (1) double action tin snip;

(g) Minimum of one (1) crow bar, with pinch point;

(h) Minimum of one (1) hacksaw, with twelve (12) blades; and

(i) Minimum of one (1) hammer, three (3) pound size;

(j) Minimum of one (1) fire axe;

(k) Minimum of one (1) wrecking bar;

(l) Minimum of one (1) bolt cutter, with a minimum of one and one-fourth (1 1/4) inch jaw opening;

(m) Minimum of one (1) four (4) ton porta-power jack and spreader tool;

(n) Minimum of one (1) shovel, short handle, with pointed blade;

(o) Minimum of one (1) shovel, long handle, with pointed blade;

(p) Minimum of one (1) come-along tool; and

(q) Minimum of two (2) fire blankets.

Section 9. Specialized Emergency Care and Ambulance Transportation Service. An ambulance service which complies with Sections 1 through 8 of this regulation, and may also comply with Section 12, of this regulation may be allowed to have the following variances. If the ambulance service operates with these approved variances, it may be licensed as a specialized emergency care and ambulance transportation service:

(1) Each specialized ambulance service license shall specify the limitations of the services approved by the cabinet;

(2) In reference to Section 5(1) of this regulation, a specialized ambulance service shall not be required to provide emergency care and ambulance transportation on a twenty-four (24) hour, seven (7) days a week basis;

(3) Depending on the level of care to be provided, a specialized ambulance service shall be required to meet the minimum equipment, supplies and personnel requirements as listed in Sections 6 and 7 of this regulation or Section 12 of this regulation with certain variations as approved by the cabinet. Each specialized ambulance service desiring variations in equipment, supplies or personnel shall submit the requests in writing for consideration and for approval by the cabinet.

Section 10. Nonconforming Emergency Ambulance Service. No new ambulance service shall be eligible to become licensed as a nonconforming emergency ambulance service. Each existing service licensed as nonconforming shall on their next annual licensure survey submit an acceptable plan of correction to the licensing agency, for licensing as a basic ambulance service and may continue to operate according to the nonconforming license until it is able to meet the full criteria of the present regulations, or until the following annual survey whichever comes first, at which time it shall become licensed and fully comply with the standards of this regulation as a nonemergency health or a basic ambulance service. A nonconforming emergency ambulance service shall meet the minimum requirements of Sections 1 through 8 of this regulation with the exception of the following, until such time as the service is able to upgrade its operation to meet all requirements of the current laws and regulations governing ambulance services:

(1) In reference to Section 3(1) of this regulation, no ambulance service licensed in any category other than nonconforming ambulance service, shall be eligible to become licensed as a nonconforming ambulance service.

(2) In reference to Section 3(3)(b) of this regulation, a nonconforming ambulance service shall not expand its geographic area of operation unless it is in the process of upgrading to fully comply with the laws and regulations governing ambulance services.

(3) In reference to Section 3(5) of this regulation, a nonconforming ambulance service shall not expand its service by the addition of ambulances, other than replacement of a previously approved ambulance, unless it is in the process of upgrading to fully comply with the current laws and regulations governing ambulance services.

(4) In reference to Section 4(2) and (3) and Section 5(3)(d) of this regulation, a nonconforming ambulance service shall not be required to keep written records and reports.

(5) In reference to Section 5(3)(a), (b) and (c), a nonconforming ambulance service may continue to operate ambulances that were in operation prior to these regulations that did not meet GSA federal specifications. Each ambulance purchased after the effective date of these regulations shall have been originally designed for use as an ambulance, shall meet the GSA federal design specifications in effect at the time of manufacture except for color and location of the provider identification and shall be provided with a certification sticker by the manufacturer.

(6) In reference to Section 6 of this regulation, as a minimum the attendants for each emergency care ambulance run for a nonconforming ambulance service shall have current certification for one (1) of the following

levels:

(a) American Red Cross Advanced First Aid, including supplemental CPR instruction approved by the American Red Cross or American Heart Association, until six (6) months after the effective date of this regulation, after which each shall become certified as an EMT first responder;

(b) EMT-first responder;

(c) EMT;

(d) Paramedic;

(e) Registered nurse; or

(f) Physician.

(7) In reference to Section 5(4)(b) of this regulation, a portable radio communication device, for use when away from the ambulance, shall not be required for a nonconforming ambulance service.

Section 11. Nonemergency Health Care and Transportation (NEHT) Service. (1) A service that is designed for the transportation of a person who is unable to utilize common carrier and complies with Sections 1 through 8 of this regulation, while having the following variances, shall be deemed as meeting the requirements for a nonemergency health care and transportation exclusive service.

(2) In reference to Section 3(3)(b) of this regulation, NEHT exclusive services shall not be required to meet a maximum of thirty (30) minutes initial response time for ninety-five (95) percent of the population within the service area.

(3) In reference to Section 3(3)(d) of this regulation, NEHT exclusive services shall have only primary vehicles.

(4) In reference to Section 5(1) of this regulation, a NEHT exclusive service shall not be required to operate nor provide dispatch coverage on a twenty-four (24) hour basis, but may limit its prescheduled coverage to a designated range of hours.

(5) In reference to Section 5(3)(a), (b) and (c) of this regulation, vehicles used exclusively for nonemergency, convalescent health transportation may deviate from federal GSA requirements. In accordance with KRS 189.920, the NEHT vehicles shall not be equipped with emergency lights or sirens. As a minimum, each vehicle for a NEHT exclusive service shall:

(a) Be constructed to allow verbal communication between the driver and patient attendant during transit;

(b) In reference to Section 5(3)(c)1 and 2 of this regulation, have comparable heating and air conditioning systems in both the driver and patient compartments;

(c) Have two (2) access doors to the patient compartment, one (1) being at the right side and one (1) at the rear of the patient compartment; and

(d) Have in the patient compartment, interior minimum dimensions as follows:

1. Height of forty-two (42) inches from floor to ceiling;

2. Width of forty-eight (48) inches; and

3. Length of ninety-two (92) inches from the rear door to the driver section.

(6) In reference to Section 6(2)(a)3 of this regulation, the driver on each NEHT exclusive service run shall not be required to complete a defensive driving training program.

(7) In reference to Section 6(2)(b) of this regulation, the patient attendant on each NEHT exclusive service run shall as a minimum have:

(a) American Red Cross advanced first aid and emergency care certification, including supplemental CPR instruction certification approved by the American Red Cross or American Heart Association, until six (6) months after the effective date of this regulation after which each shall become certified as an EMT-first responder; or

(b) EMT-first responder certification.

(c) A second attendant, who may also be the driver, shall not be required to have certification or licensing in one (1) of the categories listed in Section 6(2)(c) of this regulation.

(d) For nonemergency health transportation in which the patient may require monitoring or potential treatment by personnel trained beyond the EMT-first responder level, ambulances licensed to be staffed and equipped for basic or advanced life support shall be used for transporting the patient.

(8) In reference to Section 7 of this regulation, all vehicles used exclusively for provision of nonemergency health care and transportation shall be required to provide and maintain in full operational order, only the following minimum supplies and equipment:

(a) Two (2) five (5) pound size, ABC multipurpose fire extinguishers approved by Underwriters Laboratory, the Coast Guard or Factory Mutual. One (1) extinguisher shall be located in the driver compartment and the other one shall be located in the patient compartment;

(b) Oxygen equipment, as specified in Section 7(2) of this regulation may be utilized only when the vehicle patient compartment is staffed minimally by EMT-first responder certified personnel.

(c) Multiposition stretcher with wheels and a mechanism to secure the stretcher while in transit or equipped with a wheelchair lift and a mechanism to secure all wheelchairs utilized during transport;

(d) First aid supplies and equipment of quantities to be determined by the NEHT service director to include:

1. Sterile gauze pads, four (4) inches by four (4) inches;

2. Soft roller self-adhering bandages;

3. Adhesive tape, various size rolls;

4. Triangular bandages with large safety pins;

5. Bandaids, various sizes; and

6. Shears for bandages.

(e) Clean linens as required by Section 7(6)(i) of this regulation; and

(f) Personal supplies as required by Section 7(6)(j) of this regulation.

(9) In reference to Section 8 of this regulation, NEHT exclusive services shall not be required to carry extrication equipment nor have a written agreement with another service for this provision.

(10) In reference to Section 5(1) of this regulation, a NEHT exclusive service shall not be required to operate twenty-four (24) hours a day.

(11) The following additional variances shall apply to NEHT exclusive services:

(a) Each NEHT exclusive vehicle shall not be labelled to imply that it provides emergency medical services, nor display the Star of Life or the word ambulance. Vehicles so labelled prior to the effective date of this regulation shall, on the next scheduled licensure survey,

submit an acceptable plan of correction to the licensing agency for complying with this regulation.

(b) The minimum staffing requirement for a NEHT exclusive vehicle shall be one (1) driver and one (1) attendant who shall remain with the patient at all times.

(c) Nonemergency health transportation exclusive vehicles, purchased after the effective date of these regulations, that have an orange stripe shall have a nonwhite field (a white field is acceptable for any vehicle having a nonorange stripe).

Section 12. Advanced Life Support (ALS) Emergency Care and Ambulance Transportation Service. (1) An ALS ambulance service shall meet all the minimum requirements of Sections 1 through 8 of this regulation. It shall also meet the additional requirements of this section.

(2) Evidence shall be on file to verify that the ALS written medical protocols have been reviewed by the Kentucky Board of Medical Licensure to assure compliance with 201 KAR 9:161.

(3) An ALS emergency care and ambulance transportation service shall provide services on a twenty-four (24) hour, seven (7) days a week basis. This provision may be met through an adequate call system or by a written mutual aid agreement with another licensed advanced life support emergency care ambulance service.

(4) Each ALS ambulance shall be staffed according to the requirements of 201 KAR 9:171, Section 5.

(5) Each ALS nontransportation vehicle shall be staffed by a minimum of one (1) person who shall have minimum training and current certification as an EMT paramedic.

(6) In addition, each ALS service shall have a medical director who:

(a) Shall assume responsibilities in accordance with 201 KAR 9:171, Section 2(1) through (5);

(b) Shall assume other responsibilities as agreed upon between the medical director and the director of the ALS ambulance service;

(c) Shall meet the qualifications specified in 201 KAR 9:171, Section 2(6). Evidence shall be on file, to verify that the qualifications of the medical director have been reviewed by the Kentucky Board of Medical Licensure to assure compliance with 201 KAR 9:171, Section 2(6); and

(d) Shall have, within six (6) months after the effective date of this regulation, completed a residency program in emergency medicine approved by the Residency Review Committee of the American Medical Association, or shall be a physician who holds or is in the process of completing certification in advanced cardiac and advanced trauma life support, or shall have, in the personnel file, written approval from the Kentucky Board of Medical Licensure.

(7) Each ambulance used in the provision of ALS emergency care and ambulance transportation shall carry and maintain in full operational order the minimum equipment and supplies required by 902 KAR 20:115.

(8) A nonambulance, nontransportation ALS vehicle shall have available the minimum equipment and supplies required by 902 KAR 20:115. This may be accomplished through the coordinated response of an ambulance from the same service, or the coordinated response of an ambulance from a separate service under the provisions of a written mutual aid agreement on file with both services.

(9) In addition, each ALS service shall carry and maintain in full operational order the minimum ALS equipment and supplies as required in 201 KAR 9:171, Section 7, on each ALS ambulance or nontransportation vehicle.

(10) Drugs and medications, as provided for in protocols established in accordance with subsection (2) of this section shall be stocked and maintained.

(11) A locked compartment, or equivalent approved by the cabinet, shall be provided for the storage of controlled drugs.

Section 13. (1) 902 KAR 20:115 is hereby repealed.

(2) 902 KAR 20:120 is hereby repealed.

CLAY CESSNA, Inspector General
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 31, 1991
FILED WITH LRC: November 4, 1991 at 3 p.m.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Amended After Hearing)

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

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050, 205.575
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the HICAP program. This regulation sets forth provisions relating to the eligibility requirements for recipients under HICAP.

Section 1. Definitions. (1) "Family unit" means the parents, stepparents, their minor children and stepchildren living in the same household; unmarried couples who have at least one (1) minor child in common and siblings of that child living in the same household; or a child under age eighteen (18), legal guardian and the legal guardian's family living in the same household. A minor child who is also a minor parent and who lives with his or her parents is included in the family unit along with his or her child; if the minor parent, his or her child and the child's other parent, regardless of their marital status, are in the same household, they are considered a separate family unit from any other family unit in that household.

(2) "Minor children" means individuals under the age of twenty-one (21) living with a parent, or under the age of eighteen (18) living with a legal guardian in the same household, or one (1) of the previously described children attending college or a similar type of higher education facility.

(3) "Minor parent" means an individual under the age of twenty-one (21) who has a minor child.

(4) "Self-support" means a demonstration by the minor child that he or she is paying more than fifty (50) percent of his or her living expenses (i.e., proof of wages versus expenditures for living expenses, etc.).

Section 2. Eligibility Requirements. For an individual or family unit to be HICAP eligible

the following requirements shall be met:
(1) The individual or family unit shall be a resident(s) of Kentucky. Transients and non-U.S. citizens in visa status (i.e., visitors, students, etc.) shall not be eligible for HICAP;
(2) The individual's or family unit's income shall not exceed 100 percent of the official poverty income guidelines as promulgated by the Department of Health and Human Services, United State government, and revised annually; and
(3) The individual or family unit must apply for ongoing Medicaid benefits if potentially eligible before a determination can be made that the individual or family unit is HICAP eligible. If an individual or family unit that is potentially eligible for ongoing Medicaid refuses to make an application for Medicaid benefits but applies for HICAP benefits, a finding of ineligibility for HICAP benefits shall be made. (Ongoing Medicaid does not include spenddown or time limited Medicaid benefits.) When a Medicaid application is made under this circumstance, the HICAP inquiry protects the HICAP application date.

Section 3. Exclusions from Eligibility. The following shall not be eligible for coverage under HICAP:
(1) Individuals within a correctional system (i.e., inmates of jails, prisons, etc.);
(2) Individuals in the custody of a unit of government which is responsible for coverage of the acute care needs of the individuals; and
(3) Individuals who receive ongoing Medicaid in any category, including Aid to Families with Dependent Children (AFDC) and Supplemental Security Income (SSI).

Section 4. Eligibility Periods. Each determination of eligibility shall be for the month of application and two (2) subsequent months with a retroactive determination of eligibility for the three (3) months preceding the month of application if the individual has had a hospitalization during that period of time. The Commissioner of the Department for Medicaid Services may determine on an individual case basis that an additional retroactive period is necessary when the applicant presents extenuating circumstances. No retroactive coverage shall be provided for a period of time prior to January 1, 1991.

Section 5. Income Considerations. Eligibility is determined by comparing the family unit's (or that of the individual not living with other family members) income to the poverty income guidelines for the appropriate family size. In comparing the family unit income to 100 percent of the official poverty income guidelines, the following policies shall be applied:
(1) For the application month and subsequent months, an average income of the most recent two (2) calendar months shall be used;
(2) For retroactive eligibility, actual income received for those months shall be used;
(3) For annualized income, the most recent tax return shall be used;
(4) For seasonal, contract and occasional work, the actual income received shall be used;
(5) If it is anticipated that no income will be received for future months due to illness, accident, or other reasons, no income shall be considered as available;
(6) The gross income or adjusted gross income for self-employment shall be used;
(7) Income of all family unit members, including ineligible members, shall be considered and compared to the appropriate HICAP family size;
(8) Parental income shall not be considered in eligibility determinations for children age twenty-one (21) or older. If the child, regardless of age, is not living with the parent or attending college or a similar type of higher education facility, parental income shall not be considered;
(9) A legal guardian's income shall be considered in determining eligibility for children living in the same household as the legal guardian until the child reaches the age of eighteen (18);
(10) A grandparent's income shall not be considered for grandchildren living with the grandparent **(but not also living with the minor parent)** 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. **If a hospital refuses admission or provision of a particular service to a HICAP eligible individual, or otherwise contests medical necessity (whether before or after the fact), the Medicaid Peer Review Organization (PRO) shall be contacted by the hospital for a determination of the appropriateness of the admission or service using Medicaid standards of medical necessity; the decision of the PRO shall be binding upon the hospital for HICAP purposes. It shall be the PRO's responsibility to advise the hospital, the HICAP recipient, and the recipient's physician, in writing, of the PRO's decision. If the HICAP recipient is dissatisfied**

with the decision of the PRO, he may appeal the decision in accordance with 904 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: November 4, 1991
FILED WITH LRC: November 5, 1991 at 11 a.m.

PROPOSED AMENDMENTS RECEIVED THROUGH NOON, NOVEMBER 15, 1991

CRIME VICTIMS COMPENSATION BOARD
(Proposed Amendment)

107 KAR 1:025. Attorneys fees prohibited.

RELATES TO: KRS 346.040, 346.110
STATUTORY AUTHORITY: KRS 346.040, 346.110
NECESSITY AND FUNCTION: Under KRS 346.040(2) the Crime Victims Compensation Board's powers and duties include the adoption of rules for the approval of attorneys' fees for representation before the board or upon judicial review as provided for in KRS 346.110. This regulation sets forth the conditions of such payment.

Section 1. Attorneys fees shall not be awarded for the filing of any claim made pursuant to KRS Chapter 346 or in any subsequent proceedings. [If a claimant is represented by an attorney and the attorney so requests, the board, may, as a part of any award or by separate order subsequent to the award, allow a reasonable attorney's fee for the filing of a claim and any subsequent proceedings. Such fee shall not exceed fifteen (15) percent of the amount of the award, and shall be paid out of the award and not in addition to the award. No attorney representing a claimant shall contract for or receive as a fee any sum larger than fifteen (15) percent of the amount of the award. Any fee contract in violation of this provision shall be void.]

EDWARD M. COLEMAN, Acting Chairman
APPROVED BY AGENCY: September 26, 1991
FILED WITH LRC: October 16, 1991 at 11 a.m.
PUBLIC HEARING: A public hearing on these proposed regulations will be held on December 23, 1991 at the hour of 10 a.m. at the offices of the Crime Victims Compensation Board, 115 Myrtle Avenue, Frankfort, Kentucky 40601. Any person interested in commenting on these regulations at that hearing should contact Ms. Sheila Tharpe, Crime Victims Compensation Board, 115 Myrtle Avenue, Frankfort, Kentucky 40601 in writing by December 18, 1991.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sheila Tharpe
(1) Type and number of entities affected: All claimants.
(a) Direct and indirect costs or savings to those affected: Claimants receive full award without deduction for attorney fees.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body: Minimal
(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? None because all claimants are treated equally.

CRIME VICTIMS COMPENSATION BOARD
(Proposed Amendment)

107 KAR 1:050. Prorating awards.

RELATES TO: KRS 346.185(2)
STATUTORY AUTHORITY: KRS 346.040(2)
NECESSITY AND FUNCTION: KRS 346.185(2) provides that in the event there are insufficient funds in the Crime Victims Compensation Fund to pay all claims in full, all claims shall be paid on a pro rata basis. This regulation establishes the extent to which claims shall be paid when this event occurs.

Section 1. On the 15th day of each and every month [the executive director of] the board shall examine the accounts established for the payment of crime victim awards and shall determine whether or not the available balances in the accounts are sufficient to permit payment in full of all awards which are then due and payable.

Section 2. In the event the funds on hand are insufficient to permit payment in full of all awards then due and payable, the board [executive director] shall cause all [that portion of each] awards due each service provider to be processed for payment at seventy (70) percent of the total awarded each such provider which shall constitute payment of the board's award in full and the affected service providers shall not make demand for payment of the unpaid portion on the victim, the claimant or the board.

[Section 3. The following awards shall not be reduced:]
[(1) Awards payable directly to the victim as reimbursement for out-of-pocket expenses incurred, or for wages lost due to injuries suffered as a result of the crime;]
[(2) Awards payable in monthly installments to the survivors of victims for income or support lost because of the death of the victim;]
[(3) Awards to funeral homes.]

EDWARD M. COLEMAN, Acting Chairman
APPROVED BY AGENCY: September 26, 1991
FILED WITH LRC: October 16, 1991 at 11 a.m.
PUBLIC HEARING: A public hearing on these proposed regulations will be held on December 23, 1991 at the hour of 10 a.m. at the offices of the Crime Victims Compensation Board, 115 Myrtle Avenue, Frankfort, Kentucky 40601. Any person interested in commenting on these regulations at that hearing should contact Ms. Sheila Tharpe, Crime Victims Compensation Board,

115 Myrtle Avenue, Frankfort, Kentucky 40601 in writing by December 18, 1991.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sheila Tharpe
(1) Type and number of entities affected: All claimants.
(a) Direct and indirect costs or savings to those affected: Claimants receive full award without deduction for insurance.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body: Minimal
(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? None because all claimants are treated equally.

GENERAL GOVERNMENT CABINET
Kentucky Board of Pharmacy
(Proposed Amendment)

201 KAR 2:010. Schools approved by the board.

RELATES TO: KRS 315.050
STATUTORY AUTHORITY: KRS 315.050, 315.191(1)
NECESSITY AND FUNCTION: The Kentucky Board of Pharmacy is directed by KRS 315.050(1) to approve the schools or colleges of pharmacy whose curricula or course of studies are acceptable. This regulation is to assure that applicants for licensure are graduates of acceptable and approved colleges or schools.

Section 1. Every applicant for licensure as a pharmacist shall have graduated and received a [the first professional undergraduate] degree in [from] an accredited pharmacy degree program which has been approved by the Board of Pharmacy. Approved programs shall be those programs whose standards are equivalent to the minimum standards required by the American Council on Pharmaceutical Education for the accreditation of such programs. The American Council on Pharmaceutical Education, "Accreditation Standards and Guidelines," 8th Edition, July, 1984, effective January 1, 1985; and the American Council on Pharmaceutical Education, "Accredited Professional Programs of Colleges and Schools of Pharmacy[, Accredited Professional Degree Program]", July 1, 1991 [1989] are incorporated by reference. A copy of the referenced material may be reviewed or obtained from the Kentucky Board of Pharmacy, 1228 U.S. 127 South, Frankfort, Kentucky 40601, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.

DONALD J. RUWE, President
APPROVED BY AGENCY: November 13, 1991
FILED WITH LRC: November 14, 1991 at 9 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 23, 1991, at 10 a.m. (EST) at the office of the Kentucky Board of Pharmacy, 1228 U.S. 127 South, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by December 18, 1991, of their intent to attend. If no notification of intent to attend the hearing is received by this date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed amendments to the administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed amendments to the administrative regulation to: Richard L. Ross, Executive Director, Kentucky Board of Pharmacy, 1228 U.S. 127 South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Richard L. Ross
(1) Type and number of entities affected: No fees are affected by this amendment.
(a) Direct and indirect costs or savings to those affected:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: No change affected by this amendment.
(2) Effects on the promulgating administrative body: To update incorporated reference.
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: No fees are affected by this amendment.
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were required.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflict.
(a) Necessity of proposed regulation if in conflict: There is no conflict.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? No. This regulation is being amended to update incorporated reference.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(Proposed Amendment)

405 KAR 8:010. General provisions for permits.

RELATES TO: KRS 350.020, 350.055, 350.060, 350.070, 350.085, 350.090, 350.130, 350.135, 350.450, 350.465, 27 CFR 55.206, 55.218, 55.219, 55.220, 30 CFR 77.1301(c), 30 CFR Parts 730-733, 735, 773-775, 777, 778.17, 917, 16 USC 470 et seq., 661 et seq., 66A, 703 et seq., 1513 et seq., 30 USC 1253, 1255-1261, 1263-1266, 1272

STATUTORY AUTHORITY: KRS Chapter 13A, 350.020, 350.028, 350.060, 350.135, 350.450, 350.465, 30 CFR Parts 730-733, 735, 773-775, 777, 778.17, 917, 16 USC 470 et seq., 661 et seq., 66A, 703 et seq., 1513 et seq., 30 USC 1253, 1255-1261, 1263-1266, 1272

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations pertaining to permits for surface coal mining and reclamation operations. This regulation provides for permits to conduct these operations. The regulation specifies when permits are required, application deadlines, requirements for applications for permanent program permits, fees, verification of applications, public notice requirements, submission of comments on permit applications, the right to file objections, informal conferences, review of the permit applications, criteria for application approval or denial and relevant actions, term of the permits, conditions of permits, review of outstanding permits, revisions of permits, amendments, [and] renewals, transfers, assignments, and sales of permit rights, administrative and judicial review, and procedures relating to improvidently issued permits.

Section 1. Applicability. Excluding coal exploration operations, this regulation shall apply to all applications, all actions regarding permits, and all surface coal mining and reclamation operations.

Section 2. General Requirements. (1) Permanent program permits required. No person shall engage in surface coal mining and reclamation operations unless that person has first obtained a valid permanent program permit under this chapter for the area to be affected by the operations.

(2) General filing requirements for permanent program permit applications.

(a) Each person who intends to engage in surface coal mining and reclamation operations shall file a complete and accurate application for a permanent program permit which shall comply fully with all applicable requirements of KRS Chapter 350 and 405 KAR Chapters 7 through 24, and shall not begin the operations until the permit has been granted.

(b) Renewal of valid permanent program permits. An application for renewal of a permit under Section 21 of this regulation shall be filed with the cabinet at least 120 days before the expiration of the permit.

(c) Revision of permanent program permits. A permittee may, at any time, apply for a revision of a permit, but shall not vary from the requirements of the permit until the revision has been approved by the cabinet. The term of a permit shall remain unchanged by a revision.

(d) Succession to rights granted under prior permanent program permits. An application for the transfer, sale, or assignment of rights granted under a permit may be submitted at any time. The actual transfer, sale, or assignment of permit rights, however, may not take place until written permission has been granted by the cabinet.

(e) Amendment of permanent program permits. A permittee may, at any time, apply for an amendment to a permit under Section 23 of this regulation, but shall not begin surface coal mining and reclamation operations on the areas until the amendment has been approved by the cabinet. The term of a permit shall remain unchanged by an amendment.

(3) Compliance with permits. Any person engaging in surface coal mining and reclamation operations under a permit issued pursuant to KRS Chapter 350 shall comply with the terms and conditions of the permit, including the plans and other documents submitted as part of the application and approved by the cabinet, and the applicable requirements of KRS Chapter 350 and 405 KAR.

Section 3. Coordination of Review of Permit Applications. (1) For the purposes of avoiding duplication, the cabinet shall coordinate the review and issuance of permits for surface coal mining and reclamation operations with:

(a) Any other federal or Kentucky permit process applicable to the proposed operations, as required by Section 503 of SMCRA; and

(b) Applicable requirements of the Endangered Species Act of 1973, as amended (16 USC 1531 et seq.); the Fish and Wildlife Coordination Act, as amended (16 USC 661 et seq.); the Migratory Bird Treaty Act of 1918, as amended (16 USC 703 et seq.); the National Historic Preservation Act of 1966, as amended (16 USC 470 et seq.); and the Bald Eagle Protection Act, as amended (16 USC 668a), as required by 30 CFR 773.12.

(2) This coordination shall be accomplished by providing the appropriate agencies with an opportunity to comment on permit applications as set forth in Section 8(6) and (7) of this regulation and, if necessary, by any other measures the cabinet may deem appropriate.

Section 4. Preliminary Requirements. A person desiring a permit shall submit to the cabinet a preliminary application of the form and content prescribed by the cabinet. The preliminary application shall contain pertinent information, including a map at a scale of one (1) inch equals 400 or 500 feet, marked to show the proposed permit area and adjacent areas; and the areas of land to be affected, including, but not limited to, locations of the coal seam[(s)] or seams to be mined, access roads, haul roads, spoil or coal waste disposal areas, and sedimentation ponds. Areas so delineated on the map shall be physically marked at the site in a manner prescribed by the cabinet. Personnel of the cabinet shall conduct, within fifteen (15) working days after the filing of the preliminary application, an on-site investigation of the area with the person or his or her representatives and representatives of appropriate local, state or federal agencies, after which the person may submit a permit application.

Section 5. General Format and Content of Applications. (1)(a) Applications for permits to conduct surface coal mining and reclamation operations shall be filed in the number, form and content required by the cabinet, including a copy to be filed for public inspection under Section 8(8) of this regulation.

(b) The application shall be on forms provided by the cabinet, and originals and copies of the application shall be prepared, assembled and submitted in the number, form and manner prescribed by the cabinet with attachments, plans, maps, certifications, drawings, calculations or other documentation or relevant information as the cabinet may require.

(c) The following forms, which are required to be submitted by applicants, are hereby incorporated by reference:

1. Preliminary Application, MPA-00;
2. Permittee Information for a Mining Permit, MPA-01;
3. Operator Information for a Mining Permit, MPA-02;
4. Technical Information for a Mining Permit, MPA-03;
5. Surface Owner's Affidavit: Lands Historically Used for Cropland, MPA-03-20.1.B;
6. Disinterested Third Party Affidavid: Lands Historically Used for Cropland, MPA-03-20.1.C;
7. Application to Revise a Mining Plan, MPA-04;
8. Update of Permittee or Operator Information, MPA-05;
9. Change of Corporate Owners, Officers or Directors, MPA-06;
10. Application to Transfer a Mining Permit, MPA-07;
11. Revision Application to Change Operator, MPA-08;
12. Application for Renewal of a Mining Permit, MPA-09;
13. Application for a Coal Marketing Deferment, MPA-10; and
14. Minor Field Revision Application Form, SME 80, revised 9/91.

(d) These forms may be reviewed or obtained at the Department for Surface Mining Reclamation and Enforcement, #2 Hudson Hollow, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(e) [(c)] The application shall be complete with respect to all information required by 405 KAR and include, at a minimum: for surface mining activities, all the applicable information required under 405 KAR 8:030; for underground mining activities, all the information required under 405 KAR 8:040; and, for special types of surface coal mining and reclamation operations, all the information required under 405 KAR 8:050. No application shall be determined to be administratively complete unless all design plans for the permit area are in detailed form.

(2) Information set forth in the application shall be current, presented clearly and concisely, and supported by appropriate references to technical and other written material available to the cabinet.

(3) The collection and analysis of all technical data submitted in the application shall be planned by or conducted under the direction of a professional qualified in the subject to be analyzed and shall be accompanied by:

(a) Names of persons or organizations which collected and analyzed the data;

(b) Dates of the collection and analyses; and

(c) Descriptions of methodology used to collect and analyze the data.

(4) The application shall state the name, address and position of officials of each private or academic research organization or governmental agency who provided information which has been made a part of the application regarding land uses, soils, geology, vegetation, fish and wildlife, water quantity and quality, air quality, and archaeological, cultural, and historic features.

(5)(a) The applicant shall designate in the permit application either himself or some other person who will serve as agent for service of notices and orders. The designation shall identify the person by full name and complete mailing address, and if a natural person, the person's Social Security number. The person shall continue as agent for service of process until a written revision of the permit has been made to designate another person as agent.

(b) The applicant may designate persons authorized by the applicant to submit modifications to the application to the cabinet. If the designation has not been made in the application, or in separate correspondence, the cabinet shall accept modifications only from the applicant.

(6) General requirements for maps and plans.

(a) If any of the information marked on the preliminary map required under Section 4 of this regulation has changed, the application shall contain an updated USGS seven and one-half (7 1/2) minute topographic map marked as required in Section 4 of this regulation.

(b) Maps submitted with applications shall be presented in a consolidated format, to the extent possible, and shall include the types of information set forth on topographic maps of the U.S. Geological Survey of the 1:24,000 scale series. Maps of the permit area and adjacent areas shall be at a scale of 400 or 500 feet to the inch, inclusive; and the scale shall be clearly shown on the map. However, if [when] the cabinet determines that a map scale larger than 400 feet to the inch is required to adequately show mine site details, a map of larger scale shall be provided by the applicant. The map required by 405 KAR 8:030, Section 23(1)(a) or 405 KAR 8:040, Section 23(1)(a), regarding additional areas on which permits will be sought, shall be a USGS seven and one-half (7 1/2) minute (1:24,000) topographic map.

(c) If [Where] a map or drawing is required to be certified by a qualified registered professional engineer, the map or drawing shall bear the seal and signature of the engineer as required by KRS Chapter 322, and shall be certified in accordance with 405 KAR 7:040, Section 10.

(d) All engineering design plans submitted with applications shall be prepared by or under the direction of a qualified registered professional engineer and shall bear the engineer's seal, signature, and certification as required by KRS Chapter 322 and 405 KAR 7:040, Section 10.

(e) Maps and plans submitted with the application shall clearly identify all previously mined areas as defined at 405 KAR 16:190, Section 7(2)(c) or 405 KAR 18:190, Section 5(2)(c).

(7) Referenced materials. If used in the application, referenced materials shall either

be provided to the cabinet by the applicant or be readily available to the cabinet. If provided, relevant portions of referenced published materials shall be presented briefly and concisely in the application by photocopying or abstracting and with explicit citations.

Section 6. Application and Acreage Fees. (1) Each application for a surface coal mining and reclamation permit shall be accompanied by a fee determined by the cabinet. The fee may be less than, but shall not exceed the actual or anticipated cost of reviewing, administering and enforcing the permit.

(2) The applicant shall submit an application fee of $375 for each application, plus an additional seventy-five (75) for each acre or fraction thereof of the area of land to be affected by the operation. If the cabinet approves an incremental bonding plan submitted by the applicant, the acreage fees may be paid individually as the bond for each increment is submitted. However, no acreage fees shall be required for surface areas overlying underground or auger workings which will not be affected by surface operations and facilities.

(3) The fee shall accompany the application in the form of a cashier's check or money order payable to the Kentucky State Treasurer. No permit application shall be processed unless the application fee has been paid.

Section 7. Verification of Application. Applications for permits; revisions; amendments; renewals; or transfers, sales, or assignments of permit rights shall be verified under oath, before a notary public, by the applicant or his authorized representative, that the information contained in the application is true and correct to the best of the official's information and belief.

Section 8. Public Notice of Filing of Permit Applications. (1) An applicant for a permit, major revision, amendment, or renewal of a permit shall place an advertisement in the newspaper of largest bona fide circulation, according to the definition in KRS 424.110 to 424.120, in the county where the proposed surface coal mining and reclamation operations are to be located.

(2)(a) The first advertisement shall be published on or after the date the application is submitted to the cabinet. The applicant may elect to begin publication on or after the date the applicant receives the notification from the cabinet under Section 13(2) of this regulation that the application has been deemed administratively complete and ready for technical review. The advertisement shall be published at least once each week for four (4) consecutive weeks, with the final consecutive weekly advertisement being published after the applicant's receipt of written notice from the cabinet that the application has been deemed administratively complete and ready for technical review.

(b) The final consecutive weekly advertisement shall clearly state that it is the final advertisement, and that written objections to the application may be submitted to the cabinet until thirty (30) days after the date of the final advertisement.

(3) Within fifteen (15) days of the final date of publication of the advertisement, the applicant shall submit to the cabinet proof of publication of the required final four (4) consecutive weekly notices, satisfactory to the cabinet, which may consist of an affidavit from the publishing newspaper certifying the dates, place and content of the advertisements.

(4) The advertisement shall be entitled "Notice of Intention to Mine" and shall be of a form specified by the cabinet.

(5) The advertisement shall contain, at a minimum, the following information:

(a) The name and business address of the applicant; and

(b) A map or description which shall:

1. Clearly show or describe towns, rivers, streams, and other bodies of water, local landmarks, and any other information, including routes, streets, or roads and accurate distance measurements, necessary to allow local residents to readily identify the proposed permit area;

2. Clearly show or describe the exact location and boundaries of the proposed permit area;

3. State the name of the U.S. Geological Survey seven and one-half (7 1/2) minute quadrangle map(s) which contains the area shown or described; and

4. If a map is used, show the north arrow and map scale.

(c) The location where a copy of the application is available for public inspection under subsection (8) of this section;

(d) The name and address of the cabinet to which written comments, objections, or requests for permit conferences on the application may be submitted under Sections 9, 10, and 11 of this regulation;

(e) If an applicant seeks a permit to mine within 100 feet of the outside right-of-way of a public road or to relocate or close a public road; except <u>when</u> [where] public notice and hearing have been previously provided for this particular part of road in accordance with 405 KAR 24:040, Section 2(6)[(a) and (b)]; a concise statement describing the public road, the particular part to be relocated or closed, and the approximate timing and duration of the relocation or closing;

(f) If the application includes a request for an experimental practice under 405 KAR 7:060, a statement indicating that an experimental practice is requested and identifying the regulatory requirement for which a variance is requested; and

(g) The application number.

(6) Within five (5) working days after the application for a permit, major revision, amendment, or renewal of a permit has been determined to be administratively complete, the cabinet shall issue written notification of:

(a) The applicant's intention to conduct surface coal mining and reclamation operations on a particularly described tract of land;

(b) The application number;

(c) Where a copy of the application may be inspected; and

(d) Where comments on the application may be submitted under Section 9 of this regulation.

(7) The written notifications required by subsection (6) of this section shall be sent to:

(a) Local government agencies with jurisdiction over or an interest in the area of the proposed operations, including, but not limited to, planning agencies and sewage and water treatment authorities and water companies, either providing sewage or water services to

users in the area of the proposed operations or having water sources or collection, treatment, or distribution facilities located in these areas; and

(b) All federal and Kentucky governmental agencies which have the authority to issue permits and licenses applicable to the proposed surface coal mining and reclamation operation and which are a part of the permit coordination process required by Section 3 of this regulation; and

(c) Those agencies with an interest in the particular proposed operation including, but not limited to:

1. The USDA Soil Conservation Service State Conservationist;

2. The local U.S. Army Corps of Engineers district engineer;

3. The National Park Service;

4. Kentucky and federal fish and wildlife agencies; and

5. The state historic preservation officer.

(8) In accordance with Section 12 of this regulation, the cabinet shall, upon receipt of the application, make the application available for public inspection and copying during all normal working hours at the appropriate regional office of the cabinet where the mining has been proposed, and shall provide reasonable assistance to the public in the inspection and copying of the application.

Section 9. Submission of Comments or Objections by Public Agencies. (1) Written comments or objections on applications for permits, major revisions, amendments, and renewals of permits may be submitted to the cabinet by the public agencies to whom notification has been provided under Section 8(6) and (7) of this regulation with respect to the effects of the proposed mining operations on the environment within their area of responsibility.

(2) These comments or objections shall be submitted to the cabinet in the manner prescribed by the cabinet, and shall be submitted within thirty (30) calendar days after the date of the written notification by the cabinet pursuant to Section 8(6) and (7) of this regulation.

(3) The cabinet shall immediately file a copy of all comments or objections at the appropriate regional office of the cabinet for public inspection under Section 8(8) of this regulation. A copy shall also be transmitted to the applicant.

Section 10. Right to File Written Objections. (1) Any person whose interests are or may be adversely affected or an officer or head of any federal, state, or local government agency or authority to be notified under Section 8 of this regulation shall have the right to file written objections to an application for a permit, major revision, amendment, or renewal of a permit with the cabinet, within thirty (30) days after the last publication of the newspaper notice required by Section 8(1) of this regulation.

(2) The cabinet shall, immediately upon receipt of any written objections:

(a) Transmit a copy of the objections to the applicant; and

(b) File a copy at the appropriate regional office of the cabinet for public inspection under Section 8(8) of this regulation.

Section 11. Permit Conferences. (1) Procedure for requests. Any person whose interests are or may be adversely affected by the decision on the application, or the officer or head of any federal, state or local government agency or authority to be notified under Section 8 of this regulation may, in writing, request that the cabinet hold an informal conference on any application for a permit, major revision, amendment, or renewal of a permit. The request shall:

(a) Briefly summarize the issues to be raised by the requester at the conference;

(b) State whether the requester desires to have the conference conducted in the locality of the proposed mining operations; and

(c) Be filed with the cabinet not later than thirty (30) days after the last publication of the newspaper advertisement placed by the applicant under Section 8(1) of this regulation.

(2) Except as provided in subsection (3) of this section, if a permit conference has been requested in accordance with subsection (1) of this section, the cabinet shall hold a conference within twenty (20) working days after the last date to request a conference under subsection (1)(c) of this section. The conference shall be conducted according to the following:

(a) If requested under subsection (1)(b) of this section, the conference shall be held in the locality of the proposed mining.

(b) The date, time, and location of the conference shall be sent to the applicant and parties requesting the conference and advertised once by the cabinet in the newspaper of largest bona fide circulation, according to the definition in KRS 424.110 to 424.120, in the county where the proposed surface coal mining and reclamation operations are to be located, at least two (2) weeks prior to the scheduled conference.

(c) If requested, in writing, by a conference requester in a reasonable time prior to the conference, the cabinet may arrange with the applicant to grant parties to the conference access to the permit area and, to the extent that the applicant has the right to grant access, to the adjacent areas prior to the established date of the conference for the purpose of gathering information relevant to the conference.

(d) The requirements of 405 KAR 7:090 shall not apply to the conduct of the conference. The conference shall be conducted by a representative of the cabinet, who may accept oral or written statements and any other relevant information from any party to the conference. An electronic or stenographic record shall be made of the conference proceedings, unless waived by all the parties. The record shall be maintained and shall be accessible to the parties of the conference until final release of the applicant's performance bond or other equivalent guarantee pursuant to 405 KAR Chapter 10.

(3) If all parties requesting the conference stipulate agreement before the requested conference and withdraw their requests, the conference need not be held.

(4) Permit conferences held in accordance with this section may be used by the cabinet as the public hearing required under 405 KAR 24:040, Section 2(6) on proposed relocation and closure of public roads.

Section 12. Public Availability of Information in Permit Applications on File with the Cabinet. (1) General availability.

(a) The cabinet shall make an application for a permit, [major or minor] revision, amendment, or renewal of a permit or an application for transfer, assignment, or sale of permit rights available for the public to inspect and copy by placing a full copy of the application at the regional office for the area in which mining shall occur. The application will be made available by the cabinet for public inspection and copying, at reasonable times, in accordance with Kentucky open records statutes, KRS 61.870 to 61.884. This copy need not include confidential information exempt from disclosure under subsections (2) and (3) of this section.

(b) The application required by paragraph (a) of this subsection shall be placed at the appropriate regional office no later than the first date of newspaper advertisement of the application.

(c) The applicant shall be responsible for placing all changes in the copy of the application retained at the regional office when the changes are submitted to the Division of Permits.

(2) Information pertaining to coal seams, test borings, core samples, or soil samples in applications shall be made available for inspection and copying to any person with an interest which is or may be adversely affected.

(3) Confidentiality. The cabinet shall provide for procedures to ensure the confidentiality of qualified confidential information. Confidential information shall be clearly identified by the applicant and submitted separately from the remainder of the application. If [Where] a dispute arises concerning the disclosure or nondisclosure of confidential information, the cabinet shall provide notice and convene a hearing in accordance with 405 KAR 7:090. Confidential information shall be limited to the following:

(a) Information that pertains only to the analysis of the chemical and physical properties of the coal to be mined, except information on components of the coal which are potentially toxic in the environment;

(b) Information on the nature and location of archaeological resources on public land and Indian land as required under the Archaeological Resources Protection Act of 1979.

Section 13. Department Review of Applications for Permits, Revisions, Amendments, and Renewals. (1) General.

(a) The cabinet shall review the application for a permit, revision, amendment, or renewal; written comments and objections submitted; and records of any permit conference held on the application and make a written decision, within the time frames listed in Section 16(1) of this regulation, concerning approval of, requiring modification of, or concerning rejection of the application.

(b) An applicant for a permit, revision, or amendment shall have the burden of establishing that the application is in compliance with all requirements of KRS Chapter 350 and 405 KAR Chapters 7 through 24.

(2)(a) Administrative completeness determination. Within ten (10) working days of initial receipt of the application the cabinet shall provide written notification to the applicant as to the administrative completeness of the application. If the application is determined to be incomplete, the cabinet shall notify the applicant within ten (10) working days after initial receipt of the application by certified mail, return receipt requested, or by registered mail, of the deficiencies which render the application incomplete. The applicant may submit supplemental information to correct the identified deficiencies for a period of ten (10) working days after the applicant's receipt of the initial notice of incompleteness. If, after ten (10) working days, the cabinet determines that the application is still incomplete, the cabinet shall return the incomplete application to the applicant with written notification of the reasons for the determination.

(b) A determination by the cabinet that the application is administratively complete means that the application contains the major elements required by KRS Chapter 350 and 405 KAR Chapters 7 through 24 which are necessary to allow meaningful review of the application by the cabinet. An application shall not be deemed administratively complete if one (1) or more major elements are found to be absent from the application, which, by virtue of their absence, would require that the permit be denied. A determination that an application is administratively complete shall not mean that the application is complete in every detail, nor shall it mean that any aspect of the application is technically sufficient or approvable.

(3) Processing of the administratively complete application. Within the time periods set forth in Section 16 of this regulation, the cabinet shall either:

(a) Notify the applicant of the cabinet's decision to issue or deny the application; or

(b) Notify the applicant in writing, by certified mail, return receipt requested, or by registered mail, promptly upon discovery of deficiencies in the application and allow the application to be temporarily withdrawn for the purpose of correcting the deficiencies. Temporary withdrawal periods shall not be counted against the time available to the cabinet for consideration of the application.

(4) Review of violations.

(a) Based on available information concerning failure-to-abate cessation orders issued by OSM, Kentucky, or any other state; unabated imminent harm cessation orders issued by OSM, Kentucky, or any other state; delinquent civil penalties assessed pursuant to SMCRA, federal regulations enacted pursuant to SMCRA, KRS Chapter 350 and regulations adopted pursuant thereto, or any other state's laws or regulations under SMCRA; bond forfeitures by OSM, Kentucky, or any other state where violations upon which the forfeitures were based have not been corrected; delinquent abandoned mine reclamation fees; and unabated violations of federal, Kentucky, and any other state's laws, rules and regulations pertaining to air or water environmental protection incurred in connection with any surface coal mining operation, the cabinet shall not issue the permit if any surface coal mining reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant is currently in violation of SMCRA, federal regulations enacted pursuant to SMCRA, KRS Chapter 350 and regulations adopted pursuant thereto, any other

state's laws or regulations under SMCRA, or any other law, rule, or regulation referred to in this subsection. In the absence of a failure-to-abate cessation order, the cabinet may presume that a notice of violation issued by OSM, Kentucky, or any other state pursuant to its laws and regulations under SMCRA has been or is being corrected to the satisfaction of the agency with jurisdiction over the violation, except when [where] evidence to the contrary is set forth in the permit application, or when [where] the violation is for nonpayment of abandoned mine reclamation fees or civil penalties. If a current violation exists, the cabinet shall require the applicant or person who owns or controls the applicant, before issuance of the permit, to either:

1. Submit to the cabinet proof that the current violation has been or is in the process of being corrected to the satisfaction of the agency that has jurisdiction over the violation; or

2. Establish for the cabinet that the applicant, or any person owned or controlled by either the applicant or any person who owns or controls the applicant, has filed and is presently pursuing, in good faith, a direct administrative or judicial appeal to contest the validity of the current violation. If the initial judicial review authority affirms the violation, then the applicant shall within thirty (30) days of the judicial action submit proof required under subparagraph 1 of this paragraph.

(b) Any permit that is issued on the basis of proof submitted under paragraph (a)1 of this subsection that a violation is in the process of being corrected, or pending the outcome of an appeal described in paragraph (a)2 of this subsection, shall be conditionally issued.

(c) If the cabinet makes a finding that the applicant, anyone who owns or controls the applicant, or the operator specified in the application, controls or has controlled surface coal mining and reclamation operations with a demonstrated pattern of willful violations of KRS Chapter 350 and regulations adopted pursuant thereto of such nature and duration, and with resulting irreparable damage to the environment as to indicate an intent not to comply with those laws or regulations, no permit shall be issued. Before such a finding becomes final, the applicant or operator shall be afforded an opportunity for an adjudicatory hearing on the determination as provided for in 405 KAR 7:090, Section 5(1)(a).

(5) Final compliance review. After an application is approved, but before the permit is issued, the cabinet shall reconsider its decision to approve the application, based on the compliance review required by subsection (4)(a) of this section in light of any new information submitted under 405 KAR 8:030, Sections 2(11) and 3(4), or 405 KAR 8:040, Sections 2(11) and 3(4).

Section 14. Criteria for Application Approval or Denial. No application for a permit, revision (as applicable), or amendment of a permit shall be approved unless the application affirmatively demonstrates and the cabinet finds, in writing, on the basis of information set forth in the application or from information otherwise available, which has been documented in the approval, that:

(1) The permit application is complete and accurate and in compliance with all requirements of KRS Chapter 350 and 405 KAR Chapters 7 through 24.

(2) The applicant has demonstrated that surface coal mining and reclamation operations, as required by KRS Chapter 350 and 405 KAR Chapters 7 through 24 can be feasibly accomplished under the mining and reclamation plan contained in the application.

(3) The assessment of the probable cumulative impacts of all anticipated coal mining in the cumulative impact area on the hydrologic balance has been made by the cabinet and the operations proposed under the application have been designed to prevent material damage to the hydrologic balance outside the proposed permit area.

(4) The proposed permit area is:

(a) Not included within an area designated unsuitable for surface coal mining operations under 405 KAR 24:030;

(b) Not within an area under study for designation as unsuitable for surface coal mining operations in an administrative proceeding begun under 405 KAR 24:030, unless the applicant demonstrates that, before January 4, 1977, he or she made substantial legal and financial commitments in relation to the operation for which he or she is applying for a permit;

(c) Not on any lands subject to the prohibitions or limitations of 405 KAR 24:040, Section 2(1), (2) or (3);

(d) Not within 100 feet of the outside right-of-way line of any public road, except as provided for in 405 KAR 24:040, Section 2(6); and

(e) Not within 300 feet from any occupied dwelling, except as provided for in 405 KAR 24:040, Section 2(5).

(5)(a) The proposed operations will not adversely affect any publicly-owned parks or any places included on the National Register of Historic Places, except as provided for in 405 KAR 24:040, Section 2(4); and

(b) The cabinet has taken into account the effect of the proposed operations on properties listed and eligible for listing on the National Register of Historic Places. This finding may be supported in part by inclusion of appropriate permit conditions or changes in the mining and reclamation plan to protect historic resources, or a documented decision that the cabinet has determined that no additional protection measures are necessary.

(6) For operations involving the surface mining of coal where the private mineral estate to be mined has been severed from the private surface estate, the applicant has submitted to the cabinet the documentation required under 405 KAR 8:030, Section 4(2) or 405 KAR 8:040, Section 4(2).

(7) With regard to current violations, the applicant has either:

(a) Submitted the proof required by Section 13(4)(a) of this regulation; or

(b) Made the demonstration required by Section 13(4)(b) of this regulation.

(8) The applicant has paid all reclamation fees from previous and existing operations as required by 30 CFR 870, or has entered into a payment schedule approved by OSM. If the applicant has entered into a payment schedule approved by OSM, a permit may be issued only if it includes a condition that the permittee

comply with the approved payment schedule.

(9) The applicant or the operator, if other than the applicant, does not control and has not controlled mining operations with a demonstrated pattern of willful violations of SMCRA or KRS Chapter 350 of such a nature and duration and with such resulting ["]irreparable damage to the environment[" (as defined in 405 KAR 7:020)] as to indicate an intent not to comply with SMCRA or KRS Chapter 350.

(10) The applicant has demonstrated that any existing structure will comply with 405 KAR 8:030, Section 25 and 405 KAR 8:040, Section 25, and the applicable performance standards of KAR 405 KAR Chapters 16 and 18.

(11) The applicant has, if applicable, satisfied the requirements for approval of a long-term, intensive agricultural postmining land use.

(12) The applicant can reasonably be expected to submit the performance bond or other equivalent guarantee required under 405 KAR Chapter 10 prior to the issuance of the permit.

(13) The applicant has, with respect to prime farmland obtained either a negative determination or satisfied the requirements of 405 KAR 8:050, Section 3.

(14) The applicant has satisfied the applicable requirements of 405 KAR 8:050 regarding special categories of mining.

(15) The cabinet has made all specific approvals required under 405 KAR Chapters 16 through 20.

(16) The cabinet has found that the activities would not affect the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitats as determined under the Endangered Species Act of 1973 (16 USC 1531 et seq.).

(17) The applicant has not forfeited any bond under KRS Chapter 350. When the applicant has forfeited a bond, the permit may be issued if the land for which the bond was forfeited has been satisfactorily reclaimed without cost to the state or the operator or person has paid a sum that the cabinet finds is adequate to reclaim the land.

(18) The applicant has not had a permit revoked, suspended or terminated under KRS Chapter 350. If the applicant has had a permit revoked, suspended or terminated, another permit may be issued, or a suspended permit may be reinstated, only if the applicant has complied with all of the requirements of KRS Chapter 350 or submitted proof satisfactory to the cabinet that the violation has been corrected or is in the process of being corrected, in respect to all permits issued to him or her.

(19) The operation will not constitute a hazard to or do physical damage to a dwelling house, public building, school, church, cemetery, commercial or institutional building, public road, stream, lake, or other public property.

(20) The surface coal mining operation will not adversely affect a wild river established pursuant to KRS Chapter 146 or a state park unless adequate screening and other measures as approved by the cabinet have been incorporated into the permit application and the surface coal mining operation has been jointly approved by all affected agencies as set forth under 405 KAR 24:040.

(21) For a proposed remining operation where the applicant intends to reclaim in accordance with the requirements of 405 KAR 16:190, Section 7 or 405 KAR 18:190, Section 5, the applicant has demonstrated, to the satisfaction of the cabinet, that the site of the operation will be a previously mined area as defined in those sections.

Section 15. Criteria for Application Approval or Denial Regarding Existing Structures. No application for a permit, revision, or amendment which proposes to use an existing structure in connection with or to facilitate the proposed surface coal mining and reclamation operation shall be approved, unless the applicant demonstrates and the cabinet finds, in writing, on the basis of information set forth in the complete and accurate application, that the provisions of 405 KAR 7:040, Section 4, have been met.

Section 16. Application Approval or Denial Actions. (1) The cabinet shall take action on applications within the following time periods as appropriate:

(a)1. Except as provided for in paragraph (b) of this subsection, for a complete and accurate application submitted under Section 2(2)(a), (b), (d), and (e) of this regulation, a decision shall be made by the cabinet to approve, require modification of, or deny the application within sixty-five (65) working days after the notice of administrative completeness under Section 13(2) of this regulation, except that periods of temporary withdrawal under Section 13(3)(b) of this regulation shall not be counted against the sixty-five (65) working-day period available to the cabinet.

2. Except as provided in paragraph (b) of this subsection, for a complete and accurate application submitted under Section 2(2)(c) of this regulation of a major revision as provided in Section 20 of this regulation, a decision shall be made by the cabinet to approve, require modification of, or deny the application within forty-five (45) working days after the notice of administrative completeness under Section 13(2) of this regulation, except that periods of temporary withdrawal under Section 13(3)(b) of this regulation shall not be counted against the forty-five (45) working-day period available to the cabinet.

3. For a complete and accurate application submitted under Section 2(2)(c) of this regulation for a minor revision as provided in Section 20 of this regulation, a decision shall be made by the cabinet to approve, require modification of, or deny the application within fifteen (15) working days after the notice of administrative completeness under Section 13(2) of this regulation, except that periods of temporary withdrawal under Section 13(3)(b) of this regulation shall not be counted against the fifteen (15) working-day period available to the cabinet.

(b) If the notice, hearing and conference procedures mandated by KRS Chapter 350 and 405 KAR prevent a decision from being made within the time periods specified in paragraph (a) of this subsection, the cabinet shall have additional time to issue its decision, but not to exceed twenty (20) days from the completion of the notice, hearing and conference procedures.

(2) The cabinet shall issue written notification of the decision to approve, modify,

or deny the application, in whole or part, to the following persons and entities:

(a) The applicant;

(b) Each person who files comments or objections to the permit application;

(c) Each party to an informal permit conference, if held;

(d) The county judge-executive of the county, and the chief executive officer of any municipality, in which the permit area lies. This notice shall be sent within ten (10) days after the issuance of the permit and shall include a description of the location of the permit area; and

(e) The field office director of the Office of Surface Mining Reclamation and Enforcement.

(3) If the application has been denied, the notification required in subsection (2) of this section, for the applicant, any person filing objections to the permit and parties to an informal conference, shall include specific reasons for the denial.

(4) If the cabinet decides to approve the application, it shall require that the applicant file the performance bond before the permit is issued, in accordance with 405 KAR Chapter 10.

(5) The cabinet shall publish a summary of its decision in the newspaper of largest bona fide circulation, according to the definition in KRS 424.110 to 424.120, in the county where the proposed surface coal mining and reclamation operations are to be located.

Section 17. Term of Permit. (1) Each permit shall be issued for a fixed term not to exceed five (5) years. A longer fixed permit term may be granted at the discretion of the cabinet only if:

(a) The application is complete and accurate for the specified longer term; and

(b) The applicant shows that a specified longer term is reasonably needed to allow the applicant to obtain necessary financing for equipment and for the opening of the operation with the need confirmed, in writing, by the applicant's proposed source for the financing.

(2)(a) A permit shall terminate, if the permittee has not begun the surface coal mining and reclamation operation covered by the permit within three (3) years of the issuance of the permit.

(b) The cabinet may grant reasonable extensions of the time for commencement of these operations, upon receipt of a written statement showing that the extensions of time are necessary, if:

1. Litigation precludes the commencement or threatens substantial economic loss to the permittee; or

2. There are conditions beyond the control and without the fault or negligence of the permittee.

(c) With respect to coal to be mined for use in a synthetic fuel facility or specified major electric generating facility, the permittee shall be deemed to have commenced surface mining operations when construction of the synthetic fuel or generating facility is initiated.

(d) Extensions of time granted by the cabinet under this subsection shall be specifically set forth in the permit and notice of the extension shall be made to the public.

(3) Permits may be suspended, revoked, or modified by the cabinet, in accordance with Section 19 of this regulation; Section 3 of 405 KAR 7:060; Sections 4, 6, and 7 of 405 KAR 8:050; and 405 KAR Chapter 12.

Section 18. Conditions of Permits. Actions by an applicant, permittee, or operator to submit an application to the cabinet, to accept a permit issued by the cabinet, or to begin operations pursuant to a permit issued by the cabinet, shall be deemed to constitute knowledge and acceptance of the conditions set forth in this section, which shall be applicable to each permit issued by the cabinet pursuant to this chapter whether or not the conditions have been set forth in the permit.

(1) General.

(a) The permittee shall comply fully with all terms and conditions of the permit and all applicable performance standards of KRS Chapter 350 and 405 KAR Chapters 7 through 24; and

(b) Except to the extent that the cabinet otherwise directs in the permit that specific actions be taken, the permittee shall conduct all surface coal mining and reclamation operations as described in the approved application; and

(c) The permittee shall conduct surface coal mining and reclamation operations only on those lands specifically designated as the permit area on the maps submitted under 405 KAR 8:030 or 405 KAR 8:040 and authorized for the term of the permit; and which are subject to the performance bond in effect pursuant to 405 KAR Chapter 10.

(2) Right of entry.

(a) Without advance notice, unreasonable delay, or a search warrant, and upon presentation of appropriate credentials, the permittee shall allow authorized representatives of the Secretary of the Interior and the cabinet to:

1. Have the rights of entry provided for in 405 KAR 12:010, Section 3; and

2. Be accompanied by private persons for the purpose of conducting a federal inspection when the inspection is in response to an alleged violation reported to the cabinet by the private person.

(b) The permittee shall allow the authorized representatives of the cabinet to be accompanied by private persons for the purpose of conducting an inspection pursuant to 405 KAR 12:030.

(3) Environment, public health, and safety.

(a) The permittee shall take all possible steps to minimize any adverse impact to the environment or public health and safety resulting from failure to comply with any term or condition of the permit, including, but not limited to:

1. Any accelerated or additional monitoring necessary to determine the nature and extent of failure to comply and the results of the failure to comply;

2. Immediate implementation of measures necessary to comply; and

3. Warning, as soon as possible after learning of the failure to comply, any person whose health and safety is in imminent danger due to the failure to comply.

(b) The permittee shall dispose of solids, sludge, filter backwash, or pollutants removed in the course of treatment or control of waters or emissions to the air in the manner required by 405 KAR Chapters 16 through 20, and which prevents violation of any other applicable Kentucky or federal law.

(c) The permittee shall conduct its operations:

1. In accordance with any measures specified in the permit as necessary to prevent significant, imminent environmental harm to the health or safety of the public; and

2. Utilizing any methods specified in the permit by the cabinet in approving alternative methods of compliance with the performance standards of KRS Chapter 350 and 405 KAR Chapters 16 through 20, in accordance with KRS Chapter 350 and 405 KAR Chapters 16 through 20.

(4) Reclamation fees. The permittee shall pay all reclamation fees required by 30 CFR 870 for coal produced under the permit for sale, transfer, or use, in the manner required by that subchapter.

(5) Within thirty (30) days after a cessation order is issued by OSM for operations conducted under the permit or after an order for cessation and immediate compliance is issued under 405 KAR 12:020, Section 3 for operations conducted under the permit, except when [where] a stay of the order is granted and remains in effect, the permittee shall either submit to the cabinet the following information, current to the date the order was issued, or notify the cabinet in writing that there has been no change since the immediately preceding submittal of the information:

(a) Any new information needed to correct or update the information previously submitted to the cabinet by the permittee under 405 KAR 8:030, Section 2(3) or 405 KAR 8:040, Section 2(3); or

(b) If not previously submitted, the information required from a permit applicant by 405 KAR 8:030, Section 2(3) or 405 KAR 8:040, Section 2(3).

Section 19. Review of Permits. (1)(a) The cabinet shall review each permit issued under this chapter during the term of the permit. This review shall occur not later than the middle of the permit term and as required by 405 KAR 7:060 and 405 KAR 8:050, Sections 4, 6, and 7. Issued permits shall be reevaluated in accordance with the terms of the permit and the requirements of KRS Chapter 350 and 405 KAR Chapters 7 through 24, including reevaluation of the bond.

(b) For permits of longer than five (5) year terms, a review of the permit shall be no less frequent than the permit midterm or every five (5) years, whichever is more frequent.

(2) After the review required by subsection (1) of this section, or at any time, the cabinet may, by order, require revision or modification of the permit provisions to ensure compliance with KRS Chapter 350 and 405 KAR Chapters 7 through 24.

(3) Copies of the decision of the cabinet shall be sent to the permittee.

(4) Any order of the cabinet requiring revision or modification of permits shall be based upon written findings and shall be subject to the provisions for administrative and judicial review of 405 KAR 7:090.

Section 20. Permit Revisions. (1) General. A revision to a permit shall be obtained:

(a) For changes in the surface coal mining and reclamation operations described in the existing application and approved under the current permit; [.]

(b) If [When] a revision is required by an order issued under Section 19 of this regulation;

(c) In order to continue operation after the cancellation or material reduction of the liability insurance policy, performance bond, or other equivalent guarantee upon which the original permit was issued; or

(d) As otherwise required under 405 KAR Chapters 7 through 24.

(2) Major revision.

(a) Except as provided in subsections (3)(f) and (6) of this section, a revision shall be deemed [is] a major revision if the cabinet determines that the proposed change is of such scope and nature that [the cabinet determines that] public notice is necessary to allow participation in the cabinet's decision by persons who have an interest which may be adversely affected by the proposed change. Major revisions shall include, but shall not be limited to:

1. Changes in the postmining land use;

2. Enlargement or relocation of impoundments so as to increase the safety hazard classification of the impoundment;

3. Variances to approximate original contour requirements;

4. Construction or relocation of roads, where the construction or relocation could adversely affect the interests of persons other than the surface owner;

5. Changes which may adversely affect significant fish and wildlife habitats or endangered species;

6. Proposed experimental practices;

7. Changes which may cause major impacts on the hydrologic balance;

8. Incidental boundary revisions that affect new watersheds; and

9. Incidental boundary revisions that include diversions of perennial streams. [;]

[10. Incidental boundary revisions that include new areas from which coal will be removed, except these revisions shall be limited to ten (10) percent of the permit area acreage or five (5) acres, whichever is less.]

(b) Major revisions shall be subject to all of the requirements of Sections 5; 7 through 12; 13(1), (2), (3); 14(1) through (6), (8), (10) through (16), (19) through (21); 15; 16; 18; and 24 of this regulation; and shall be submitted on forms prescribed by the cabinet. In addition to the requirements of Section 8(5) of this regulation, the advertisement shall contain a statement that the applicant proposes to revise the existing permit and shall contain a description of the proposed change.

(3) Minor revisions.

(a) All revisions which are not determined by the cabinet under subsection (2) of this section to be major revisions, or which are not operator change revisions under subsection (6) of this section, shall be deemed [are] minor revisions. Minor revisions shall be subject to Sections 5; 7; 12; 13(1), (2), (3); 14(1) through (6), (10) through (16), (19) through (21); 15; 16(1) through (4); 18; and 24 of this regulation, except that minor field revisions described in paragraph (d) of this subsection shall not be subject to the administrative completeness determination of Section 13(2) of this regulation, and the time frame for review in Section 16(1)(a)3 of this regulation shall begin at the time of application submittal. Minor revisions shall be submitted on forms prescribed by the cabinet.

(b) If the cabinet determines that a proposed minor revision is actually a major revision

during the administrative completeness determination under Section 13 of this regulation, the cabinet shall so inform the applicant and return the application.

(c) The cabinet shall notify, in writing, those persons, if any, that the cabinet determines could have an interest that may be adversely affected by the proposed change. Those persons shall have the right to file written objections to the revision within ten (10) days of the date of the notification.

(d) The following minor revisions shall be deemed minor field revisions which may be reviewed and processed in accordance with this section by the appropriate regional office of the department. However, if the number of persons that potentially could have an interest that may be adversely affected by the proposed change is large enough that public notice by newspaper advertisement rather than individual notice by letter from the cabinet is necessary, the regional administrator shall determine that the proposed revision is a major revision and it shall not be processed under this paragraph.

1. Proposals for minor relocation of underground mine entries if [where]:

a. There are no structures or renewable resource lands (under paragraph (b) of the definition of "renewable resource lands" [(as that term is defined in paragraph (b) of the definition provided in 405 KAR 7:020, Section 1]) overlying the area;

b. There is no proposed change to the permit boundary; and

c. The proposed new location is on the same face-up area and coal seam as originally permitted, is within the same drainage area as the original location, is controlled by the same sedimentation pond, and there will be no additional disturbed acreage within the drainage area of that sedimentation pond.

2. Proposals for retention of concrete platforms and small buildings if [where]:

a. There is no proposed change to the previously approved postmining land use; and

b. The application contains a notarized letter from the surface owner requesting retention of the structure.

3. Proposals to leave roads as permanent, except proposals involving roads to impoundments, excess spoil fills, coal mine waste fills, or air shafts; roads within 100 feet of an intermittent or perennial stream; and roads within areas designated unsuitable for mining under 405 KAR 24:040, Section 2, regardless of whether a previous waiver or approval has been granted. The application shall contain a notarized letter from the surface owner including a request to retain the road and a statement acknowledging that the surface owner understands that the operator has no responsibility for maintenance of the road after the performance bond has been released pursuant to 405 KAR 10:040 for the area in which the road is located.

4. Proposals to increase the diameter of culverts used as road crossdrains, not including culverts used for stream crossings, if [provided that] the proposed culvert is the same type of pipe as the previously approved culvert.

5. Proposals to install additional culverts used as road crossdrains (not including culverts used for stream crossings), if [provided that] the diameter of the proposed additional culvert is equal to the diameter of the nearest downstream crossdrain and if it is the same type of pipe as the nearest downstream crossdrain.

6. Proposals for minor relocation of on-bench sediment control structures (dugouts only) in order to locate the structures at low spots on the same bench on which they were initially proposed, if [where]:

a. The drainage area to the structure will remain the same as the original design;

b. The proposed location will not cause short-circuiting of the structure; and

c. There is no proposed change to the permit boundary.

7. Proposals to retain diversions of overland flow (not including stream diversions) as permanent facilities if [where]:

a. The application contains a notarized letter from the surface owner including a request to retain the diversion and a statement accepting maintenance responsibilities for the diversions; and

b. The diversions have previously been designed to the standards for permanent diversions.

8. Proposals for relocation of topsoil storage areas if [where]:

a. There is no proposed change to the permit boundary; and

b. The proposed new location was previously permitted as a disturbed area within the same drainage area as the original location, is controlled by the same sedimentation pond, and there will be no additional disturbed acreage within the drainage area of that sedimentation pond.

9. Proposals to substitute plant species if [where]:

a. The proposed species is of the same vegetative type (grass, legume, tree, or shrub) as the original species;

b. The proposed species will serve the equivalent function of the original species with respect to the previously approved: revegetation plan, postmining land use plan, and the fish and wildlife protection and enhancement plan; and

c. The proposed species and its application or planting rate are compatible with the remainder of the previously approved species mixture to be planted.

10. Proposals to utilize hydroseeding for trees instead of planting trees or tree seedlings if [where]:

a. Hydroseeding is an appropriate method for the tree species being established; and

b. No change in tree species is involved unless concurrently approved under subparagraph 9 of this paragraph.

11. Proposals to change the type of mulch to be utilized on the permit area, including a revised rate of application consistent with the different type of mulch proposed.

12. Proposals to retain small depressions in the reclaimed area.

13. Proposals required by the cabinet to increase frequency of air blast monitoring.

14. Proposals required by the cabinet to increase frequency of air pollution monitoring.

15. Proposals to employ more effective fugitive dust controls, and proposals required by the cabinet to employ additional fugitive dust controls.

16. Proposals to add a portable coal crusher if [where]:

a. The crusher and associated conveying equipment are a completely portable, trailer

mounted unit;

b. The equipment will be utilized to crush coal only from the permit area on which it is proposed to be located;

c. The operation will not generate coal mine waste;

d. There is no proposed change to the permit boundary; and

e. The equipment will always be located in the mining pit or other location previously permitted as a disturbed area controlled by a previously approved sedimentation pond and there will be no additional disturbed acreage or delayed reclamation within the drainage area of any of the sedimentation ponds.

17. Proposals to change the time periods, or the types or patterns of warning or all-clear signals, when explosives are to be detonated.

18. Proposals to relocate an explosive storage area within the existing permit area in accordance with 27 CFR 55.206, 55.218, 55.219, 55.220, and 30 CFR 77.1301(c).

19. Approval for minor relocation of support facilities such as conveyors, hoppers, and coal stockpiles if [where]:

a. There is no proposed change to the permit boundary; and

b. The proposed new location was previously permitted as a disturbed area within the same drainage area as the original location, is controlled by the same sedimentation pond, and there will be no additional disturbed acreage within the drainage area of that sedimentation pond.

20. Proposals for modifications of shared facilities if [where] that modification has already been approved in a revision for one of the permittees by the Division of Permits and no additional performance bond was required for the initial revision.

21. Proposals to add a hopper to a permitted area if [where]:

a. There is no proposed change to the permit boundary; and

b. The proposed location was previously permitted as a disturbed area controlled by a previously approved sedimentation pond and there will be no additional disturbed acreage or delayed reclamation within the drainage area of that sedimentation pond.

22. Proposals to change the brush disposal plan, not including any proposals to bury brush in the backfill area on steep slopes or in excess spoil fills or coal mine waste fills.

[23. Proposals to cut berms, provided that the cuts will not cause bypassing or short circuiting of on-bench structures or other sedimentation control structures.]

23. [24.] Proposals to change the basis of judging revegetation from reference areas to the technical standards established in 405 KAR Chapters 7 through 24.

24. [25.] Proposals for incidental boundary revisions for minor off-permit disturbances if [where]:

a. The total acreage of the minor off-permit disturbances is no more than one (1) acre combined per proposal;

b. The cumulative acreage limitation in subsection (5) of this section [established in the definition of "incidental boundary revision" in 405 KAR 7:020] is not exceeded;

c. The area to be permitted does not include any wetlands, prime farmlands, stream buffer zones, federal lands, habitats of unusually high value for fish and wildlife, areas that may contain threatened or endangered species, or areas designated unsuitable for mining under 405 KAR Chapter 24;

d. The off-permit disturbance was not a coal extraction area nor shall any future coal extraction occur on the area;

e. There are no structures such as excess spoil disposal fills, coal mine waste disposal fills or impoundments, or water impoundments involved;

f. The surface owner of the area to be permitted is a surface owner of disturbed area under the existing permit; and

g. An additional performance bond in the amount of $5000 has been filed by the permittee.

h. If deemed necessary for any reason, the regional administrator may decline to review and process any proposal to permit an off-permit disturbance as a minor field revision and instead require that an application be submitted to the Division of Permits.

25. [26.] Except as provided below, proposals to remove sedimentation ponds previously approved as permanent impoundments if [where] the application contains a notarized letter from the surface owner requesting the elimination of the impoundment, the application contains an acceptable plan for removal, and the criteria for sedimentation pond removal have been met. However, proposals to remove sedimentation ponds [in the following situations] shall not be processed as minor field revisions if:

a. [Where] The structure has a hazard classification of B or C;

b. [Where] The impoundment is a developed water resource land use;

c. [Where] The removal or activities associated with the removal of the structure may adversely affect significant fish and wildlife habitats or threatened or endangered species;

d. [Where] The impoundment may be a necessary element in the achievement of the previously approved postmining land use (such as a stock pond for pastureland where no other nearby source of water is available to the livestock); or

e. [Where] The impoundment was originally planned to be left for the purpose, in whole or in part, of enhancing fish and wildlife and related environmental values.

26. [27.] Proposals to approve exemptions from the requirement to pass drainage through sedimentation ponds for disturbed areas that, due to unexpected field conditions, will not drain to an approved sedimentation pond if [where]:

a. There has not been any acid drainage or drainage containing concentrations of total iron or manganese from this or nearby areas of the mine that could result in water quality violations if untreated and none is expected based on overburden analysis;

b. The application contains a justification that it is not feasible to control the drainage by a sedimentation pond;

c. The disturbed area is one (1) acre or less;

d. The application contains a plan to immediately implement alternate sedimentation control measures including, at a minimum, mulching, silt fences, straw bale dikes and establishment of a quick growing temporary vegetative cover;

e. The application contains sufficient plan views and cross sections certified by a

registered professional engineer to clearly illustrate the feasibility of the proposal and the location of the alternate control methods (minimum scale one (1) inch equals 100 feet); and

f. The application contains a MRP map certified by a registered professional engineer showing the location of the disturbed area and the drainage area clearly.

(e) Proposed minor revisions which only seek to change the engineering design of impoundments and diversions of overland flow where no change in permit boundary is involved shall not be subject to the administrative completeness determination of Section 13(2) of this regulation; however, the application shall be processed in, and written notice that the application has been determined to be subject to this paragraph and is being forwarded for technical review shall be provided to the applicant within ten (10) working days. The time frame for review in Section 16(1)(a)3 of this regulation shall begin at the time of this notice.

(f) Incidental boundary revisions shall be deemed minor revisions if they:

1. Do not exceed ten (10) percent of the relevant surface or underground acreage in the original or amended permit area;

2. Are contiguous to the current permit area;

3. Are within the same watershed as the current permit area;

4. Are required for an orderly continuation of the mining operation;

5. Involve mining of the same coal seam or seams as in the current permit;

6. Involve only lands for which the hydrologic and geologic data and the probable hydrologic consequences determination in the current permit are applicable;

7. Do not involve properties on which mining is prohibited under KRS 350.085 and 405 KAR 24:040, unless appropriate waivers have been obtained, or which have been designated as unsuitable for mining under 405 KAR 24:030, or any properties eligible for listing on the National Register of Historic Places;

8. Do not involve any of the categories of mining in 405 KAR 7:060 and 405 KAR 8:050 unless the current permit already includes the relevant category;

9. Do not constitute a change in the current method of mining; and

10. Will be reclaimed in conformity with the current reclamation plan.

(4) Any extensions to the area covered by a permit, except for incidental boundary revisions, shall be made by application for a new or amended permit and shall not be approved under this section.

(5) Size limitations for incidental boundary revisions.

(a) For surface mining activities, an incidental boundary revision shall not exceed ten (10) percent of the acreage in the original or amended permit area, and shall not exceed twenty (20) acres.

(b) For underground mining activities and auger mining, incidental boundary revisions for surface operations and incidental boundary revisions for underground workings shall be determined separately.

1. For surface operations, an incidental boundary revision shall not exceed the greater of two (2) acres or ten (10) percent of the acreage of surface operations in the original or amended permit area, and shall not exceed twenty (20) acres.

2. For underground workings, an incidental boundary revision shall not exceed ten (10) percent of the acreage of underground workings in the original or amended permit area, and shall not exceed twenty (20) acres.

(c) Cumulative incidental acreage added by successive incidental boundary revisions shall not exceed the limitations in this subsection. Acreage added by incidental boundary revisions prior to a permit amendment shall not be counted toward cumulative incidental acreage after the amendment.

(6) Operator change revisions.

(a) This subsection shall apply to all operator changes that do not constitute a transfer, assignment or sale of permit rights.

(b) A permittee proposing to change the operator approved in the permit shall submit a complete and accurate application for approval of the change. The application shall be on forms provided by the cabinet.

(c) The application shall include, but shall not be limited to, the information set forth in this paragraph:

1. The permit number, the name and business address of the permittee, the telephone number of the permittee, and the identifying number assigned to the permittee by the cabinet;

2. The name, business address and telephone number of the operator approved in the permit, and the identifying number, if any, assigned to the approved operator by the cabinet;

3. For the proposed operator and persons related to the proposed operator through ownership or control, the same information as required for applicants and persons related to applicants through ownership or control by Sections 2(1) through (4) and (8) of 405 KAR 8:030 and 405 KAR 8:040, and Sections 2(11) through (13) of those regulations shall also apply; and

4. For the proposed operator and persons related to the proposed operator through ownership or control, the same information as required for applicants and persons related to applicants through ownership or control by Sections 3(1) through (3) of 405 KAR 8:030 and 405 KAR 8:040, except information under Section 3(3) pertaining to abated violations shall not be required, and Section 3(5) of those regulations shall also apply.

(d) The application shall be verified under oath by the permittee and the proposed operator in the manner required under Section 7 of this regulation.

(e) On or after the date the application has been submitted to the cabinet, the application shall be advertised at least once in the newspaper of largest bona fide circulation, according to the definition in KRS 424.110 to 424.120, in the county where the proposed surface coal mining and reclamation operations are to be located. The advertisement shall be entitled "Notice of Intention to Mine" and shall be of a form specified by the cabinet. The advertisement shall include, at a minimum, the permit number, the geographic location of the permit area, the name and business address of the permittee, a statement that the permittee proposes to change the operator approved in the permit, the names and business addresses of the currently approved operator and the proposed operator, the cabinet address to which written

comments may be sent under paragraph (g) of this subsection and the time available for submission of the comments. A copy of the advertisement and proof of publication acceptable to the cabinet shall be filed with the cabinet and made a part of the application not later than fifteen (15) days after the date of publication.

(f) A person whose interests are or may be adversely affected by the cabinet's decision on the proposed operator change, including an officer of a federal, state, or local government agency, may submit written comments on the application to the cabinet within fifteen (15) days after the date of publication of the advertisement.

(g) The cabinet may approve the proposed operator change if it finds, in writing, that the proposed operator:

1. Is eligible to act as an operator under the criteria in Section 13(4) of this regulation; and

2. Meets any other requirements specified by the cabinet in order to ensure compliance with KRS Chapter 350 or 405 KAR Chapters 7 through 24.

(h) The cabinet shall notify in writing the permittee, the proposed operator, and any commenters on the application, of its final decision.

(7) [(5)] Fees. Applications for [major and minor] revisions shall include a basic fee of $375, except that minor field revisions and operator change revisions shall have no basic fee. If the revision application proposes incidental boundary revisions which would increase the acreage in the permit, an additional acreage fee of seventy-five (75) dollars per acre, or fraction thereof, shall be included with the application, except that no acreage fee shall be required for surface areas overlying underground workings which will not be affected by surface operations and facilities.

Section 21. Permit Renewals. (1) General requirements for renewal. Any valid, existing permit issued pursuant to this chapter shall carry with it the right of successive renewal, within the approved boundaries of the existing permit, upon expiration of the term of the permit.

(2) Contents of renewal applications. Applications for renewal of permits shall be submitted within the time prescribed by Section 2(2)(b) of this regulation. Renewal applications shall be in a form and with content as required by the cabinet and in accordance with this section, and shall include at a minimum:

(a) The name and address of the permittee, the term of the renewal requested and the permit number;

(b) A copy of the proposed newspaper notice and proof of publication of same under Section 8 of this regulation;

(c) Evidence that liability insurance under 405 KAR 10:030, Section 4, will be provided by the applicant for the proposed period of renewal;

(d) A renewal fee of $375;

(e) Evidence that the performance bond will continue in effect for any renewal requested, as well as any additional bond required by the cabinet pursuant to 405 KAR 10:020; and

(f) Any additional revised or updated information which may be required by the cabinet.

(3) Applications for renewal shall be subject to the requirements of Sections 8 through 11, 13 and 16 of this regulation.

(4) An application for renewal shall not include any proposed revisions to the permit. Revisions shall be made by separate application and shall be subject to the requirements of Section 20 of this regulation.

(5) Term of renewal. Any permit renewal shall be for a term not to exceed the period of the original permit established under Section 17 of this regulation.

(6) Approval or denial of renewal applications.

(a) The cabinet shall approve a complete and accurate application for permit renewal, unless it finds, in writing, that:

1. The terms and conditions of the existing permit are not being satisfactorily met;

2. The present surface coal mining and reclamation operations are not in compliance with the environmental protection standards under KRS Chapter 350 and 405 KAR Chapters 7 through 24;

3. The requested renewal substantially jeopardizes the applicant's continuing responsibility to comply with KRS Chapter 350 and 405 KAR Chapters 7 through 24 on existing permit areas;

4. The applicant has not provided evidence that any performance bond required for the operations will continue in effect for the proposed period of renewal, as well as any additional bond the cabinet might require pursuant to 405 KAR Chapter 10;

5. Any additional revised or updated information required by the cabinet has not been provided by the applicant; or

6. The applicant has not provided evidence of having liability insurance in accordance with 405 KAR 10:030, Section 4.

(b) In determining whether to approve or deny a renewal, the burden shall be on the opponents of renewal.

(c) The cabinet shall send copies of its decision to the applicant, any persons who filed objections or comments to the renewal, to any persons who were parties to any informal conference held on the permit renewal and to the field office director of the Office of Surface Mining Reclamation and Enforcement.

(d) Any person having an interest which is or may be adversely affected by the decision of the cabinet shall have the right to administrative and judicial review set forth in Section 24 of this regulation.

Section 22. Transfer, Assignment, or Sale of Permit Rights. (1) General. No transfer, assignment, or sale of the rights granted under any permit issued pursuant to 405 KAR shall be made without the prior written approval of the cabinet, in accordance with this section.

(2) Application requirements. An applicant (successor) for approval of the transfer, assignment, or sale of permit rights shall:

(a) Provide a complete and accurate application, on forms provided by the cabinet, for the approval of the proposed transfer, assignment, or sale. The application shall be signed by both the existing holder of permit rights and the applicant for succession. Additionally, the following information shall be provided:

1. The name and address of the existing permittee and the permit number;

2. A brief description of the proposed action requiring approval;

3. The legal, financial, compliance, and related information required by 405 KAR 8:030,

Sections 2 through 10 and 405 KAR 8:040, Sections 2 through 10; and

4. A processing fee of $375.

(b) Advertise the filing of the application in the newspaper of largest bona fide circulation, according to the definition in KRS 424.110 to 424.120, in the county where the operations are located, indicating the name and address of the applicant, the original permittee, the permit number, the geographic location of the permit, and the address to which written comments may be sent under subsection (3) of this section.

(c) Obtain sufficient performance bond coverage which will ensure reclamation of all lands affected by the permit, including areas previously affected by the existing permittee on the permit being transferred.

(3) Public participation. Any person whose interests are or may be adversely affected by a decision on the transfer, assignment, or sale of permit rights, including an official of any federal, state, or local government agency, may submit written comments on the application to the cabinet within fifteen (15) days of the date of publication of the advertisement.

(4) Criteria for approval. The cabinet may allow a permittee to transfer, assign, or sell permit rights to a successor if it finds, in writing, that the successor:

(a) Is eligible to receive a permit in accordance with the criteria specified in Section 14 of this regulation;

(b) Has submitted a performance bond, in accordance with 405 KAR Chapter 10, which will ensure reclamation of all lands affected by the permit, including areas previously disturbed by the existing permittee on the permit being transferred, and which is at least equivalent to the bond of the existing permittee;

(c) Has submitted proof that liability insurance, as required by 405 KAR 10:030, Section 4, has been obtained; and

(d) Meets any other requirements specified by the cabinet in order to ensure compliance with KRS Chapter 350 or 405 KAR Chapters 7 through 24.

(5) Notice of decision. The cabinet shall notify the original permittee, the successor, any commenters or objectors, and the field office director of the Office of Surface Mining Reclamation and Enforcement of its final decision.

(6) Permit reissuance. After receiving the notice described in subsection (5) of this section, the successor shall immediately provide proof to the cabinet of the consummation of the transfer, assignment, or sale of permit rights. Upon submission of this proof, the cabinet shall reissue the original permit in the name of the successor.

(7) Rights of successor. All rights and liabilities under the original permit shall pass to the successor upon reissuance of the permit, except that the original permittee shall remain liable for any civil penalties resulting from violations occurring prior to the date of reissuance of the permit. The cabinet shall not approve transfer of a surface coal mining permit to any person who would be ineligible to receive a new permit under KRS 350.130(3).

(8) Requirements for new permits for persons succeeding to rights granted under a permit. A successor in interest who is able to obtain appropriate bond coverage may continue surface coal mining and reclamation operations according to the approved mining and reclamation plan and permit of the original permittee. However, any successor in interest seeking to change the conditions of mining or reclamation operations, or any of the terms or conditions of the original permit shall make application for a new permit, revision, or amendment, as appropriate.

(9) Release of bond liability. The cabinet may release the prior permittee from bond liability on the permit area if the successor in interest has filed a performance bond satisfactory to the cabinet, has received written approval of the cabinet for the transfer, sale or assignment of rights, has submitted proof of execution of the agreement, and has assumed all liability under 405 KAR for reclamation of the areas affected by all prior permittees.

Section 23. Amendments. Except for incidental boundary revisions, no extensions to an area covered by a permit shall be approved under Section 20 (permit revisions) or Section 21 (permit renewals) of this regulation. All such extensions shall be made by application for another permit. However, if the permittee desires to add the new area to his existing permit in order to have existing areas and new areas under one (1) permit, the cabinet may so amend the original permit, but [provided that] the application for the new area shall be subject to all procedures and requirements applicable to applications for original permits under 405 KAR.

Section 24. Administrative and Judicial Review. (1) Following the final decision of the cabinet concerning the application for a permit, revision or renewal thereof, application for transfer, sale, or assignment of rights or concerning an application for coal exploration, the applicant, permittee or any person with an interest which is or may be adversely affected may request a hearing on the reasons for the final decision in accordance with 405 KAR 7:090.

(2) Any applicant or any person with an interest which is or may be adversely affected and who has participated in the administrative proceedings as an objector shall:

(a) Have the right to judicial review as provided in KRS 224.085 if the applicant or person is aggrieved by the decision of the cabinet in an administrative hearing requested pursuant to subsection (1) of this section; or

(b) Have the right to an action in mandamus pursuant to KRS 350.250 if the cabinet fails to act within time limits specified in KRS Chapter 350 or 405 KAR Chapters 7 through 24.

Section 25. Improvidently Issued Permits. (1) Permit review. If the cabinet has reason to believe that it improvidently issued a surface coal mining and reclamation permit, the cabinet shall review the circumstances under which the permit was issued, using the criteria in subsection (2) of this section. If the cabinet finds that the permit was improvidently issued, the cabinet shall comply with subsection (3) of this section.

(2) Review criteria. The cabinet shall find that a surface coal mining and reclamation permit was improvidently issued if:

(a) Under the violation review criteria of the cabinet at the time the permit was issued:

1. The cabinet should not have issued the permit because of an unabated violation or a delinquent penalty or fee; or

2. The permit was issued on the presumption that a notice of violation was in the process of being corrected to the satisfaction of the agency with jurisdiction over the violation, but a cessation order subsequently was issued; and

(b) The violation, penalty, or fee:

1. Remains unabated or delinquent; and

2. Is not the subject of a good faith appeal, or of an abatement plan or payment schedule with which the permittee or other person responsible is complying to the satisfaction of the responsible agency; and

(c) If [Where] the permittee was linked to the violation, penalty, or fee through ownership or control, under the violations review criteria of the regulatory program at the time the permit was issued an ownership or control link between the permittee and the person responsible for the violation, penalty, or fee still exists, or if [where] the link was severed the permittee continues to be responsible for the violation, penalty, or fee.

(3) Remedial measures. If the cabinet, under subsection (2) of this section, finds that because of an unabated violation or a delinquent penalty or fee a permit was improvidently issued, the cabinet shall use one (1) or more of the following remedial measures:

(a) Implement, with the cooperation of the permittee or other person responsible, and of the responsible agency, a plan for abatement of the violation or a schedule for payment of the penalty or fee;

(b) Impose on the permit a condition requiring that in a reasonable period of time the permittee or other person responsible abate the violation or pay the penalty or fee;

(c) Suspend the permit until the violation is abated or the penalty or fee is paid; or

(d) Rescind the permit under subsection (4) of this section.

(4) Rescission procedures. If the cabinet, under subsection (3)(d) of this section, elects to rescind an improvidently issued permit, the cabinet shall serve on the permittee a notice of proposed suspension and rescission which includes the reasons for the finding of the cabinet under subsection (2) of this section and states that:

(a) Automatic suspension and rescission. After a specified period of time not to exceed ninety (90) days the permit automatically will become suspended, and not to exceed ninety (90) days thereafter rescinded, unless within those periods the permittee submits proof, and the cabinet finds, that:

1. The finding of the cabinet under subsection (2) of this section was erroneous;

2. The permittee or other person responsible has abated the violation on which the finding was based, or paid the penalty or fee, to the satisfaction of the responsible agency;

3. The violation, penalty, or fee is the subject of a good faith appeal, or of an abatement plan or payment schedule with which the permittee or other person responsible is complying to the satisfaction of the responsible agency; or

4. Since the finding was made, the permittee has severed any ownership or control link with the person responsible for, and does not continue to be responsible for, the violation, penalty, or fee;

(b) Cessation of operations. After permit suspension or rescission, the permittee shall cease all surface coal mining and reclamation operations under the permit, except for violation abatement and for reclamation and other environmental protection measures as required by the cabinet; and

(c) Right to request a formal hearing. Any permittee aggrieved by the notice may request a formal hearing under 405 KAR 7:090.

FRANK DICKERSON, Commissioner
CARL H. BRADLEY, Secretary

APPROVED BY AGENCY: October 30, 1991

FILED WITH LRC: October 30, 1991 at 1 p.m.

PUBLIC HEARING: A public hearing on this proposed regulation has been scheduled for 9 a.m. (EST) Friday, December 27, 1991, in the Department for Surface Mining Reclamation and Enforcement's Main Conference Room (Room B-31) at the Hudson Hollow Office Park, 2 Hudson Hollow Road, Frankfort, Kentucky. Persons who wish to testify at the hearing shall notify the contact person listed below, in writing, by December 22, 1991. The schedule hearing may be cancelled if the contact person has not received any written notice of intent to testify by December 22, 1991, five days before the scheduled hearing date. If the hearing is held, it will be open to the public. Any person in attendance who wishes to testify on the proposed regulation will be given a fair and reasonable opportunity to do so, regardless of whether the person has given the cabinet prior written notice of his intent to testify. To assure an accurate record, the cabinet requests each person testifying at the hearing to provide the cabinet with a written copy of his testimony. The cabinet is not required to make a recording or transcript of the hearing unless someone makes a written request for it, in which case the person requesting the recording or transcript shall pay for it.

WRITTEN COMMENTS: A person who wishes to comment on this proposed regulation but does not wish to testify at the hearing may submit written comments on the proposed regulation at any time before 4:30 p.m. (EST) on Decenber 27, 1991. Comments received after that time will not be considered. Written comments and written notices of intent to testify at the hearing shall be submitted to:

CONTACT PERSON: Jim Villines, Kentucky Department for Surface Mining, 2 Hudson Hollow Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jim Villines

(1) Type and number of entities affected: The regulation establishes procedures for review of permit applications for surface coal mining operations. Although several minor changes are included in these amendments, there are 3 significant amendments: 1) incorporating new application forms; 2) increasing the size of an area that can be added to a permit as an incidental boundary revision rather than through a new permit or amendment, coupled with setting forth criteria for determining if an incidental boundary revision must be treated as a minor revision rather than a major revision; and 3) establishing a new type of revision for approval of a change in a permittee's operator. Currently, the cabinet processes about 300 major revisions per year and about 1,000 minor revisions per year, not including minor "field"

revisions.

(a) Direct and indirect costs or savings to those affected:

1. First year: There will be some savings to permittees due to the changes in the incidental boundary revision provisions because a greater number of these changes can be processed as revisions, which is a quicker procedure than obtaining a new permit or amendment. Furthermore, some incidental boundary revisions that previously were treated as major revisions, will now be treated as minor revisions. Minor revisions are easier and faster to obtain than major revisions. There will be some small increase in administrative cost for some permittees who wish to change their operator, because they must prepare and submit an application for prior approval by the cabinet to ensure that the new proposed operator is eligible under law to conduct surface coal mining operations. However, the cabinet will not charge a permit fee for this type of revision.

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: There will be an increase in paperwork requirements due to the new procedure for approval of operator changes and due to the additional information relating to ownership and control and reporting of violations that must be provided on the new forms.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There will be some increase in cost of operation due to the new procedure of processing applications for changing operators and due to the need to review the additional information in the new forms relating to ownership and control and reporting of violations.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There will be an increase in the cabinet's paperwork due to the new procedure for reviewing applications for changing operators and due to the additional information in permit applications pertaining to ownership and control and reporting of violations.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were considered.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: As proposed, Section 5(1)(c) of this regulation potentially conflicts with 405 KAR 8:030, Section 1(4)(a) and 8:040, Section 1(3)(a), which incorporate by reference earlier versions of the various application forms.

(a) Necessity of proposed regulation if in conflict: The new application forms are necessary, in part, to comply with 405 KAR 8:010, Sections 13 and 14, and 8:030/8:040, Sections 2 and 3, as amended on May 22, 1991 relating to ownership and control information and reporting of violations, and to comply with federal requirements as reflected in a memorandum of understanding between the cabinet and the U.S. Office of Surface Mining pursuant to the settlement agreement in federal court in Save Our Cumberland Mountains, Inc., v. William P. Clark, et al, D.P.C. No. 81-2134 ("Amended Order") commonly called the "SOCM Settlement Agreement".

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Proposed amendments to 405 KAR 8:030 and 8:040 were filed July 15, 1991 which, when adopted, will remove the potential conflict.

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. Tiering is not applicable to this proposed amendment because, under the federal and Kentucky surface mining laws and regulations, these requirements must apply equally to all applicants under 405 KAR Chapters 7-24.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 USC 1253, 1255-1261, 1263-1266, 1272. 30 CFR Parts 730-733, 735, 773-775, 777, 778.17, 917.

2. State compliance standards. These amendments make several changes to bring the state regulation into compliance with federal requirements and changes to KRS Chapter 350. However, the three most significant changes do not have federal counterparts. These changes: 1) incorporate new application forms; 2) increase the size of area that can be treated as an incidental boundary revision and specify that certain incidental boundary revisions are minor revisions; and 3) establish a procedure for approving proposed operator changes.

3. Minimum or uniform standards contained in the federal mandate. The federal regulations do not specify size limits for incidental boundary revisions, but leave that to individual state programs. Under the federal regulations, proposed operator changes would be processed either as revisions or as transfers of permit rights. This would generally provide a result equivalent to Kentucky's proposed treatment of this type of change as a new type of revision.

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. Not applicable.

CORRECTIONS CABINET
(Proposed Amendment)

501 KAR 6:020. Corrections policies and procedures.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the secretary to adopt, amend or rescind regulations necessary and suitable for the proper administration of the cabinet or any division therein. These policies and procedures are incorporated by reference in order to comply

with the accreditation standards of the American Correctional Association. These regulations are in conformity with those provisions.

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

1.1 Legal Assistance for Corrections Staff
1.2 News Media
1.4 The operation of Contracted Adult Correctional Facilities
1.6 Extraordinary Occurrence Reports
1.9 Institutional Duty Officer
1.11 Population Counts and Reporting Procedures
1.12 Operation of Motor Vehicles by Corrections Cabinet Employees
2.1 Inmate Canteen
2.2 Warden's Fund
2.10 Surplus Property
3.1 Code of Ethics
3.12 Institutional Staff Housing
4.2 Staff Training and Development
4.3 Firearms and Chemical Agents Training
6.1 Open Records Law
7.2 Asbestos Abatement
8.4 Emergency Preparedness
9.1 Use of Force
9.4 Transportation of Inmates to Funerals or Bedside Visits
9.6 Contraband
9.7 Storage, Issue and Use of Weapons Including Chemical Agents
9.8 Search Policy
9.9 Transportation of Inmates
9.10 Security Inspections
9.11 Tool Control
9.18 Informants
9.19 Found Lost or Abandoned Property
10.2 Special Management Inmates
10.3 Safekeepers
10.4 Special Needs Inmates
11.2 Nutritional Adequacy of the Diet for Inmates
11.3 Special Diet Procedures
13.1 Pharmacy Policy and Formulary
13.2 Health Maintenance Services
13.3 Medical Alert System
13.4 Health Program Audits
13.5 Acquired Immune Deficiency Syndrome
13.6 Sex Offender Treatment Program
14.2 Personal Hygiene Items
14.3 Marriage of Inmates
14-04-01 Legal Services Program
14.6 Inmate Grievance Procedures
15.1 Hair and Grooming Standards
15.2 Offenses and Penalties
15.3 Meritorious Good Time
15.5 Restoration of Forfeited Good Time
15.6 Adjustment Procedures and Programs
15-07-01 Inmate Account Restriction [(Added 8/15/91)]
16.1 General Inmate Visiting Procedure
16.2 Inmate Correspondence
16.3 Telephone Calls
16.4 Inmate Packages
17.1 Inmate Personal Property
17.2 Assessment Center Operations
17.3 Controlled Intake of Inmates
18.4 Classification of the Inmate
18.5 Custody/Security Guidelines
18.6 Classification Document
18.7 Transfers
18.8 Guidelines for Transfers Between Institutions
18.9 Out-of-state Transfers
18.10 Preparole Progress Reports
18.11 Kentucky Correctional Psychiatric Center Transfer Procedures
18.12 Referral Procedure for Inmates Adjudicated Guilty But Mentally Ill
18.13 Population Categories
18.15 Protective Custody
19.1 Government Services Projects
19.2 Community Services Projects
20-01-01 Educational Programs [(Added 8/15/91)]
22.1 Privilege Trips
25-01-01 [25.1] Gratuities (Amended 11/8/91)
25.2 Public Official Notification of Release of an Inmate
25.3 Prerelease Program
25.4 Inmate Furloughs
25.6 Community Center Program
25.7 Expedient Release
25.8 Extended Furloughs
25.10 Administrative Release of Inmates
27-01-01 Probation and Parole Procedures
27-02-01 Duties of Probation and Parole Officers
27-03-01 Workload Formula Supervisor/Staff Ratio
27-05-01 Testimony, Court Demeanor and Availability of Legal Services
27-06-01 Availability of Supervision Services
27-06-02 Equal Access to Services
27-07-01 Cooperation with Law Enforcement Agencies
27-08-01 Use of Force
27-09-01 Kentucky Community Resources Directory
27-10-01 Advanced Supervision
27-11-01 Intensive Supervision
27-12-01 Supervision: Case Classification
27-12-02 Risk/Needs Assessment
27-12-03 Initial Interview
27-12-04 Conditions of Regular Supervision/Request for Modification
27-12-05 Releasee's Report
27-12-06 Grievance Procedures for Offenders
27-12-07 Employment, Education/Vocational Referral
27-12-08 Supervision Plan
27-12-09 Casebook
27-12-10 Guidelines for Monitoring Supervision Fee
27-12-11 Guidelines for Monitoring Financial Obligations Ordered by the Releasing Authority
27-12-12 Other Financial Obligations (Not Ordered by Releasing Authority)
27-12-13 Community Service Work
27-12-14 Client Travel Restrictions
27-13-02 Alcohol Detection
27-14-01 Interstate Compact Transfers
27-14-02 Interstate Compact Out-of-state Probation and Parole Violation
27-15-01 Supervision Report; Violations, Unusual Incidents
27-16-01 Search; Seizure; Chain of Custody; Disposal of Evidence

27-17-01	Absconder Procedures
27-18-01	Probation and Parole Issuance of Detainer/Warrant
27-19-01	Preliminary Revocation Hearing
27-20-01	Division of Probation and Parole Controlled Intake Program
27-20-02	Prisoner Intake Notification
27-20-03	Prisoner Status Change
27-21-01	Apprehension and Transportation of Probation and Parole Violators
27-22-01	Fugitive Unit - Apprehensions
27-22-02	Fugitive Unit - Transportation of Fugitives
27-23-01	In-state Transfer
27-24-01	Closing Supervision Report
27-24-02	Reinstatement of Clients to Active Supervision
27-25-01	Application for Final Discharge from Parole
27-26-01	Assistance to Former Clients and Dischargees
27-27-01	Restoration of Civil Rights
27-28-01	Firearms/Explosives: Application for Relief from Disability
27-29-01	Parole Review Dates Modification
28-01-01	Probation and Parole Investigation Reports (Introduction, Definitions, Confidentiality, Timing, and General Comments)
28-01-02	Probation and Parole Investigation Reports (Administrative Responsibilities)
28-01-03	Probation and Parole Investigation Reports (Presentence/Postsentence Investigation Interview Procedure)
28-01-04	Probation and Parole Investigation Reports (Presentence/Postsentence Verification, Composition, Case Material and Submission Schedules)
28-01-05	Probation and Parole Investigation Reports (Computation of Jail Custody Credit)
28-01-06	Probation and Parole Investigation Reports (Misdemeanant Presentence Investigation Reports for the Circuit and District Courts)
28-01-07	Probation and Parole Investigation Reports (Supplemental Postsentence Investigation Report, Case Material, and Submission Schedule)
28-01-08	Probation Parole Investigation Reports (Partial Investigation Reports and Submission Schedule)
28-01-09	Release of Information of Factual Content on Presentence/Postsentence Investigation Reports
28-02-01	Expedient Release Program
28-03-01	Parole Plans/Halfway Houses/Extended Furlough/Sponsorship/Gradual Release
28-04-01	Furlough Verifications
28-05-01	Out-of-state Investigations

JOHN T. WIGGINTON, Secretary
APPROVED BY AGENCY: November 8, 1991
FILED WITH LRC: November 8, 1991 at 2 p.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for December 30, 1991 at 9 a.m., in the Auditorium of the State Office Building. Those interested in attending this hearing shall notify in writing: Jack Damron or Ellen Tharpe, Office of General Counsel, 2nd Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jack Damron
(1) Type and number of entities affected: 3,035 employees of the Corrections Cabinet, 8,060 inmates, 12,799 parolees and probationers, and all visitors to state correctional institutions.
(a) Direct and indirect costs or savings to those affected:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: None - All of the costs involved with the implementation of the regulations are included in the operational budget.
2. Continuing costs or savings: Same as 2(a)1.
3. Additional factors increasing or decreasing costs: Same as 2(a)1.
(b) Reporting and paperwork requirements: Monthly submission of policy revisions.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None
TIERING: Was tiering applied? No. All policies are administered in a uniform manner.

CORRECTIONS CABINET
(Proposed Amendment)

501 KAR 6:030. Kentucky State Reformatory.

RELATES TO: KRS Chapters 196, 197, 439
STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640
NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the secretary to adopt, amend or rescind regulations necessary and suitable for the proper administration of the cabinet or any division therein. 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 November 15 [July 14], 1991, are incorporated by reference and [hereinafter] shall be referred to as Kentucky State Reformatory Policies and Procedures, July 14, 1991. Copies of the procedures may be obtained from the Office of the General Counsel, Corrections Cabinet, State Office Building, Frankfort, Kentucky 40601 or may be reviewed at

the Office of General Counsel weekdays from 8 a.m. to 4:30 p.m.

KSR 01-00-09	Public Information and News Media Relations
KSR 01-00-10	Entry Authorization for All Cameras and Tape Recorders Brought into the Institution
KSR 01-00-14	Extraordinary Occurrence Report
KSR 01-00-15	Cooperation and Coordination with Oldham County Court
KSR 01-00-19	Personal Service Contract Personnel
KSR 01-00-20	Consent Decree Notification to Inmates
KSR 02-00-01	Inmate Canteen
KSR 02-00-03	Screening Disbursements from Inmate Personal Accounts
KSR 02-00-11	Inmate Personal Accounts
KSR 02-00-12	Institutional Funds and Issuance of Checks
KSR 04-00-02	Staff Training and Development
KSR 05-00-01	Officers' Daily Housing Security and Safety Log
KSR 05-00-02	Research Activities (Revised 11-15-91)
KSR 05-00-03	Management Information Systems
KSR 06-00-01	Inmate Master File
KSR 06-00-02	Records Audit
KSR 06-00-03	Kentucky Open Records Law and Release of Psychological/ Psychiatric Information
KSR 07-00-02	Institutional Tower Room Regulations
KSR 07-00-04	Handling of PCB Articles and Containers
KSR 07-00-05	Proper Removal of Transformers
KSR 07-00-06	Asbestos Abatement
KSR 07-00-07	Discharge Monitoring Report (DMR)
KSR 08-00-07	Inmate Family Emergency - Life Threatening Illness or Death in Inmate's Immediate Family
KSR 08-00-08	Death of an Inmate/Notification of Inmate Family in Case of Serious Injury, Critical Medical Emergency, Major Surgery
KSR 08-00-10	Hazardous Chemicals and Material Safety Data Sheet
KSR 09-00-04	Horizontal Gates/Box 1 Entry and Exit Procedure
KSR 09-00-05	Gate I Entrance and Exit Procedure
KSR 09-00-09	Contraband, Dangerous Contraband and Search Policy
KSR 09-00-14	Use of Force
KSR 09-00-21	Crime Scene Camera
KSR 09-00-22	Collection, Preservation, and Identification of Physical Evidence
KSR 09-00-23	Drug Abuse Testing
KSR 09-00-25	Inmate Motor Vehicle Operator's License
KSR 09-00-26	Contraband Outside Institutional Perimeter
KSR 09-00-27	Construction Crew Entry/Exit
KSR 09-00-28	Restricted Areas [(Amended 7/15/91)]
KSR 09-00-29	Transportation of Inmates
KSR 09-00-30	Parole Board
KSR 09-00-31	Forced Cell Move in Medium or Maximum Area
KSR 10-01-01	Unit D - Staffing Pattern, Staff Allocation, Position Description, Staff Selection, Training and Evaluation, Time and Attendance, and Unit Personnel Records
KSR 10-01-02	Unit D - General Operational Procedures
KSR 10-01-03	Unit D - Inmate Tracking System and Records System
KSR 10-01-04	Unit D - Administrative Segregation
KSR 10-01-05	Unit D - Disciplinary Segregation
KSR 10-01-06	Unit D - Protective Custody
KSR 10-01-07	Unit D - Geriatrics
KSR 10-01-08	Unit D - Safekeepers
KSR 10-01-09	Unit D - Hold Ticket Residents
KSR 10-00-10	Unit D - Inmate Legal Access
KSR 10-01-11	Unit D - Behavior Problem Control
KSR 10-00-12	Unit D - Designated Staff Visits (Revised 11-15-91)
KSR 10-00-13	Unit D - Property Room Access
KSR 10-02-01	Mental Health Staffing Pattern [(Amended 7/15/91)]
KSR 10-02-02	Unit E Designated Staff Visits
KSR 10-02-03	Unit E-1 Convalescent Care
KRS 10-02-04	Unit E-General Operating Procedures (Added 11-15-91)
KSR 11-00-01	Meal Planning for the General Population
KSR 11-00-02	Special Diets
KSR 11-00-03	Food Service Inspections
KSR 11-00-04	Dining Room Rules and Dress Code for Inmates
KSR 11-00-06	Health Standards/Regulations for Food Service Employees
KSR 11-00-07	Early Chow Line Passes for Medically Designated Inmates
KSR 12-00-01	Inmate Summer Dress Regulations
KSR 12-00-03	State Items Issued to Inmates [(Amended 7/15/91)]
KSR 12-00-07	Regulations for Inmate Barbershop
KSR 12-00-09	Treatment of Inmates with Body Lice
KSR 13-00-02	Hospital Operations, Rules and Regulations
KSR 13-00-03	Medication for Inmates Leaving Institution Grounds
KSR 13-00-04	Medical and Dental Care
KSR 13-00-05	Medical Records [(Amended 7/15/91)]
KSR 13-00-08	Institutional Laboratory Procedures
KSR 13-00-09	Institutional Pharmacy Procedures
KSR 13-00-10	Requirements for Medical Personnel
KSR 13-00-11	Health Evaluation
KSR 13-00-12	Vision Care/Optometry Services
KSR 13-00-14	Periodic Health Examinations for Inmates
KSR 13-00-15	Medical Alert System
KSR 13-00-16	Suicide Prevention and Intervention Program
KSR 13-00-17	Special Care
KSR 13-02-01	Mental Health Services
KSR 13-02-02	Mentally Retarded Inmates
KSR 13-02-03	Suicide Prevention and Intervention Program [(Amended 7/15/91)]
KSR 13-02-04	Division of Mental Health's Residential Services
KSR 14-00-01	Inmate Rights
KSR 14-00-04	Inmate Grievance Procedure
KSR 15-00-02	Regulations Prohibiting Inmate Control or Authority Over Other Inmate(s)
KSR 15-00-04	Restoration of Forfeited Good Time
KSR 15-00-05	Differential Status for SU (QUIT) Inmates
KSR 15-00-06	Inmate I.D. Cards
KSR 15-00-07	Inmate Rules and Discipline - Adjustment Committee Procedures
KSR 15-00-08	Firehouse Living Area
KSR 15-00-10	Program Services for Special Housing Placement
KSR 15-01-01	Operational Procedures and Rules and Regulations for Unit A, B & C: Functions of Assigned Personnel

KSR 15-01-02	Operational Procedures and Rules and Regulations for Unit A, B, & C: Staff Operational Procedures [(Amended 7/15/91)]
KSR 15-01-03	Operational Procedures and Rules and Regulations for Unit A, B & C: Inmate Rules and Regulations [(Amended 7/15/91)]
KSR 15-01-04	Institutional Medical and Fire Safety Service: Unit Application
KSR 15-01-05	Institutional Inmate Services
KSR 15-01-06	Operational Procedures and Rules and Regulations for Unit A, B & C: Inmate Honor Housing Criteria and Regulations [(Amended 7/15/91)]
KSR 16-00-02	Inmate Correspondence and Mailroom Operations [(Amended 7/15/91)]
KSR 16-00-03	Inmate Access to Telephones
KSR 16-01-01	Visiting Regulations [(Added 7/15/91)]
KSR 16-01-02	Lawn Visit Regulations [(Added 7/15/91)]
KSR 16-01-03	Night Visit Regulations [(Added 7/15/91)]
KSR 17-00-03	Notifying Inmates' Families of Admission and Procedures for Mail and Visiting
KSR 17-00-05	Dormitory 10 Operations
KSR 17-00-06	Identification Department Admission and Discharge Procedures [(Amended 7/15/91)]
KSR 17-00-07	Inmate Personal Property [(Amended 7/15/91)]
KSR 17-00-08	Repair of Inmate Owned Appliances by Outside Dealers
KSR 18-00-04	Returns from Other Institutions
KSR 18-00-05	Transfer of Residents to Kentucky Correctional Psychiatric Center, and Referral Procedure for Residents Adjudicated Guilty but Mentally Ill
KSR 18-00-06	Classification and Special Notice Form
KSR 18-00-07	Kentucky State Reformatory Placement Committee [(Amended 7/15/91)]
KSR 19-00-01	Inmate Work Incentives
KSR 19-00-02	On-the-job Training Program
KSR 19-00-03	Safety Inspections of Inmate Work Assignment Locations (Revised 11-15-91)
KSR 19-00-05	Food Service On-The-Job Training and Workers Rules
KSR 20-00-01	Vocational School Referral and Release Process
KSR 20-00-03	Academic School Program
KSR 20-00-04	Criteria for Participation in Jefferson Community College Program
KSR 20-00-08	Integration of Vocational and Academic Education Programs
KSR 21-00-01	Legal Aide Office and Inmate Law Library Services and Supervision
KSR 21-00-02	Inmate Library Services
KSR 21-00-03	Library Services for Unit D
KSR 22-00-03	Inmate Organizations
KSR 22-00-07	Inmate News Magazine
KSR 23-00-02	Chaplain's Responsibility and Inmate Access to Religious Representatives
KSR 23-00-03	Religious Programming
KSR 25-00-01	Discharge of Inmates [Residents] to Hospital or Nursing Home (Revised 11-15-91)
KSR 25-00-02	Violations of Law or Code of Conduct by Inmates on Parole Furlough
KSR 25-00-03	Preparole Progress Report

JOHN T. WIGGINTON, Secretary
APPROVED BY AGENCY: November 15, 1991
FILED WITH LRC: November 15, 1991 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for December 30, 1991 at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: Jack Damron and Tom Campbell, 5th Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jack Damron
(1) Type and number of entities affected: 581 employees of the Kentucky State Reformatory, 1398 inmates, and all visitors to state correctional institutions.
(a) Direct and indirect costs or savings to those affected:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: None - All of the costs involved with the implementation of the regulations are included in the operational budget.
2. Continuing costs or savings: Same as 2(a)1.
3. Additional factors increasing or decreasing costs: Same as 2(a)1.
(b) Reporting and paperwork requirements: Monthly submission of policy revisions.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None
TIERING: Was tiering applied? No. All policies are administered in a uniform manner.

CORRECTIONS CABINET
(Proposed Amendment)

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

RELATES TO: KRS Chapters 196, 197, 439
STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640
NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the secretary to adopt, amend or rescind regulations necessary and suitable for the proper administration of the cabinet or any division therein. These policies and procedures are

incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. These regulations are in conformity with those provisions.

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

KCIW 01-06-01	Legal Assistance for Corrections Staff
KCIW 01-08-01	News Media Access
KCIW 02-01-01	Comprehensive Insurance Coverage
KCIW 02-02-01	Fiscal Management: Audits
KCIW 02-02-03	Fiscal Management: Checks
KCIW 02-02-04	Institution Purchasing Procedures
KCIW 02-03-01	Inventory Control of Nonexpendable Personal Property
KCIW 02-03-02	Inventory and Control of Stores
KCIW 02-04-01	Accounting Procedures
KCIW 02-05-01	Inmate Canteen and Staff Canteen
KCIW 06-01-01	Inmate Records
KCIW 06-01-02	Transfers to Community Centers and the Minimum Security Unit
KCIW 06-01-03	Storage of Expunged Records
KCIW 10-01-01	Special Management Unit General Operation and Regulations
KCIW 10-01-02	Special Management Unit Programs, Placement and Review
KCIW 10-01-04	Special Security
KCIW 11-01-01	Food Service Operation Inspections [(Amended 7/15/91)]
KCIW 11-01-02	Budgeting, Accounting, and Purchasing Procedures for Food Products
KCIW 11-02-01	Menu Preparation/Special Diets
KCIW 11-03-01	General Guidelines for Food Service Workers
KCIW 11-03-02	General Guidelines for Food Service Workers
KCIW 11-04-01	Health Regulations and General Guidelines for the Food Service Area
KCIW 12-01-01	Control of Pests and Vermin
KCIW 12-02-01	Laundry and Clothing Issuance
KCIW 12-02-03	Donated Items
KCIW 12-04-01	Sanitation and General Living Conditions
KCIW 12-04-02	Hair Care Services
KCIW 13-01-01	Provision of Medical and Dental Care [(Amended 7/15/91)]
KCIW 13-01-02	Preliminary Health Screening and Appraisal
KCIW 13-01-03	Use of Pharmaceutical Products [(Amended 7/15/91)]
KCIW 13-03-01	Emergency Care [(Amended 7/15/91)]
KCIW 13-03-02	Infirmary Care and Outside Services
KCIW 13-04-01	Medical Alert System
KCIW 13-04-02	Psychiatric/Psychological Services
KCIW 13-06-01	Informed Consent
KCIW 13-07-01	Detoxification and Alcohol or Chemical Dependency Guidelines
KCIW 13-08-01	Medical Examination for Employees
KCIW 13-09-01	Suicide Prevention and Intervention Program
KCIW 13-11-01	Infection Control
KCIW 14-01-02	Inmate Rights
KCIW 14-02-01	Access to Attorneys and Designated Counsel Substitutes
KCIW 14-03-01	Inmates Are Not Subject to Discrimination Based on Race, Religion, National Origin, Sex, Handicap, or Political Beliefs
KCIW 14-04-01	Inmate Grievance Procedure (Revised 11-15-91)
KCIW 15-01-01	Offenses and Penalties
KCIW 15-01-02	Adjustment Committee Procedures and Programs
KCIW 15-03-01	Inmate Rule Book
KCIW 15-04-01	Honor Program
KCIW 15-06-01	Restriction Guidelines
KCIW 16-01-01	Inmate Correspondence
KCIW 16-01-03	Staff Mail
KCIW 16-02-01	Inmate Access to Telephone
KCIW 16-02-02	Intra-Institution Phone Calls
KCIW 16-03-01	Inmate Visiting Regulations [(Amended 7/15/91)]
KCIW 16-03-02	Unauthorized Items for Picnic Lunches, Food Packages and Regular Packages
KCIW 16-04-01	Inmate Indigent Fund
KCIW 16-05-01	Inmate Packages
KCIW 17-01-01	Assessment Center Operation and Reception Programs
KCIW 17-01-02	Assessment/Classification Center Operations, Rules and Regulations
KCIW 17-01-03	Assessment and Classification Unit Property Guidelines
KCIW 17-02-01	Identification Department Admissions
KCIW 17-03-01	Notifying Inmates Families of Admission and Procedures for Mail and Visiting
KCIW 17-05-01	Inmate Personal Property Guidelines
KCIW 18-01-02	Institutional Housing Assignments
KCIW 18-02-01	Classification Procedures (Revised 11-15-91)
KCIW 18-05-01	Special Needs Inmates
KCIW 18-06-01	Institutional Status Codes
KCIW 19-01-01	Inmate Work/Program Assignments
KCIW 19-03-01	Landscape and Maintenance Work Details
KCIW 20-01-01	Education Programs
KCIW 20-01-03	Vocational Education: Curriculum Flexible Schedule, Upgrade Programs and Release Preparation Program
KCIW 20-01-04	Entry - Exit Vocational School
KCIW 20-01-05	Vocational Programs: Approved, Assessed and Contain Guidelines for Vocational Records
KCIW 20-01-06	Vocational Education: Staffing Patterns/Requirements
KCIW 20-01-07	Vocational Counselor
KCIW 20-01-08	Vocational Education: Community Resources and the Integration with Academic Progress
KCIW 20-01-09	Vocational Education: Support Equipment
KCIW 20-01-10	Control of Flammable, Hazardous, Toxic and Caustic Materials in the Vocational Area
KCIW 22-01-04	Inmate Club Activities
KCIW 23-01-01	Religious Services
KCIW 25-01-01	Preparole Progress Report
KCIW 25-02-01	Temporary Release/Community Center
KCIW 25-02-02	Furloughs
KCIW 25-03-01	Escorted [Leave into the] Community Leave (Revised 11-15-91)

JOHN T. WIGGINTON, Secretary
APPROVED BY AGENCY: November 15, 1991
FILED WITH LRC: November 15, 1991 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for December 30, 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 Cambpell, Corrections Cabinet, 5th Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jack Damron
(1) Type and number of entities affected: 126 employees of the Kentucky Correctional Institution for Women, 334 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 November [October] 15, 1991, are incorporated by reference and shall 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 02-08-03	Inventory Control, Nonexpendable Items (Added 11-15-91)
EKCC 02-08-04	Warehouse Policy and Procedure (Added 11-15-91)
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 03-02-01	Operation in Inclement Weather/Dense Fog/Essential Emergency Personnel (Added 11-15-91)
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 (Revised 11-15-91)
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 08-06-01 Control of Flammable, Hazardous, Toxic and Caustic Chemicals and Materials (Added 11-15-91)
EKCC 08-06-02 Hazardous Chemicals and Materials Safety Date Sheets (Added 11-15-91)
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 (Revised 11-15-91)
EKCC 09-15-01 Standards for Maintaining Perimeter Safety
EKCC 09-15-02 Lobby/Reception: Entry and Exit Procedure
EKCC 09-15-05 Post #1 - Entry and Exit Procedures (Added 11-15-91)
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 09-24-02 Rules and Regulations of the Unit (Added 11-15-91)
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 (Revised 11-15-91)
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
EKCC 13-02-01 Emergency Medical Procedure
EKCC 13-02-02 Disaster and Mass Casualty Plan
EKCC 13-02-03 Consultations
EKCC 13-02-04 Hospital Services
EKCC 13-01-05 Health Evaluations
EKCC 13-02-06 Sick Call
EKCC 13-02-07 First Aid Kits
EKCC 13-02-08 Transportation of Injured or Ill Staff
EKCC 13-02-09 Emergency Dental Care
EKCC 13-02-10 Dental Services for Special Management Units
EKCC 13-02-11 Suicide Prevention and Intervention Program (Added 11-15-91)
EKCC 13-05-01 Aids and Hepatitis B
EKCC 13-07-01 Serious Illness, Major Injuries, Death
EKCC 13-08-01 Psychiatric and Psychological Services
EKCC 13-08-02 Psychiatric and Psychological Services Team
EKCC 13-09-01 Optometric Services
EKCC 13-10-01 Detoxification
EKCC 13-11-01 Therapeutic Diets
EKCC 13-12-02 Resident Transfer/Medical Profiles
EKCC 13-13-01 Syringes, Needles and Sharps Control
EKCC 13-14-01 Fire and Emergency Evacuation Plan
EKCC 13-15-01 Medical Department - General Housekeeping, Sanitation and Protection Standards and Requirements
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 (Revised 11-15-91)
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 24-01-01 Social Services and Counseling Program (Added 11-15-91)
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: November 15, 1991
FILED WITH LRC: November 15, 1991 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for December 30, 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.

CORRECTIONS CABINET
(Proposed Amendment)

501 KAR 6:160. Correctional Industries.

RELATES TO: KRS Chapters 196, 197, 439
STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640
NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590 and 439.640 authorizes the secretary to adopt, amend or rescind regulations necessary and suitable for the proper administration of the cabinet or any division therein.

Section 1. Pursuant to the authority vested in the Corrections Cabinet the following policies and procedures revised November 15, 1991 are incorporated by reference and [are incorporated by reference on September 14, 1990 and hereinafter] shall be referred to as Correctional Industries Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Corrections Cabinet, State Office Building, Frankfort, Kentucky 40601 or may be reviewed at the Office of General Counsel weekdays from 8 a.m. to 4:30 p.m.

CI 01-01-01	Establishment and Issuance of Policies and Procedures
CI 01-01-02	Administration and Use of the Policy and Procedures Manual, Including Issuance, Revision and Dissemination
CI 01-02-01	Organization of Correctional Industries
CI 01-03-01	Annual Planning Document
CI 01-04-01	Personnel Records
CI 01-04-04	New Employee Orientation
CI 02-01-01	Budgeting
CI 02-02-01	Purchasing
CI 02-03-01	Equipment Inventory and Other Nonexpendable Items (Revised 11-15-91)
CI 02-04-01	Accounts Receivable
CI 03-01-01	Raw Material and Work In-Process Inventory
CI 03-01-02	Finished Goods Inventory (Revised 11-15-91)
CI 03-01-03	Stocking of Warehouse
CI 03-02-01	Delivery of Goods and Services
CI 03-02-02	Pickup of Reupholstery and Repair Items (Revised 11-15-91)
CI 04-01-01	Marketing
CI 04-02-01	Advertising Correctional Industry Products and Services
CI 04-02-02	Correctional Industries Catalog
CI 04-02-03	Prototypes and Samples Not For Sale
CI 04-03-01	Pricing of Correctional Industries Products
CI 04-03-02	Preparation of Bids
CI 04-03-03	Customer Orders
CI 04-03-04	Sale of Industry Products to Private Individuals
CI 04-03-05	Sales and Sales Reporting
CI 04-04-02	Warranty of Products (Revised 11-15-91)
CI 05-01-01	Inmate Job Descriptions
CI 05-01-02	Equal Opportunity Employment
CI 05-01-03	Job Performance Evaluations
CI 05-01-04	Inmate Compensation
CI 05-01-05	Job Assignments
CI 05-02-01	Inmate Orientation
CI 05-03-01	Standards for Working in Correctional Industries Plants
CI 06-01-01	Safety and Working Conditions
CI 06-02-01	Key and Tool Control (Revised 11-15-91)
CI 06-02-02	Searches
CI 06-02-03	Use of State Vehicles
CI 06-03-01	Inmate Supervision
CI 07-01-01	Production Scheduling
CI 07-01-02	New Production Development
CI 07-02-01	Quality Control

JOHN T. WIGGINTON, Secretary
APPROVED BY AGENCY: November 15, 1990
FILED WITH LRC: November 15, 1990 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for December 30, 1990 at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: Tom Campbell or Jack Damron, Department of Adult Institutions, 5th Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Barbara Jones
(1) Type and number of entities affected: 58 employees of the Correctional Industries.
(a) Direct and indirect costs or savings to those affected:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: None - All of the costs involved with the implementation of the regulations are included in the operational budget.
2. Continuing costs or savings: Same as 2(a)1.
3. Additional factors increasing or decreasing costs: Same as 2(a)1.
(b) Reporting and paperwork requirements: Monthly submission of policy revisions.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None
TIERING: Was tiering applied? No. All policies are administered in a uniform manner.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Administration and Finance
(Proposed Amendment)

702 KAR 4:050. Building sites; inspection, approval.

RELATES TO: KRS 156.160, 162.010, 162.060
STATUTORY AUTHORITY: KRS 156.070, 156.160
NECESSITY AND FUNCTION: KRS 156.160 requires the State Board for Elementary and Secondary Education to prescribe regulations relative to sanitary and protective construction of public school buildings; KRS 162.010 requires fee simple title to school property; and KRS 162.060 requires plan and specification approval for school construction by the chief state school officer. This regulation provides for the location of school buildings in accordance with the program approved by the chief state school officer.

Section 1. Definitions. (1) In determining the location of an acceptable site, the term "in the vicinity of," as used in educational facilities plans, shall be defined as within a one (1) mile radius of a specific point or the main highway intersection (center) of a city or one (1) mile beyond any two (2) specific points referenced in the facility plan priority. No site shall be approved which exceeds the one (1) mile limit.
(2) A "major renovation" is a renovation of three (3) or more building systems in a permanent center with a total cost of more than twenty (20) percent of the current replacement cost of the building. The building may be the entire permanent center or a clearly, definable portion of the center (such as, 1973 addition, senior high wing, or physical education facility). The renovation shall have been identified in a district facility plan as a priority in order to be allowed. Building systems are defined as foundations, exterior walls, roofing, ceilings, structural, mechanical (HVAC), electrical (including lighting), plumbing, sewage and storm water disposal, doors and hardware, windows, floor coverings, and fixed equipment. The renovation shall also meet the criteria set forth in the school durability section of the school facilities construction criteria adopted by 702 KAR 1:<u>001</u> [010] and consist of work that extends the useful life of the structure and work that is not considered as routine maintenance.

Section 2. The chief state school officer shall cause an inspection to be made of each proposed school building site or proposed real property acquisition including site addition upon written request of the local board of education. Site approval shall be given by the chief state school officer prior to any purchase or commitment to purchase, except that an option-to-purchase which in no way obligates purchaser, may be executed to assure availability of site during this approval procedure. All school sites shall be in agreement with the current school facilities plan except that a local board of education may request approval of the chief state school officer to acquire a school site in a rapidly growing area where the existing school cannot accommodate the increased student population and a new school may be proposed in a future facility plan by the Department of Education. However, no site preparation or construction shall take place prior to the time the proposed new school is a part of the facility plan. The site shall have the approval of the chief state school officer prior to initiation of an application for approval of a construction project.

Section 3. The minimum size of school sites shall be as follows:
(1) Elementary school: five (5) acres plus an additional acre for each 100 or fraction of 100 students of anticipated enrollment.
(2) Middle school, junior high school, and high school: ten (10) acres plus an additional acre for each 100 or fraction of 100 students of anticipated enrollment.
(3) Any deviation from subsections (1) and (2) of this regulation shall be made only after a site inspection and investigation of all other circumstances, including a certification of support by the local education agency and approval by the chief state school officer.

Section 4. Prior to contracting for the purchase of a school site, <u>site expansion, or other real property, the local board of education shall follow the site selection process established in this section. The site selection process is a two (2) step approval process. A tentative approval allows the local district to pursue a site for further assurances and documentation which may lead to the approval to acquire the property.</u>
<u>(1) Using the requirements of this regulation, the local district shall review proposed sites for location and site size.</u>
<u>(a) Location. The site shall be located within parameters established in the facility plan priority. A site not in the vicinity shall not be approved without written waiver by the chief state school officer.</u>
<u>(b) The minimum site size shall be:</u>

1. Elementary school. Five (5) acres plus one (1) acre for each 100 or portion of 100 students projected for the school capacity;

2. Middle, junior, and high school. Ten (10) acres plus one (1) acre for each 100 or portion of 100 students projected for the school capacity. Consideration may be given to acquisition of adequate acreage to meet maximum capacity school size (elementary K-5/6: 600; middle/junior: 900; and high: 1500 students).

(2) The school district shall request a site review visit by the Division of Facilities Management of proposed site(s) and provide a city or county map locating proposed site(s) to the staff member upon their visit.

(3) A tentative approval or disapproval shall be given for each proposed sites(s).

(4) With tentative approval the district shall provide the following documentation to the Division of Facilities Management:

(a) Letter from attorney indicating fee simple title may be obtained. A fee simple title shall be received by local board in accordance with KRS 162.010 and certificate of title insurance provided. Should the mineral rights not be acquired, it shall require a forbearance agreement to ensure surface support.

(b) Plat by registered surveyor indicating property boundaries, acreage, road access, easements, and certification that property is above the 100-year flood plain. The property shall not have easements traversing the site. Easements are allowable alone perimeter. Commitments to relocate easement from traversing site to perimeter shall be considered. Consideration may be given if filling of the site will bring building floor level and appurtenances above 100-year elevation.

(c) Letter from professional engineer and/or municipal government agency providing assurance of adequate site utilities to include the following:

1. Water. Adequate water supply for both domestic and fire suppression shall be available. This shall require both an adequate volume, flow and pressure.

2. Power. Adequate electrical service shall be available with normal voltages of 120V/240/v, and three (3) phase.

3. Natural gas. Access to natural gas is desirable but not required.

4. Sewage treatment. Either municipal sewer system shall be available or site shall be equipped with a package sewage treatment plant with the effluent piped to an acceptable blue-line stream. Distance from property line to stream and number of property owners with whom an easement shall be required to be negotiated shall be indicated.

(d) Letter from local government or state highway office confirming road adequacy shall be provided. The public road network servicing a site shall be adequate both in width and capacity to accommodate the projected bus and vehicular traffic for the proposed facility in addition to normal traffic while providing a safe and efficient access. This shall require consultation with either the local government road department or the Kentucky District Highway Office if access is by state highway.

(e) A letter from an architect or engineer relating to any potential environmental or safety hazards in the vicinity of the proposed site shall be provided. Within the vicinity of a selected site, there shall not be any hazards to health or environment which are deemed so by state agencies having jurisdiction. Examples include: airport - landing/takeoff corridor, airborne particulates; hazardous waste site affecting runoff and aquifer; manufacturing concerns; sewage treatment/water purification; chlorine presence; subsurface faults; unstable high-wall conditions of surrounding grounds.

(f) Site survey of site development costs by architects or engineers and projected acquisition cost for the proposed site shall be provided. A cost analysis site survey, as requested by the Division of Facilities Management, shall include but not be limited to: mass site excavation, cost of bringing utilities to site and infrastructures, on-site roadway access (less paving), geotechnical survey (drilling a minimum of four (4) holes for subsurface conditions) with associated above normal footing requirements, any costs for hazardous condition cleanup, and acquisition cost. The site survey shall provide alternative locations or elevations of building as requested by the Kentucky Department of Education on the proposed site.

(g) Current assessed value and classification by property valuation administrator shall be provided.

(5) After evaluation of the submitted documentation, the chief state school officer shall issue an approval to acquire the property or disapprove the acquisition, except when approval is required by the State Board for Elementary and Secondary Education for site cost analysis survey and acquisition cost exceeding ten (10) percent of the maximum budget for the project.

(6) A disapproved site shall require the district to recommend another site for review as stated in subsection (1) of this section.

(7) If no site has been approved for purchase by department staff approaching 120 days after the official offer of assistance from Kentucky School Facility Construction Commission (KSFCC), the department staff shall select the site and require all documentation.

(8) The district shall submit a BG-1 application for the site purchase when funding source is capital outlay, special voted building funds, or a school revenue bond issue.

(9) Should the district seek reimbursement of site acquisition costs from School Facility Construction Commission funds, the Executive Director of the SFCC shall be contacted for an appraiser to be named.

(10) The district shall provide the Division of Facilities Management with a notarized copy of the executed deed and title insurance certificate within thirty (30) days after closing of property purchase. [it shall be determined by the local board of education that the following conditions can be met and assurances will be given in writing to the chief state school officer prior to his approval to acquire the site.]

[(1) A fee simple title shall be obtained in conformance with KRS 162.010. A copy of the deed and attorney's title certificate shall be furnished the chief state school officer for approval of the title to the site.]

[(2) Assurances that an adequate water supply and sewage disposal can be approved by the Department of Natural Resources and Environmental Protection and the Fire Marshal's office having jurisdiction.]

[(3) Assurances of adequate access to public roads or streets to accommodate anticipated school traffic.]

[(4) A copy of a plat of the site survey showing any easements prepared by a registered land surveyor.]

[(5) Certification by a registered architect, engineer or land surveyor that the site or site addition is above the 100-year flood plain. New building construction, additions or major renovation to existing buildings on land presently owned shall be approved only if it is designed in such a manner that all instructional space and the building systems are at an elevation above the 100-year flood plain.]

Section 5. (1) A local board of education desiring approval of a site shall request such approval of the chief state school officer. If all assurances and requirements are in order and conform to the facility plan, except as noted in Section 2 of this regulation, the chief state school officer may approve the site. If questions exist, the chief state school officer shall require the requesting school district to contract with an architectural or engineering firm licensed to operate in the Commonwealth of Kentucky. The firm designated by the chief state school officer shall be from a list approved by the State Board for Elementary and Secondary Education contracted to perform a study of the proposed site. This study shall include the following: estimated costs for site development including utilities to provide required infrastructures, necessary road access including traffic impact and analysis, geotechnical report including a soils analysis and requirements for soils compaction or special footing requirements, and any hazardous conditions. Cost of the study shall be borne by the requesting school district and shall be payable upon receipt and approval of same by the chief state school officer. The chief state school officer may waive the requirements for the study in expansions of existing school sites where proposed construction is not anticipated. The architectural or engineering firm conducting the study shall not be eligible to contract to design any construction activities for that priority project. Acquisition and site preparation costs of the local school board shall be ten (10) percent or less of the maximum budget for the project, unless authorized by the State Board for Elementary and Secondary Education. Sites already owned by the school district that meet criteria of the facility plan shall be included in site approval requests and may be subject to the required study.

(2) Once a site has been designated an approvable site, the local board of education shall obtain a written option of sufficient duration approved by the chief state school officer on all approvable sites under consideration until final approval of a specific site has been made in writing by the chief state school officer.

(3) In the event that a local board of education has exhausted the time periods established by the School Facility Construction Commission and has not been able to identify a site that meets the appropriate criteria for approval, the chief state school officer shall take the action necessary based upon the required site investigation to identify and approve a school site. This identification process shall include requesting the school district to contract with an architectural or engineering firm as described above for site analysis.

Section 6. A local board of education shall obtain title insurance, in an amount equal to the current appraised value of the property, from an acceptable title insurance company on property acquired for a school site in compliance with KRS 162.010. A copy of the title insurance shall be forwarded with a copy of the fee simple deed to the chief state school officer within sixty (60) days from the date of the deed.

Section 7. A permanent monument (four (4) by four (4) by eighteen (18) inches deep concrete with a brass pin) shall be set in the boundary line of the site at a point which will provide a starting point for initial and final plot of metes and bounds which will circumscribe the site.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the State Board for Elementary and Secondary Education, as required by KRS 156.070(4).

THOMAS C. BOYSEN, Commissioner

JOSEPH W. KELLY, Chairman

APPROVED BY AGENCY: November 12, 1991

FILED WITH LRC: November 14, 1991 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 27, 1991 at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by December 22, 1991, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to Mr. Kevin M. Noland, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Mike Luscher

(1) Type and number of entities affected: 176 school districts.

(a) Direct and indirect costs or savings to those affected:

1. First year: No effect.

2. Continuing costs or savings: No effect.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: No effect.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:
1. First year: No effect.
2. Continuing costs or savings: No effect.
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: No effect.
(3) Assessment of anticipated effect on state and local revenues: No effect.
(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 known.
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: Proposed regulation implements existing policy into regulation.
TIERING: Was tiering applied? No. Application is applied equally to all districts.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Education for Exceptional Children
(Proposed Amendment)

707 KAR 1:040. Tuition and support programs for deaf-blind children.

RELATES TO: KRS 167.210, 167.220 [to 167.240]
STATUTORY AUTHORITY: KRS 156.070, 156.160, 167.240
NECESSITY AND FUNCTION: KRS 167.210 provides a definition for deaf-blind students; KRS 167.220 authorizes the Department of Education to expend funds to send deaf-blind students to schools which provide qualified education programs for these students. KRS 167.240 authorizes the department to promulgate rules and regulations as deemed necessary to carry out the purposes of KRS 167.210 to 167.240. [To repromulgate State Board of Education regulations for programs for deaf-blind children.]

Section 1. Definitions. (1) The definition of "deaf-blind children" is found in KRS 167.210.
(2) "Tuition" means a fee for instruction at a formal institution of learning as described in KRS 167.220.
(3) "Support" means those services described in KRS 167.220 which are required for the student to benefit from his/her educational program.

Section 2. [1.] The tuition and support program for deaf-blind children shall be operated pursuant to KRS 167.210 to 167.240, inclusive, and the criteria listed below:
[(1) Definition. As used in KRS 167.210 to 167.240, unless the context otherwise requires, "deaf-blind children" includes any child whose combination of handicaps of deafness and blindness prevents him/her from profiting satisfactorily from public educational programs provided for the blind child or the deaf child.]
(1) [(2)] Evaluation. Before placement for deaf-blind children in a facility, school or institution providing a qualified program of education for deaf-blind [such] children can be considered, appropriate evaluations of the child shall be made by qualified personnel and a copy of the evaluation report forwarded to the Office of Special Instructional Services [Education for Exceptional Children].
(a) The Kentucky State Department of Education is authorized to expend available funds for the purpose of providing evaluation and diagnostic services for deaf-blind children. [Such] Funds are administered through the Office of Special Instructional Services [Education for Exceptional Children].
(b) Arrangements for evaluations shall be made by contacting the Office of Special Instructional Services [Education for Exceptional Children].
[(3) Educational placement.]
[(a) If results of the evaluation indicate that the child should be enrolled in an educational facility for deaf-blind children, application shall be made to an appropriate school.]
[(b) A statement that the child has been, or will be accepted by the school, must be submitted to the Office of Education for Exceptional Children. This bureau in cooperation with the child's parents and other professional personnel shall have the final responsibility for determining if the selected school is appropriate to the special educational needs of the child.]
(2) [(4)] Eligibility. The eligibility of the child for placement in a special educational facility, school or institution for deaf-blind children is based upon the following criteria:
(a) The child has both a vision and hearing loss so severe that he/she cannot make educational progress in existing public schools or state residential programs for the deaf or for the blind.
(b) All efforts have been exhausted for provision of educational programs for the child in state residential or [a] public school programs for the deaf or for the blind.
(c) All efforts have been exhausted for placement of the child in existing state-supported programs offering special adaptations of standard educational programs and practices.
[(d) The parents have followed through on the recommendation made by medical, psychological, and/or educational evaluations.]
(3) Educational placement. If a local school district's admissions and release committee determines through appropriate committee procedures as set out in 707 KAR 1:051, that the child meets the eligibility criteria set forth in KRS 167.210 and subsection (2) of this section, the admissions and release committee shall reflect such decision in writing. The decision of the local admissions and release committee and all information which the committee used to make such a determination shall be forwarded to the Office of Special Instructional Services. The Office of Special Instructional Services shall make application to an appropriate school. Upon receipt of a statement that the child has been, or will be accepted by the school, representatives of this office in cooperation with the child's parents and other professional personnel shall have the final responsibility for determining if the selected school is appropriate to the special educational needs of the child.
(4) [(5)] Transportation. Funds will be

provided by the Department of Education for the transportation of the deaf-blind child and one (1) parent or guardian to and from school at the beginning and end of the academic year, at the beginning and end of Christmas holidays, and at other times during the year when the school is closed and when all students are required to leave campus. If it is necessary for more than one (1) person to accompany the child, requests shall be submitted to the Office of Special Instructional Services [Education for Exceptional Children].

(5) [(6)] Selection. The selection of children to receive aid through this program will be made on the basis of a review of all applications and on the availability of state funds. The Office of Special Instructional Services [Education for Exceptional Children] shall made this selection.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the State Board for Elementary and Secondary Education, as required by KRS 156.070(4).

THOMAS C. BOYSEN, Commissioner

JOSEPH W. KELLY, Chairman

APPROVED BY AGENCY: November 7, 1991

FILED WITH LRC: November 14, 1991 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 27, 1991 at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by December 22, 1991, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to Mr. Kevin M. Noland, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Kenneth Warlick

(1) Type and number of entities affected: 176 local school districts.

(a) Direct and indirect costs or savings to those affected: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A. No alternative methods were available to insure that regulations reflect the intent of federal mandate.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. The federal mandate requires all local school districts and deaf-blind children to have equal access to this option within the continuum of placement requirements.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 34 CFR 300.4, 300.5, 300.400-403, 300.551.

2. State compliance standards. 707 KAR 1:040

3. Minimum or uniform standards contained in the federal mandate. 34 CFR 300.4 requires the provision of a "free appropriate public education: to identify handicapped children. 300.5 requires the identification of handicapped children in the categories defined in the federal mandate. 300.400-403 requires the state agency to insure that all students placed by public schools in private schools are provided an educational program which meet state standards. 300.551 requires the state education agency to insure that a continuum of alternative placements is available to meet the needs of handicapped children.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? 707 KAR 1:040 is the standard by which the state educational agency insures the federal requirement for a continuum of alternative placements for deaf-blind children.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

PUBLIC PROTECTION & REGULATION CABINET
Registry of Election Finance
(Proposed Amendment)

801 KAR 2:010. Processing complaints; hearings.

RELATES TO: KRS Chapter 121

STATUTORY AUTHORITY: KRS 121.120

NECESSITY AND FUNCTION: KRS 121.120(3) provides for the registry to adopt rules and regulations to implement [effectuate] the purposes and provisions of the Act. The rules of practice and procedure before the registry are designed to inform the citizens of the Commonwealth of the steps to be followed in the processing of complaints by investigation or public hearing.

Section 1. Definitions. When used in this regulation:

(1) "Act" means the Kentucky Campaign Finance Regulation, KRS Chapter 121.

[(2) "registry" means the Kentucky Registry of Election Finance.]

[(3) "Election" means any primary, regular or special election to fill vacancies.]

(2) [(4)] "Complainant" means any person [registered voter] who files a complaint with the registry, as required by KRS 121.140.

(3) [(5)] "Executive Director" means [shall be] the person appointed by the registry under provisions of [and referred to in] KRS 121.120(1).

(4) [(6)] "Chairman" means [shall mean] the duly elected [appointed] Chairman of the Kentucky Registry of Election Finance.

(5) [(7)] "Hearing officer" means [shall mean] the person designated by the chairman, with concurrence of the registry, to conduct a hearing, or the registry.

(6) [(8)] "Investigator" means [shall mean] a member of the staff of the registry designated by the executive director to investigate the allegations of a [any] complaint, or to investigate any matter arising out of KRS Chapter 121.

Section 2. Complaint. (1) Who may file:

(a) Any person [registered voter] claiming the commission of a violation under this Act may [make, sign, and] file with the registry a written, sworn complaint. Assistance in drafting and filing a [such] complaint shall be made available to any complainant at the registry's office.

(b) The chairman may[, in a like manner, make, sign, and] file [such] a complaint.

(2) Complaint form. The complaint shall be in writing. The complaint must be signed and sworn before a Notary Public or other person duly authorized by law to administer oaths and take acknowledgments. Notarial service shall be furnished without charge by the registry.

(3) Contents.

(a) A complaint shall contain the following:

1. The full name and address of the complainant.

2. The name and address, if known, of the person, persons, or organization against whom the complaint is made.

3. A short [and] plain statement of the facts showing that a violation of the Act has occurred.

(b) A complaint should include [contain] the following:

1. The date or dates and time of the alleged violation. [; and] If the alleged violation is of a continuing nature, the dates between which the [said] violation is [(s) are] alleged to have occurred.

2. A statement as to any other action, civil or criminal, instituted by the complainant in any other forum based on [upon] the same facts as are alleged in the complaint, together with a statement as to the status or disposition of the [such] other action.

(4) Time of filing. A complaint alleging a violation shall [may] be filed within four (4) [two (2)] years after the alleged violation occurs. If the alleged practice is of a continuing nature, the date of the occurrence of the [said] practice shall be deemed to be any date subsequent to the commencement of the practice up to and including the date on which the practice has [shall have] ceased, or the date on which the complaint is [shall have been] filed [if the practice is still continuing].

(5) Place of filing. A complaint shall be filed with the registry at its office.

(6) Manner of filing. The complaint may be filed by [a] personal delivery or by mailing [of same] to the registry's office. [A complaint may be delivered to the executive director or to a member of the registry staff.]

(a) Not later than five (5) days after the registry receives a sworn complaint, or after it decides to investigate on its own initiative, it shall give notice of the investigation to the person complained against. The person complained against shall be given five (5) days from receipt of notice of the investigation in which to respond to the complaint of alleged violations. Not later than five (5) days after receipt of a response from the person complained against, the registry shall:

(b) Acknowledge receipt of the complaint to the complainant, where appropriate;

(b) Acknowledge receipt of the response from the person complained against; and

(d) Notify, in writing, the person who made the complaint and the person complained against of what action, if any, the registry has taken or plans to take on the complaint together with the reasons for such action or nonaction. If the registry does not decide within five (5) days of receipt of the response what action to take, it shall notify the person who made the complaint of the reasons for the delay and shall subsequently give him the appropriate notification.

(7) Amendment of complaint. The registry may permit the [or the hearing officer shall have the power reasonably and fairly to grant] amendment of a complaint.

(a) The power to amend a complaint may be exercised by the executive director [registry staff] with the consent of the complainant.

(b) The complainant's power to amend a [the] complaint may be exercised prior to the issuance of a notice of hearing as a matter of right, and after notice of hearing at the discretion of the executive director, the registry concurring.

(c) If the complaint is amended after the notice of hearing has been issued, postponement of the hearing date may be granted to the respondent [upon a request to the registry. In no event shall such hearing date be more than ten (10) days later than the original hearing date].

(8) Withdrawal of complaint. Upon the written request of the complainant, stating the reasons for the [such] request, a complaint, or any part [thereof], may be withdrawn only with [on] written consent of the registry. [as hereinafter set forth:]

(a) If the request for withdrawal is made before the case has been set [noted] for hearing, the written consent of the executive director shall be obtained.

(b) If the request for withdrawal is made after the case [date] has been set [noted] for hearing, the written consent of the chairman shall be obtained.

(c) [In either case, such] Withdrawal may be ordered without prejudice to the rights of the complainant or to the registry to reinstate [reinstitute].

(9) Dismissal of complaint. If the executive director [shall] determines from the face of the

complaint or after an investigation that the complaint does not state reasonable grounds to believe a violation of the Act [KRS Chapter 121] has occurred, he[/she] shall recommend to the chairman [registry] that the complaint [same] be dismissed and notify the parties in writing [by mail] of that [such] determination and of the complainant's right to appeal to the registry for reconsideration [of such recommendation].

Section 3. General Investigations. The registry, in its discretion, may conduct such general investigations into the problems of the Kentucky campaign finance regulation as it deems necessary or desirable. Fairness demands that investigations be initiated only on credible allegations which are sufficiently specific to be capable of corroboration through investigation. [Investigation; Production of Evidence; Confidentiality.] (1) Investigation. After the filing of a complaint, the executive director may initiate [direct] an investigation [as the chief investigator. The investigator shall make a prompt and thorough investigation of the allegations of the complaint].

(2) Production of evidence.

(a) An investigator may at any reasonable time, request access to premises, records, and documents relevant to the complaint.

(b) If the [such] request for access is denied, the registry may issue a subpoena duces tecum requiring the production of the [such] documents.

(c) If a person or entity [, persons or organization] fails to permit access, examination[, photographing,] or copying, the registry may apply to a circuit court for an order requiring that access be granted [the permitting of same].

(d) The results of the investigation shall be evaluated by the executive director and counsel for the registry. The executive director and counsel shall recommend in writing to the chairman that there be a finding of probable cause and that a date for hearing be set or there be a finding of no probable cause and the complaint be dismissed.

(e) A finding of probable cause or a finding of no probable cause shall be made by the chairman or a member of the registry designated by the chairman to make a finding. Upon a finding of probable cause, a formal statement of the probable cause finding together with a statement of the specific statutory violations alleged to have occurred, shall be served on the respondent together with a notice of hearing. Upon a finding of no probable cause, an order dismissing the complaint shall be served on all parties.

(3) Confidentiality. All matters relating to the investigation of a complaint shall be kept confidential pending a determination [by the registry] that there appears to be probable cause to believe that a violation has occurred. Upon a finding of probable cause, the results of the investigation shall be furnished to the complainant and the person complained against. [, at which time the matter shall be scheduled for a hearing.]

Section 4. Hearing Ordered; Notice. (1) When hearings ordered.

(a) After a finding of probable cause to believe that a violation of the Act [KRS Chapter 121] has occurred, the executive director shall schedule the complaint for a hearing [results of the investigation shall be reported to the executive director, who shall report same to the chairman with recommendation on the scheduling of a hearing].

(b) The chairman may [thereupon] appoint a [presiding] hearing officer or may hear the complaint before the registry [and shall set a time for the holding of a hearing].

(2) Notice of hearing.

(a) The notice of hearing shall state the date, time and place of [said] hearing. The notice [and] shall be served on all parties not less than thirty (30) [at least ten (10)] days prior to hearing date.

(b) If a party is represented by an attorney, a copy of the notice of hearing and complaint, as [the same may have been] amended, shall be furnished to the [said] attorney.

(3) Place of hearing. The place of [any] hearing shall be at the office of the registry, or any [such] other place which [as] may be designated by the chairman. [it. The registry shall give consideration to any requests for a change of hearing location made by a complainant or a respondent.]

Section 5. Hearings. (1) Appearances. The complainant shall personally appear [personally] at the hearing, with or without counsel, and give [submit] testimony. The respondent may appear at the hearing with or without counsel and may examine and cross-examine witnesses and may give [present] evidence. The complainant, [and] the legal counsel for the registry, or any other person, at [and in] the discretion of the registry or hearing officer, [any other person] may intervene, examine and cross-examine witnesses and give [present] evidence. Failure of the complainant to appear may [shall] be grounds for dismissal.

(2) Who may [shall] conduct. Hearings may be conducted before a hearing officer appointed by the chairman or before the registry, as the chairman may elect.

(3) Powers and duties of the chairman or [/] hearing officer. The chairman or [/] hearing officer shall have full authority to control the procedure of a hearing, to admit or exclude testimony or other evidence, and to rule upon all motions and objections. The chairman or [/] hearing officer shall make full inquiry into all the facts in issue and shall obtain a full and complete record of all facts necessary for a fair determination of the issues. The chairman or [/]hearing officer may call and examine witnesses, direct the production of papers or documents, and introduce that evidence [the same] into the record of the proceedings. If the proceeding is before the registry, all matters requiring a decision shall be made by a vote of the members of the registry with the chairman casting the deciding vote in case of a tie.

(4) Procedure.

(a) The case in support of the complaint may be presented before the registry or before a [/] hearing officer by the legal counsel for the registry. [.] the complainant or his counsel [may also present any evidence in support of the complaint].

(b) Evidence may be admitted if it is of the type commonly relied upon by reasonably prudent men in the conduct of their affairs. [However,] Irrelevant, immaterial, scandalous, or unduly repetitious evidence shall be excluded, and the

rules of privilege shall be given effect.

(c) All testimony shall be given under oath or affirmation, and a [the] record of the proceedings shall be made and kept.

(d) Two (2) or more proceedings [under this Act] may be joined by the registry in its discretion.

(5) Stipulations. The parties may file a stipulation as to the facts. [in which event] The stipulation [same] shall be numbered and used at the hearing. The [Such] stipulation shall not preclude the offering of additional evidence by any party.

(6) Continuation and adjournments. The chairman or [/] hearing officer may continue a hearing from day to day or adjourn it to a later date or to a different place by announcement [thereof] at the hearing, or by appropriate notice to all parties.

(7) Motions and objections. Motions made during a hearing and objections with respect to the conduct of a hearing, including objections to the introduction of evidence, may [shall] be stated either in writing or orally and shall be included in the record of the proceedings [hearings].

(8) Oral arguments and briefs. The chairman or [/] hearing officer may permit the parties, their attorneys, or the members of the registry staff presenting the case in support of the complaint, to argue orally and to file briefs within the [such] time limits that [as] the chairman or [/]hearing officer may determine.

(9) Improper conduct. The chairman or [/] hearing officer may exclude from the hearing room or from further participation in the proceeding any person who engages in improper conduct.

(10) Public hearings. All registry hearings shall be open to the public unless the respondent requests that the hearing be closed [a closed hearing].

(11) Written transcript of the record. The written transcript of the record shall consist of the notice of the hearing, the sworn complaint, as [the same may have been] amended, the transcript of the testimony taken at the hearing[s], the exhibits and depositions offered in evidence, written applications, briefs, orders, motions, and oral arguments if directed by the hearing officer, stipulations, the findings of fact, conclusions of law, and the final findings or actions taken by the registry.

Section 6. Discovery. (1) Subpoenas.

(a) Issuance of subpoena. Whenever it is deemed necessary to compel the attendance of witnesses or the production for examination of any books, [payrolls, personnel] records, correspondence, documents, papers, or any other evidence relating to any matter under investigation or in question before the registry, the executive director may issue a subpoena or subpoena duces tecum and [thereby] compel the [such] attendance of witnesses or production for examination of books, papers, and records or other documents.

(b) Issuance of subpoena at instance of party. The executive director, or [in his/her absence,] the chairman may issue a [such] subpoena or subpoena duces tecum, [as may be required,] at the instance of any party to a hearing or other proceeding[s]. The issuance of a [such] subpoena or subpoena duces tecum at the instance of a party shall depend upon [a] showing [of the] necessity [thereof].

(c) Fees. Where a subpoena or subpoena duces tecum is applied for and issued at the instance of a [any] party to a hearing or other proceeding, the cost of service, witness and mileage fees[, if any,] shall be borne by the party at whose instance it has been requested and issued unless otherwise ordered by the registry. Where a subpoena or subpoena duces tecum is issued at the instance of the executive director, the cost of [such] service, witness and mileage fees[, if any,] shall be borne by the registry.

(2) Depositions and interrogatories.

(a) Depositions of witnesses, or [including] any party, may be taken as prescribed by the Kentucky Rules of Civil Procedure.

(b) Interrogatories. The registry may, at any time after a complaint is filed, require any party or witness to answer interrogatories. The procedure for interrogatories shall conform to the Kentucky Rules of Civil Procedure.

(3) Refusal to make discovery. If a person fails to permit access, fails to comply with a subpoena, refuses to have his deposition taken, refuses to comply with a subpoena duces tecum, refuses to answer interrogatories or otherwise refuses to make discovery, the registry may request an order of a circuit court requiring [said] discovery.

Section 7. Orders. (1) Contents of finding. A finding of the registry issued after a hearing shall set forth the findings of fact and conclusions of law [of the hearing officer], and the registry's final decision. At [, and in] the discretion of the registry, an opinion containing the reasons for the [said] decision, [which] may be issued in lieu of specific findings and conclusions.

(2) Issuance of orders.

(a) If upon all the evidence it appears that a respondent has engaged in a knowing [any willful] violation, the registry shall state its findings of fact and conclusions of law. The finding of a knowing violation may [, and based thereon cause same to] be delivered to the Attorney General or to the appropriate Commonwealth's Attorney for further action at the discretion of the registry.

(b) If upon all the evidence, the registry [shall] finds that a respondent has not engaged in a violation, it shall state the findings of fact and conclusions of law and [shall] dismiss the complaint.

(3) Filing. All findings issued by the registry after a hearing shall be filed in the registry's office.

Section 8. Reopening of Proceedings. Who may open. After a hearing and the issuance of a final order, the registry may, upon its own motion or upon application of any party or intervening party, for good cause shown, or whenever justice [so] requires, reopen any closed proceeding upon notice to all the parties and intervenors, and may take the [such] action [as] it [shall] deems necessary.

Section 9. Certification. The chairman, or the executive director, is authorized [and empowered] to certify all documents or records which are a part of the files and records of the registry.

Section 10. Construction of Rules and Pleadings. (1) These [rules and] regulations shall be liberally construed to effect[uate] the purposes [and provisions] of the Act [KRS Chapter 121] and the policies of the Kentucky Registry of Election Finance.

(2) All pleadings shall be liberally construed with a view to effect justice, and the registry and hearing officer will, at every stage of any proceeding, disregard errors or defects in the pleadings or proceedings which do not substantially affect the [substantial] rights of the parties.

[Section 11. General Investigations. The registry, in its discretion, may conduct such general investigations into the problems of the Kentucky Campaign Finance Regulation as it deems necessary or desirable. Fairness demands that investigations be initiated only on credible allegations which are sufficiently specific to be capable of corroboration through investigation. Mere suspicion, rumor or innuendo are not sufficient grounds on which an investigation may be justified.]

R. WAYNE STRATTON, Chairman
THEODORE C. COLLEY, Secretary
APPROVED BY AGENCY: October 27, 1991
FILED WITH LRC: November 5, 1991 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 23, 1991 at 9 a.m. at 140 Walnut Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by December 18, 1991, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Raymond E. Wallace, Executive Director, Kentucky Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Raymond E. Wallace

(1) Type and number of entities affected: Persons or entities who file complaints with the registry or against whom the registry may file complaints with regard to alleged violations of campaign finance law. Numbers vary with election cycles. Maximum potentially affected is 13,000 candidates and committees in a 4 year cycle.

(a) Direct and indirect costs or savings to those affected:

1. First year: $130,000
2. Continuing costs or savings: $130,000
3. Additional factors increasing or decreasing costs (note any effects upon competition): Increasing and decreasing costs variance in the number of candidates and level of office to be filled will determine the amount of activity that year. Cost will increase or decrease in proportion.

(b) Reporting and paperwork requirements: No routine reports are generated for those affected.

(2) Effects on the promulgating administrative body: Establish a routine method for filing a complaint, investigating a complaint, determining probable cause, conduct of the hearing, and announcing the findings of each and conclusions of law which result from a hearing.

(a) Direct and indirect costs or savings:

1. First year: $30,000
2. Continuing costs or savings: $30,000
3. Additional factors increasing or decreasing costs: Variance in the number of candidates and level of office to be filled will determine the amount of activity during that year. Cost will increase or decrease in proportion.

(b) Reporting and paperwork requirements: No routine reports are generated for the agency. Each case is developed individually.

(3) Assessment of anticipated effect on state and local revenues: This will have no effect on state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternatives were rejected because the purpose of the regulation is to establish a standard procedure to be followed by the agency and the public in processing complaints and conduct of hearings under provisions of KRS 121.140.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: This is not in conflict with any statute, regulation or government policy.

(a) Necessity of proposed regulation if in conflict: Does not apply.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Does not apply.

(6) Any additional information or comments: This regulation is needed to establish and maintain an orderly procedure for processing complaints, conduct of investigations and hearings as part of the enforcement of the provisions of the campaign finance regulation.

TIERING: Was tiering applied? No. This regulation addresses only one subject. It is promulgated in an effort to standardize and simplify the processing of complaints, conduct of investigations and hearings, and publication of findings of fact and conclusions of law pertaining to campaign finance.

LABOR CABINET
Department of Workplace Standards
Occupational Safety and Health
(Proposed Amendment)

803 KAR 2:307. Adoption of 29 CFR Part 1910.101–.120.

RELATES TO: KRS Chapter 338, 29 CFR 1910
STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules and regulations, and standards. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following regulation contains those standards to be enforced by the Division of

Occupational Safety and Health Compliance in the area of general industry. The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1910.

Section 1. The Occupational Safety and Health Standards Board hereby adopts 29 CFR Part 1910.101-.120 revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference with the following additions, exceptions, and deletions:

(1) 29 CFR 1910.101(b), "Compressed Gases," shall be amended by revocation of referenced pamphlets P-1-1965 and the adoption of P-1-1974, herein filed by reference.

(2) The amendment to 29 CFR 1910.103(a)(1)(ii), "Hydrogen," as published in Federal Register, Volume 53, Number 70, April 12, 1988, is incorporated by reference.

(3) The amendment to 29 CFR 1910.103, "Hydrogen," as published in the Federal Register, Volume 55, No. 151, August 6, 1990, is incorporated by reference.

(4) 29 CFR 1910.106, "Flammable and Combustible Liquids" is amended as follows:

(a) 29 CFR 1910.106(a)(3) shall read: "The term automotive service station, or service stations, shall mean that portion of property where flammable or combustible liquids used as motor fuel are stored and dispensed from fixed equipment and into the fuel tanks of motor vehicles and shall include any facilities available for the sale and servicing of tires, batteries, accessories and for minor automotive maintenance work and shall also include private stations not accessible or open to the public such as those used by commercial, industrial or governmental establishments. This section shall not apply to agriculture."

(b) The amendment to 29 CFR 1910.106(a)(35), "Flammable and Combustible Liquids," as published in Federal Register, Volume 53, Number 70, April 12, 1988, is incorporated by reference.

(c) 29 CFR 1910.106(g)(1)(i)(g), "Flammable and Combustible Liquids," as published in the Federal Register, Volume 51, Number 188, September 29, 1986, is removed.

(d) Amendment to 29 CFR 1910.106, "Flammable and Combustible Liquids," as published in the Federal Register, Volume 55, No. 151, August 6, 1990, is incorporated by reference.

(5) The amendment to 29 CFR 1910.107(a)(8), "Spray Finishing Using Flammable and Combustible Materials," as published in Federal Register, Volume 53, Number 70, April 12, 1988, is incorporated by reference.

(6) The amendment to 29 CFR 1910.108(a)(3), "Dip Tanks Containing Flammable or Combustible Liquids," as published in Federal Register, Volume 53, Number 70, April 12, 1988, is incorporated by reference.

(7) The amendment to 29 CFR 1910.109(d)(2)(iii)(a), "Explosives and Blasting Agents," as published in Federal Register, Volume 53, Number 70, April 12, 1988, is incorporated by reference.

(8) The amendment to 29 CFR 1910.110, as published in the Federal Register, Volume 55, Number 151, is incorporated by reference.

(9) The amendments to 29 CFR 1910.110(a)(14), (b)(2)(iii), (c)(5)(i)(g)(1) and (f)(5)(iv), "Storage and Handling of Liquefied Petroleum Gases," as published in Federal Register, Volume 53, Number 70, April 12, 1988, are incorporated by reference.

(10) The amendment to 29 CFR 1910.110, as published in the Federal Register, Volume 55, Number 119, June 20, 1990, is incorporated by reference.

(11) The amendments to 29 CFR 1910.111(b)(1)(ii) and the new paragraph 1910.111(b)(1)(vi), "Storage and Handling of Anhydrous Ammonia," as published in Federal Register, Volume 53, Number 70, April 12, 1988, are incorporated by reference.

(12) 29 CFR 1910.120, "Hazardous Waste Operations and Emergency Response," as published in the Federal Register, December 19, 1986, Volume 51, No. 244, is incorporated by reference.

(a) Corrections to amendments to 29 CFR 1910.120, "Hazardous Waste Operations and Emergency Response," as published in Federal Register, Volume 52, Number 85, May 4, 1987, are incorporated by reference.

(b) 29 CFR 1910.120, "Hazardous Waste Operations and Emergency Response," as published in the Federal Register, Volume 54, Number 42, March 6, 1989, is incorporated by reference.

(c) The amendment to 29 CFR 1910.120, as published in the Federal Register, Volume 55, Number 72, April 13, 1990, is incorporated by reference.

(d) Amendments, revisions and additions to 29 CFR 1910.120, as published in the Federal Register, Volume 56, Number 75, April 18, 1991, are incorporated by reference.

Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.

(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.

OTIS REED, Jr., Chairman

APPROVED BY AGENCY: November 15, 1991

FILED WITH LRC: November 15, 1991 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 23, 1991 at 2 p.m. at the Kentucky Labor Cabinet, 1049 U.S. 127 South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by December 18, 1990, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. Guy Schoolfield, Kentucky Labor Cabinet, 1049 U.S. 127 South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Kembra Taylor, Guy Schoolfield

(1) Type and number of entities affected: Section 1(12)(d) adoption of amendments affects

all employers in the Commonwealth with operations in general industry involving "Hazardous Waste Operations and Emergency Response."

(a) Direct and indirect costs or savings to those affected:

1. First year: The adoption of the amendment in item (1) above will not result in any direct or indirect costs to those employers affected.

2. Continuing costs or savings: The adoption of the amendment in item (1) above will not result in any direct or indirect costs to those employers affected.

3. Additional factors increasing or decreasing costs (note any effects upon competition): The adoption identified in item (1) above will have no effects on increasing or decreasing costs to competitors.

(b) Reporting and paperwork requirements: This adoption of amendments will not entail any paperwork or reporting requirements.

(2) Effects on the promulgating administrative body: There will be no effects on the promulgating administrative body by this amendment.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements resulting from this adoption of amendments.

(3) Assessment of anticipated effect on state and local revenues: There is no anticipated effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: This adoption of amendments concerns no alternative methods being considered, because the regulations concern specific methods for compliance.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflict, overlapping, or duplication as a result of this adoption of amendments.

(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 Occupational Safety and Health Program's regulations affect all employers with one or more employees. It targets its inspections toward those industries or firms that pose higher risks to worker safety and health, or from which the OSH Program has received worker complaints.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. Section 1(12)(d) adoption of amendments requires employers to adhere to regulations governing "Hazardous Waste Operations and Emergency Response" operations.

3. Minimum or uniform standards contained in the federal mandate. Section 1(12)(d) adoption of amendments relates to all standards contained in the Federal Register, "Hazardous Waste Operations and Emergency Response," Volume 56, Number 75, April 18, 1991.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There are no changes in the adoption of amendments to the Federal Register identified in item 3 above.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These amendments impose no stricter, additional or different responsibilities or requirements than federal OSHA standards.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes_X_ No___ (If yes, complete questions 2-4)

2. State what unit, part or division of local government this administrative regulation will affect. Section 1(12)(d) adoption of amendments affects all divisions of local government that are engaged in "Hazardous Waste Operations and Emergency Response" operations.

3. State the aspect or service of local government to which this administrative regulation relates. The adoption of amendments in Section 1(12)(d) affects all local government with operations involving "Hazardous Waste Operations and Emergency Response."

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: The purpose of Section 1(12)(d) is to adopt federal OSHA standards relating to "Hazardous Waste Operations and Emergency Response."

LABOR CABINET
Department of Workplace Standards
Occupational Safety and Health
(Proposed Amendment)

803 KAR 2:320. Adoption of 29 CFR Part 1910.1000-.1500.

RELATES TO: KRS Chapter 338, 29 CFR 1910

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules and regulations, and standards. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry. The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1910.

Section 1. The Occupational Safety and Health Standards Board hereby adopts 29 CFR Part 1910 revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference, as amended February 15, 1990 and May 15, 1990, with the following additions, exceptions, and deletions:

(1) 29 CFR 1910.1000, "Air Contaminants," Table Z-1 is amended as published in the Federal Register, Volume 50, Number 240, December 13, 1985, is incorporated by reference.

(a) 29 CFR 1910.1000, "Air Contaminants," Tables Z-1-A, Z-2 and Z-3 as published in Federal Register, Volume 54, Volume Number 12, January 19, 1989 are incorporated by reference.

(b) 4,4'-"Methylene bis (2-chloroaniline)," found in Table Z-1-A of 29 CFR 1910.1000, as published in the Federal Register, Volume 54, Number 12, January 19, 1989, is hereby revoked.

(c) Revisions to 29 CFR 1910.1000, "Air Contaminants," Table Z-1-A, as published in the Federal Register, Volume 54, Number 127, July 5, 1989, is incorporated by reference.

(d) Revisions to 29 CFR 1910.1000, "Air Contaminants," Table Z-1-A, as published in the Federal Register, Volume 54, Number 170, September 5, 1989, is incorporated by reference.

(e) 29 CFR 1910.1000, Table Z-2, "Benzene," shall be amended as follows: Amendments as published in the Federal Register, Volume 52, Number 176, September 11, 1987 are incorporated by reference.

(f) 29 CFR 1910.1000, Table Z-2, "Formaldehyde," as published in the Federal Register, Volume Number 52, December 4, 1987, is amended.

(2) 29 CFR 1910.1001, "Asbestos," is amended as follows:

(a) Amendments as published in the Federal Register, Volume 51, Number 119, June 20, 1986, are incorporated by reference.

(b) 29 CFR 1910.1001(d)(6)(ii) is amended to read: "The employer shall ensure that all sampling will be conducted in accordance with the ORM in Appendix A, before sampling commences."

(c) 29 CFR 1910.1001(d)(6)(iv) is amended to read: "The employer shall ensure that all analyses are performed in accordance with the elements outlined in Appendix A, and that all asbestos counters meet the criterion specified in Appendix A. This notice shall be given prior to the start of the analyses."

(d) 29 CFR 1910.1001(g)(3)(i) is amended to read: "Where respiratory protection is required, the employer shall institute a respirator program in accordance with American National Standards Practices for Respiratory Protection, ANSI Z88.2 – 1980, with the exception of Appendix A5, Suggested Procedures for Carrying Out Qualitative Respirator – Fitting Tests, and Appendix A6, Suggested Procedures for Carrying Out Quantitative Respirator – Fitting Tests."

(e) 29 CFR 1910.1001(j)(1)(ii) is amended to read: "Sign specifications. The warning signs required by paragraph (j)(1)(i) of the section shall be of a vertical format measuring twenty (20) inches in length and fourteen (14) inches in width, and shall be printed in letters of sufficient size and contrast as to be readily visible and legible, and shall bear the following information:"

(f) 29 CFR 1910.1001, "Occupational Exposure to Asbestos, Tremolite, Anthophyllite, and Actinolite," as published in Federal Register, October 17, 1986, Volume 51, No. 201, is incorporated by reference.

(g) 29 CFR 1910.1001, "Occupational Exposure to Asbestos, Tremolite, Anthophyllite, and Actinolite," as published in Federal Register, May 12, 1987, Volume 52, No. 91, is incorporated by reference.

(h) Amendments, revisions and additions to 29 CFR 1910.1001, "Occupational Exposure to Asbestos, Tremolite, Anthophyllite, and Actinolite," as published in Federal Register, Volume 53, Number 178, September 14, 1988, are incorporated by reference.

(i) Amendments, revisions and additions to 29 CFR 1910.1001, "Occupational Exposure to Asbestos, Tremolite, Anthophyllite, and Actinolite," as published in Federal Register, Volume 54, Number 243, December 20, 1989, are incorporated by reference.

(j) Amendments, revisions, and additions to 29 CFR 1910.1001, "Occupational Exposure to Asbestos, Tremolite, Anthophyllite, and Actinolite," as published in Federal Register, Volume 55, Number 24, February 5, 1990, are incorporated by reference.

(k) Amendments, revisions and additions to 29 CFR 1910.1001, "Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite," as published in the Federal Register, Volume 55, Number 237, December 10, 1990, are incorporated by reference.

(l) Amendments, revisions and additions to 29 CFR 1910.1001, "Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite," as published in the Federal Register, Volume 56, Number 171, September 4, 1991, are incorporated by reference.

(3)(a) 29 CFR 1910.1005 "4,4'-methylene bis (2-chloroaniline)" and 29 CFR 1910.1003 through .1016 paragraphs (c)(6), "Laboratory Activities," printed in the Federal Register, Volume 39, Number 125, June 27, 1974, are in effect.

(b) Paragraph 1910.1005(c)(7) of the 29 CFR 1910 General Industry Standards shall read as follows: "Premixed Solutions: Where 4,4'-methylene bis (2-chloroaniline) is present only in a single solution at a temperature not exceeding 120 degrees Celsius, the establishment of a regulated area is not required; however, (i) only authorized employees shall be permitted to handle such materials."

(4) 29 CFR 1910.1025, "Occupational Exposure to Lead" shall be amended as follows:

(a) "Table 1 – Implementation Schedule" is amended to read:

TABLE 1 – Implementation Schedule

INDUSTRY[1]	COMPLIANCE DATES 200 ug/m^3	100 ug/m^3	50 ug/m^3
Primary Lead Production	(2)	June 29, 1984	June 29, 1991
Secondary Lead Production	(2)	June 29, 1984	June 29, 1986
Lead Acid Battery Manufacture	(2)	June 29, 1983	June 29, 1986
Automobile/Manufacture/Solder Grinding	(2)	N/A	June 29, 1988

Electronics, Gray Iron Foundries, Ink Manufacture, Paints and Coatings Manufacture, Wall Paper Manufacture, Can Manufactures, and Printing	(2)	N/A	June 29, 1982
Lead Pigment Manufacture, Nonferrous Foundries, Leaded Steel Manufacture, Lead Chemical Manufacture, Ship Building and Ship Repair, Battery Breaking in the Collection and Processing of Scrap (excluding collection and processing of scrap which is part of a secondary smelting operation), Secondary Smelting of Copper, and Lead Casting	(2)	N/A	N/A
All Other Industries	(2)	N/A	June 11, 1984

[1] Includes ancillary activities located on the same worksite.

[2] On effective date. This continues an obligation from Table Z-2 of 29 CFR 1910.1000 which had been in effect since 1971 but which was deleted upon effectiveness of this section.

(b) Revision to 1910.1025, as published in the Federal Register, Volume 54, Number 131, July 11, 1989 is incorporated by reference.

(c) Amendments, revisions, and additions to 29 CFR 1910.1025, "Occupational Exposure to Lead," as published in Federal Register, Volume 55, Number 30, February 13, 1990, are incorporated by reference.

(d) Amendments, revisions, and additions to 29 CFR 1910.1025, "Occupational Exposure to Lead," as published in Federal Register, Volume 56, Number 105, May 31, 1991, are incorporated by reference.

(5) 29 CFR 1910.1028, "Benzene," as published in the Federal Register, Volume 52, Number 176, September 11, 1987 is incorporated by reference.

(6) 29 CFR 1910.1029, "Coke Oven Emissions," shall be amended as follows: Revision as published in the Federal Register, Volume 50, Number 178, September 13, 1985 are incorporated by reference.

(7) Corrections to 29 CFR 1910.1043, "Cotton Dust," as published in the Federal Register, Volume 51, Number 128, July 3, 1986, are incorporated by reference.

(8) Amendments and corrections to 29 CFR 1910.1047, "Ethylene Oxide and Appendices A, B, C and D," as published in the Federal Register, Volume 51, Number 132, July 10, 1986 are incorporated by reference.

(a) The amendments to 29 CFR 1910.1047, "Occupational Exposure to Ethylene Oxide," as published in the Federal Register, Volume 53, Number 66, April 6, 1988, are incorporated by reference.

(b) Revisions to 29 CFR 1910.1047, "Occupational Exposure to Ethylene Oxide," as published in Federal Register, Volume 53, Number 143, July 26, 1988, are incorporated by reference.

(9) 29 CFR 1910.1048, "Formaldehyde," as published in the Federal Register, Volume Number 52, December 4, 1987, is incorporated by reference.

(a) Amendments to 29 CFR 1910.1048, "Occupational Exposure to Formaldehyde," as published in Federal Register, Volume 53, Number 170, September 1, 1988, are incorporated by reference.

(b) Amendments to 29 CFR 1910.1048, "Occupational Exposure to Formaldehyde," as published in the Federal Register, Volume 54, Number 133, July 13, 1989, is incorporated by reference.

(10) Amendments, revisions, and additions to 29 CFR 1910.1101, "Asbestos," as published in Federal Register, Volume 56, Number 171, September 4, 1991, are incorporated by reference.

(11) [(10)] 29 CFR 1910.1200, "Hazard Communication," shall be amended as follows:

(a) Amendments as published in the Federal Register, Volume 52, Number 163, August 24, 1987 are incorporated by reference.

(b) Revision of 29 CFR 1910.1200(i)(3), "Hazard Communication," and an amendment removing the last paragraph in 1910.1200 Appendix D, as published in the Federal Register, Volume 51, Number 189, September 30, 1986, are incorporated by reference.

(12) [(11)] 29 CFR 1910.1450, "Occupational Exposure to Hazardous Chemicals in Laboratories," as published in Federal Register, Volume 55, Number 21, January 31, 1990, are incorporated by reference.

Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.

(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.

OTIS REED, Jr., Chairman

APPROVED BY AGENCY: November 15, 1991

FILED WITH LRC: November 15, 1991 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 23, 1991 at 2 p.m. at the Kentucky Labor Cabinet, 1049 U.S. 127 South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by December 18, 1990, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. Guy Schoolfield, Kentucky Labor Cabinet, 1049 U.S. 127 South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Kembra Taylor, Guy Schoolfield

(1) Type and number of entities affected: Section 1(2)(l) adoption of amendments affects all employers in the Commonwealth with operations in general industry involving "Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite." Section 1(10) adoption of amendments affects all employers in the Commonwealth with operations in general industry involving "Asbestos." Section 1(4)(d) adoption of amendments affects all employers in the Commonwealth with "Occupational Exposure to Lead" operations.

(a) Direct and indirect costs or savings to those affected:

1. First year: The adoption of amendments in item (1) above will not result in any direct or indirect costs to those employers affected.

2. Continuing costs or savings: The adoption of amendments in item (1) above will not result in continuing costs to those employers affected.

3. Additional factors increasing or decreasing costs (note any effects upon competition): The adoption of the amendments identified in item (1) above will have no effects on increasing or decreasing costs to employers.

(b) Reporting and paperwork requirements: The adoption of amendments will not entail any paperwork or reporting requirements.

(2) Effects on the promulgating administrative body: There will be no effects on the promulgating administrative body by adoption of these amendments.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements resulting from the adoption of these amendments.

(3) Assessment of anticipated effect on state and local revenues: There is no anticipated effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The adoption of these amendments concerns no alternative methods being considered, because the regulations concern specific methods for compliance.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflict, overlapping, or duplication as a result of the adoption of these amendments.

(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 Occupational Safety and Health Program's regulations affect all employers with one or more employees. It targets its inspections toward those industries or firms that pose higher risks to worker safety and health, or from which the OSH Program has received worker complaints.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. Section 1(2)(l) and 1(10) adoption of amendments requires employers to adhere to regulations governing "Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite" and "Asbestos" operations, respectively. Section 1(4)(d) adoption of amendments requires employers to adhere to regulations governing "Occupational Exposure to Lead" operations.

3. Minimum or uniform standards contained in the federal mandate. Section 1(2)(l) and 1(10) adoption of amendments relates to all standards contained in the Federal Register, "Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite," Volume 56, Number 171, September 4, 1991. Section 1(4)(d) adoption of amendments relates to all standards contained in the Federal Register, "Occupational Exposure to Lead," Volume 56, Number 105, May 31, 1991.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There are no changes in the adoption of amendments to the Federal Registers identified in item 3 above.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The adoption of these amendments imposes no stricter, additional or different responsibilities or requirements than federal OSHA standards.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes_X_ No___ (If yes, complete questions 2-4)

2. State what unit, part or division of local government this administrative regulation will affect. Sections 1(2)(l) and 1(1) adoption of amendments affects all divisions of local government that are engaged in "Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite" and "Asbestos" operations, respectively. Section 1(4)(d) adoption of amendments affects all divisions of local government that are engaged in "Occupational Exposure to Lead" operations.

3. State the aspect or service of local government to which this administrative regulation relates. The adoption of the amendments in Section 1(2)(l) and 1(1) affects all local government with operations involving "Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite" and "Asbestos" operations, respectively. Section 1(4)(d) adoption of amendments affects all divisions of local government with operations involving "Occupational Exposure to Lead".

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: The purpose of Section

1(2)(1), (10) and (4)(d) is to adopt federal OSHA standards relating to "Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite," "Asbestos," as well as "Occupational Exposure to Lead".

LABOR CABINET
Department of Workplace Standards
Occupational Safety and Health
(Proposed Amendment)

803 KAR 2:403. Adoption of 29 CFR Part 1926.50-.59.

RELATES TO: KRS Chapter 338
STATUTORY AUTHORITY: KRS Chapter 13A
NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules, regulations, and standards. Express authority to incorporate by reference established federal standards and national concensus standards is also given to the board. The following regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction. The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1926.

Section 1. The Occupational Safety and Health Standards Board hereby adopts 29 CFR Part 1926.50-.59, revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference, as amended April 13, 1990, with the following additions, exceptions, and deletions:

(1) 29 CFR 1926.58, "Asbestos, Tremolite, Anthophylite, and Actinolite," as published in the Federal Register, Volume 51, Number 119, June 20, 1986 is adopted by reference with the following amendments:

(a) 29 CFR 1926.58(e)(6)(iii) is amended to read: "The employer shall ensure that contractors provide in writing that they have a competent person meeting the requirements of paragraph (b) "competent person" and paragraphs (e)(6)(ii) and (III) before work commences."

(b) 29 CFR 1926.58(f)(3) is amended to read: "The respirators required by this exception are to be Type "C" supplied - air respirators; continuous flow or pressure - demand class."

(c) 29 CFR 1926.58(f)(5)(ii) is amended to read: "The employer shall ensure that all sampling is conducted in accordance with the ORM in Appendix A before sampling commences."

(d) 29 CFR 1926.58(f)(5)(iii) is amended to read: "The employer shall ensure that all analyses are performed in accordance with the elements outlined in Appendix A, and that all asbestos counters meet the qualifications listed in Appendix A. This notice shall be given prior to the start of the analyses."

(e) 29 CFR 1926.58(h)(3)(i) is amended to read: "Where respiratory protection is used, the employer shall institute a respirator program in accordance with American National Standards Practices for Respiratory Protection, ANSI Z88.2 - 1980, with the exception of Appendix A5, Suggested Procedures for Carrying Out Qualitative Respirator - Fitting Tests, and Appendix A6, Suggested Procedures for Carrying Out Quantitative Respirator - Fitting Tests."

(f) 29 CFR 1926.58(j)(2)(1) is amended to read: "The decontamination area shall be separated from the regulated area by an air lock. Air locks shall be used to separate the clean room, shower area and equipment room. An "air lock" is an open area used to separate the clean room, shower room and equipment room from each other; and to separate the decontamination area from the work area. It is accessible through doorways protected by two overlapping polyethylene sheets."

(g) 29 CFR 1926.58(k)(1)(ii) is amended to read: "Sign specifications. The warning signs required by paragraph (k)(1)(i) of this section shall be of a vertical format measuring twenty (20) inches in length and fourteen (14) inches in width, and shall be printed in letters of sufficient size and contrast as to be readily visible and legible, and shall bear the following information:"

(h) 29 CFR 1926.58, "Occupational Exposure to Asbestos, Tremolite, Anthophyllite, and Actinolite," as published in Federal Register, May 12, 1987, Volume 52, No. 91, is incorporated by reference.

(i) Revisions to 29 CFR 1926.58, "Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite," as published in Federal Register, Volume 53, Number 178, September 14, 1988, are incorporated by reference.

(j) Revisions to 29 CFR 1926.58, "Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite," as published in the Federal Register, Volume 55, Number 237, December 10, 1990, are incorporated by reference.

(k) Revisions to 29 CFR 1926.58, "Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite," as published in Federal Register, Volume 54, Number 243, December 20, 1989, is incorporated by reference.

(l) Revisions to 29 CFR 1926.58, "Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite," as published in Federal Register, Volume 55, Number 24, February 5, 1990, is incorporated by reference.

(m) Amendments, revisions and additions to 29 CFR 1926.58, "Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite," as published in the Federal Register, Volume 56, Number 171, September 4, 1991, are incorporated by reference.

(2) 29 CFR 1926.59, "Hazard Communication," as published in Federal Register, August 24, 1987, Volume 52, Number 163, is incorporated by reference.

Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.

(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.

OTIS REED, Jr., Chairman
APPROVED BY AGENCY: November 15, 1991
FILED WITH LRC: November 15, 1991 at 10 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 23, 1991 at 2 p.m. at the Kentucky Labor Cabinet, 1049 U.S. 127 South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing

shall notify this agency in writing by December 18, 1990, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. Guy B. Schoolfield, Kentucky Labor Cabinet, 1049 U.S. 127 South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Kembra Taylor, Guy Schoolfield

(1) Type and number of entities affected: Section 1(m) adoption of amendments affects all employers in the Commonwealth with operations in the construction industry involving "Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite."

(a) Direct and indirect costs or savings to those affected:

1. First year: The adoption of amendments identified in item (1) will not result in any direct or indirect costs to those employers affected.

2. Continuing costs or savings: The adoption of amendments identified in item (1) above will not result in continuing costs to those employers affected.

3. Additional factors increasing or decreasing costs (note any effects upon competition): The adoption of the amendments identified in item (1) above will have no effects on increasing or decreasing costs to employers.

(b) Reporting and paperwork requirements: The adoption of amendments will not entail any paperwork or reporting requirements.

(2) Effects on the promulgating administrative body: There will be no effects on the promulgating administrative body by the adoption of these amendments.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements resulting from the adoption of these amendments.

(3) Assessment of anticipated effect on state and local revenues: There is no anticipated effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The adoption of these amendments concerns no alternative methods being considered, because the regulations concern specific methods for compliance.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflict, overlapping, or duplication as a result of the adoption of these amendments.

(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 Occupational Safety and Health Program's regulations affect all employers with one or more employees. It targets its inspections toward those industries or firms that pose higher risks to worker safety and health, or from which the OSH Program has received worker complaints.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. P.L. 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. Section 1(m) adoption of amendments requires employers to adhere to regulations governing "Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite" with operations in the construction industry.

3. Minimum or uniform standards contained in the federal mandate. Section 1(m) adoption of amendments relate to all standards contained in the Federal Register, "Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite," Volume 56, Number 171, September 4, 1991.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There are no changes in the adoption of amendments to the Federal Register identified in item 3 above.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The adoption of these amendments imposes no stricter, additional or different responsibilities or requirements than federal OSHA standards.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes X No___ (If yes, complete questions 2-4)

2. State what unit, part or division of local government this administrative regulation will affect. Section 1(m) adoption of amendments affects all divisions of local government that are engaged in "Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite" operations.

3. State the aspect or service of local government to which this administrative regulation relates. The adoption of amendments in Section 1(m) affects all local government with operations involving "Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite."

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: The purpose of Section 1(m) is to adopt federal OSHA standards relating to

"Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite."

LABOR CABINET
Department of Workplace Standards
Occupational Safety and Health
(Proposed Amendment)

803 KAR 2:423. Adoption of 29 CFR Part 1926.1050-.1060.

RELATES TO: KRS Chapter 338
STATUTORY AUTHORITY: KRS Chapter 13A
NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules and regulations, and standards. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction. The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1926.

Section 1. The Occupational Safety and Health Standards Board hereby adopts 29 CFR, Part 1926.1050-.1060 revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference.

(1) Revisions to 29 CFR 1926.1050-.1060, as published in the Federal Register, Volume 55, Number 220, November 14, 1990, are incorporated by reference.

(2) Amendments, revisions and additions to 29 CFR 1926.1052, "Stairways and Ladders," as published in the Federal Register, Volume 56, Number 164, August 23, 1991, are incorporated by reference.

(3) Amendments, revisions and additions to 29 CFR 1926.1053, "Stairways and Ladders," as published in the Federal Register, Volume 56, Number 164, August 23, 1991, are incorporated by reference.

(4) [(2)] Revisions to 29 CFR 1926.1060, as published in the Federal Register, Volume 56, Number 15, January 23, 1991, are incorporated by reference.

Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.

(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.

OTIS REED, Jr., Chairman
APPROVED BY AGENCY: November 15, 1991
FILED WITH LRC: November 15, 1991 at 10 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 23, 1991 at 2 p.m. at the Kentucky Labor Cabinet, 1049 U.S. 127 South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by December 18, 1990, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. Guy Schoolfield, Kentucky Labor Cabinet, 1049 U.S. 127 South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Kembra Taylor, Guy Schoolfield

(1) Type and number of entities affected: Section 1(2) adoption of amendments affects all employers in the Commonwealth with construction operations using "Stairways and Ladders," in the construction industry. Section 1(2) adoption of amendments makes minor revisions to Section 1(1) adoption.

(a) Direct and indirect costs or savings to those affected:

1. First year: The adoption of amendments identified in item (1) above will result in a minimal cost to those employers affected, as the requirements have most likely been implemented when Section 1(1) became effective.

2. Continuing costs or savings: The adoption of amendments identified in item (1) above will result in a minimal continuing cost annually to those employers affected.

3. Additional factors increasing or decreasing costs (note any effects upon competition): The adoption identified in item (1) above will have no effects on increasing or decreasing costs to competitors.

(b) Reporting and paperwork requirements: This adoption of amendments will not entail any paperwork or reporting requirements.

(2) Effects on the promulgating administrative body: There will be no effects on the promulgating administrative body by this adoption of amendments.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements resulting from this adoption of amendments.

(3) Assessment of anticipated effect on state and local revenues: There is no anticipated effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: These adoption of amendments concerns no alternative methods being considered because the regulations concern specific methods for compliance.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflict, overlapping, or duplication as a result of this adoption of amendments.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to

harmonize the proposed administrative regulation with conflicting provisions: N/A

(6) Any additional information or comments:

TIERING: Was tiering applied? No. The Occupational Safety and Health Program's regulations affect all employers with one or more employees. It targets its inspections toward those industries or firms that pose higher risks to worker safety and health, or from which the OSH Program has received worker complaints.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. Section 1(2) adoption of amendments requires employers in the construction industry to adhere to regulations governing "Stairways and Ladders," operations.

3. Minimum or uniform standards contained in the federal mandate. Section 1(2) adoption of amendments relates to all standards contained in the Federal Register, "Stairways and Ladders," Volume 56, Number 164, August 23, 1991.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There are no changes in this adoption of amendments to the Federal Register identified in item 3 above.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This adoption of amendments imposes no stricter, additional or different responsibilities or requirements than federal OSHA standards.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes X No___ (If yes, complete questions 2-4)

2. State what unit, part or division of local government this administrative regulation will affect. Section 1(2) adoption of amendments affects all divisions of local government that are engaged in "Stairways and Ladders" operations.

3. State the aspect or service of local government to which this administrative regulation relates. Section 1(2) adoption of amendments affects all local government employees exposure to "Stairways and Ladders."

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: The purpose of Section 1(2) adoption of amendments is to adopt federal OSHA standards relating to "Stairways and Ladders."

PUBLIC PROTECTION AND REGULATION CABINET
Public Service Commission
(Proposed Amendment)

807 KAR 5:006. General rules.

RELATES TO: KRS Chapter 278, 49 CFR Part 192

STATUTORY AUTHORITY: KRS 278.280(2), 49 CFR Part 192

NECESSITY AND FUNCTION: KRS 278.280(2) provides that the Public Service Commission (hereinafter referred to as "commission") shall prescribe rules for the performance of any service or the furnishing of any commodity by any utility. This regulation establishes general rules which apply to electric, gas, water, sewage and telephone utilities. This regulation includes the substance of 807 KAR 5:008, which it repeals.

Section 1. Definitions. (1) "Utility" means a utility as defined in KRS 278.010(3).

(2) "Customer" means any person, firm, corporation or body politic applying for or receiving service from any utility.

Section 2. [1.] General Provisions. (1) The adoption of regulations by the commission shall not preclude the commission from altering or amending the same in whole or in part, or from requiring any other or additional service, equipment, facility, or standards, either upon request, or upon its own motion, or upon the application of the utility. No regulation of the commission shall in any way relieve a utility from any of its duties under the laws of Kentucky [this state].

(2) Any reference to [Whenever] standards or codes [are referred to] in [the] commission['s] regulations shall not prohibit [it is understood that] utilities employing competent [corps of] engineers [are not to be prohibited thereby] from continuing or initiating experimental work and installations which tend to improve, decrease the cost of, or increase the safety of their service.

[Section 2. Definitions. In addition to the definitions as set out in KRS 278.010, the following definitions shall be used in interpreting the commission's regulations:]

[(1) "Commission" means the Public Service Commission.]

[(2) "Utility" means a utility as defined in KRS 278.010(3).]

[(3) "Customer" means any person, firm, corporation or body politic supplied service by any utility.]

Section 3. Reports. (1) Financial and statistical reports. Every utility shall file annually a financial and statistical report upon forms to be furnished by the commission. This [Said] report shall be based upon the accounts set up in conformity with the [commission's order adopting] uniform system [classification] of accounts for utilities. This report shall be filed on or before March 31, each year, for the preceding calendar year. The forms for this report are hereby incorporated by reference, and may be obtained at the commission's offices at 730 Schenkel Lane, P.O. Box 615, Frankfort, Kentucky, 40602, Monday through Friday between the hours of 8 a.m. and 4:30 p.m. local time. For good cause shown, the executive director of

the commission may, upon application in writing, allow a reasonable extension of time for such filing.

(2) Report of meters, customers and refunds. Every gas, electric and water utility shall make periodic[al] reports on [such] forms [as may be] prescribed by the commission, of meter tests, number of customers and amount of refunds. These forms are hereby incorporated by reference, and may be obtained at the commission's offices at 730 Schenkel Lane, P.O. Box 615, Frankfort, Kentucky, 40602, Monday through Friday between the hours of 8 a.m. and 4:30 p.m. local time.

(3) Report of terminations for nonpayment of bills. Each electric and gas utility shall report annually the number of residential accounts terminated for nonpayment. These reports shall be filed no later than August 15 and shall cover the period ending June 30.

(4) Other reports. Every utility shall make such other reports as the commission may at its discretion from time to time require.

(5) Record and report retention. [(4)] All records and reports shall be retained in accordance with the uniform system of accounts unless otherwise specified [herein].

(6) Transmittal letter. [(5)] All reports shall be accompanied by two (2) copies of a transmittal letter describing the report being furnished.

Section 4. Service Information. (1) The utility shall, on request, give its customers or prospective customers such information as is reasonably possible in order that they may secure safe, efficient and continuous service. The utility shall inform its customers of any change made or proposed in the character of its service which might affect the efficiency, safety, or continuity of operation.

(2) Prior to making any substantial change in the character of the service furnished, which would affect the efficiency, adjustment, speed or operation of the equipment or appliances of any customer, the utility shall obtain the approval of the commission. The application shall show the nature of the change to be made, the number of customers affected, and the manner in which they will be affected.

(3) The utility shall inform each applicant for service of each [the] type, class and character of service [that is] available [to him or her] at his [or her] location.

Section 5. Special Rules or Requirements. (1) No utility shall establish any special rule or requirement without first obtaining the approval of the commission on proper application.

(2) A customer who has complied with commission [the] regulations [of the commission] shall not be denied service for failure to comply with the utility's rules [of the utility] which have not been made effective in the manner prescribed by the commission.

(3) Obtaining easements and rights-of-way necessary to extend service shall be the responsibility of the utility. No utility shall require a prospective customer to obtain easements or rights-of-way on property not owned by the prospective customer as a condition for providing service. The cost of obtaining easements or rights-of-way shall be included in the total per foot cost of an extension, and shall be apportioned among the utility and customer in accordance with the applicable extension regulation.

Section 6. Billings, Meter Readings and Information. (1) Information on bills. Each bill for utility service issued [rendered] periodically by a utility [utilities] shall clearly show the following, if applicable: class of service; [, the] present and last preceding meter readings; [, the] date of the present reading; [, the] number of units consumed; [, the] meter constant, if any; [, the] net amount for service rendered; [,] all taxes; any [, the] adjustments; [, if any,] and the gross amount of the bill. The date after which a penalty may apply to the gross amount shall [must] be indicated. Estimated or calculated bills shall be distinctly marked as such. The rate schedule under which the bill is computed shall be furnished under one (1) of the following methods:

(a) By printing it [rate schedule] on the bill.

(b) By publishing it in a newspaper of general circulation once each year [or when rate is changed].

(c) By mailing it to each customer once each year [or when rate is changed].

(d) By providing a place on each bill where a customer may indicate his desire for a copy of the applicable rates. The utility shall mail the customer a copy [and furnishing same] by return first class mail.

[(2) Meter readings. The registration of each meter shall read in the same units as used for billing unless a conversion factor be shown on the billing forms and if the meter does not read direct, the constant shall be plainly marked on the face of the meter dial.]

(2) [(3)] Flat rates. Flat rates for unmetered service shall approximate as closely as possible the utility's rates for metered service. [and] The rate schedule shall clearly set out the basis upon which consumption is estimated.

(3) Bill format. [(4) Utilities now using or desiring to adopt mechanical billing or other billing systems of such a nature as to render compliance with all of the terms of subsection (1) of this section impracticable may make application to the commission for relief from part of these terms. For good cause shown, the commission may allow the omission of part of these requirements.] Each utility shall include [submit] the [form of] billing form to be used by it, or its contents, in its tariffed rules [to the commission for its approval].

(4) Meter readings. Registration of each meter shall read in the same units as used for billing unless a conversion factor is shown on the billing form.

(5) Frequency of meter reading. Each utility, except if prevented by reasons beyond its control, shall read customer meters at least quarterly, except that each utility using customer-read meter information shall [initiate a program to] read each revenue related meter on its system at least once during each calendar year. Records shall be kept by the utility to insure that this information is available to [the] commission staff and any customer requesting this [such] information. If, due to reasons beyond its control, a utility is unable to read a meter in accordance with this subsection, the utility shall record the date and time the attempt was made, if applicable, and the reason the utility was unable to read the meter.

Section 7. Deposits. (1) Determination of deposits. A utility may require from any customer [or applicant for service] a minimum cash deposit or other guaranty to secure payment of bills, except from those customers qualifying for service reconnection under Section 15 of this regulation. The method of determining the amount of a cash deposit may differ between classes of customers, but shall be uniform for all customers within the same class. The amount of a cash deposit shall be determined by one (1) of the following methods:

(a) Calculated deposits. If actual usage data is available for the customer at the same or similar premises, the deposit amount shall be calculated using the customer's average bill for the most recent twelve (12) month period. If actual usage data is not available, the deposit amount shall be based on the average bills of similar customers and premises in the system. Deposit amounts shall not exceed two-twelfths (2/12) of the customer's actual or estimated annual bill where bills are rendered monthly, three-twelfths (3/12) where bills are rendered bimonthly, or four-twelfths (4/12) where bills are rendered quarterly.

(b) Equal deposits. The utility may establish an equal deposit amount for each class based on the average bill of customers in that class. Deposit amounts shall not [of an amount not to] exceed two-twelfths (2/12) of the average [estimated annual] bill of [such] customers in the class where bills [or applicant, where bills] are rendered monthly, [or an amount not to exceed] three-twelfths (3/12) [of the estimated annual bill of such customer or applicant,] where bills are rendered bimonthly, or [an amount not to exceed] four-twelfths (4/12) [of the estimated bill of such customer or applicant] where bills are rendered quarterly.

(c) Recalculation of deposits. If the utility will or may retain either an equal or calculated deposit for more than eighteen (18) months, it shall notify customers in writing that, at the customer's request, the deposit will be recalculated every eighteen (18) months based on actual usage of the customer. The notice of deposit recalculation shall be included either on the customer's application for service or on the receipt of deposit, or may be included annually with or on customer bills. The notice of deposit recalculation shall state that if the deposit on account differs by more than ten (10) dollars for residential customers, or by more than ten (10) percent for nonresidential customers, from the deposit calculated on actual usage, then the utility shall refund any over-collection and may collect any underpayment. Refunds shall be made either by check or by credit to the customer's bill, except that a utility shall not be required to refund any excess deposit if the customer's bill is delinquent at the time of recalculation. [The utility may require an equal deposit from all applicants for the same class of service. If the utility retains a residential deposit for more than eighteen (18) months, it shall advise the customer that the deposit will be recalculated based on actual usage upon the customer's request. The notice of deposit recalculation shall state that if the deposit on account differs by more than ten (10) dollars from the deposit calculated on actual usage, then the utility shall refund any over collection and may collect any underpayment. Refunds may be made by check or by credit to the customer's bill.]

[(2) Notification of a customer's right to a deposit recalculation shall be made at least once annually. The notice may be made by means of a general mailing (or bill stuffer) to all customers which specifies the above conditions.]

(2) Waiver of deposits. Deposits may be waived at the discretion of the utility in accordance with its currently effective tariff based upon a customer's showing of satisfactory credit and payment history.

[(3) The refund provisions contained in subsection (1) of this section notwithstanding, a utility shall not be required to refund any excess deposit if the customer's bill is delinquent by more than one (1) billing period at the time of recalculation.]

(3) Additional deposit requirement. If a deposit has been waived, as allowed in subsection (2) of this section, or has been returned and the customer fails to maintain a satisfactory payment record as defined in the utility's currently effective tariff, the utility may require that a deposit be made. If substantial change in usage has occurred, the utility may require that an additional deposit be made. No additional or subsequent deposit shall be required of residential customers whose payment record is satisfactory, unless the customer's classification of service changes, except as provided in subsection (1)(c) of this section.

[(4) The utility shall issue to every customer from whom a deposit is received a certificate of deposit, showing the name of the customer, location of initial premises occupied, date and amount of the deposit. If a residential deposit is recalculated in accordance with the above provisions, the customer shall return the original certificate of deposit to the utility in return for a new, accurate certificate.]

(4) Receipt of deposit. The utility shall issue to every customer from whom a deposit is collected a receipt of deposit. The receipt shall show the name of the customer, location of the service or customer account number, date, and amount of deposit. If the notice of recalculation described in subsection (1)(c) of this section is not included in the utility's application for service or mailed with customer bills, the receipt of deposit shall contain the notification. If deposit amounts change, the utility shall issue a new receipt of deposit to the customer.

(5) Deposits as a condition of service. Except as otherwise provided by Section 15 of this regulation, customer service may be refused or discontinued pursuant to Section 14 of this regulation if payment of requested deposits is not made.

(6) Interest on deposits. Interest shall accrue on all deposits at the rate prescribed by law, beginning on the date of deposit. Interest accrued shall be refunded to the customer or credited to the customer's bill on an annual basis, except that a utility shall not be required to refund or credit interest on deposits if the customer's bill is delinquent on the anniversary of the deposit date. All interest that has accrued as of the effective date of this regulation shall be refunded or credited to the customer's bill on the first anniversary of the deposit date after the effective date of this regulation. If interest is paid or credited to the customer's bill prior

to twelve (12) months from the date of deposit, the payment or credit shall be on a prorated basis. Upon termination of service, the deposit, any principal amounts, and interest earned and owing shall be credited to the final bill with any remainder refunded to the customer.

(7) Tariff requirements. Each utility which chooses to require deposits shall establish and include in its filed tariff the deposit policy to be utilized. This policy shall include:

(a) The method by which deposit amounts will be determined for each customer class;

(b) Standard criteria for determining when a deposit will be required or waived;

(c) The deposit amount for each customer class if the method in subsection (1)(b) of this section is used;

(d) The period of time the utility will retain the deposit, or the conditions under which the utility will refund the deposit, or both if applicable;

(e) The manner in which interest on deposits will be calculated and accrued and refunded or credited to customers' bills.

Section 8. Special Charges. (1) A utility may make special nonrecurring charges to recover customer-specific costs incurred which would otherwise result in monetary loss to the utility or increased rates to other customers to whom no benefits accrue from the service provided or action taken. Any utility desiring to establish or change any special nonrecurring charge shall apply for commission approval of such charge in accordance with the provisions of 807 KAR 5:011, Section 10.

(2) Special charges shall be included in the utility's tariff and applied uniformly throughout the area served by the utility. They shall relate directly to the service performed or action taken and shall yield only enough revenue to pay the expenses incurred in rendering the service.

(3) Special charges may include, but are not limited to:

(a) Turn-on charge. A turn-on charge may be assessed for a new service turn on, seasonal turn on or temporary service. A turn-on charge shall not be made for initial installation of service where a tap fee is applicable.

(b) Reconnect charge. A reconnect charge may be assessed to reconnect a service which has been terminated for nonpayment of bills or violation of the utility's rules or commission regulations. Customers qualifying for service reconnection under Section 15 of this regulation shall be exempt from reconnect charges.

(c) Termination or field collection charge. A charge may be assessed when a utility representative makes a trip to the premises of a customer for the purpose of terminating service. The charge may be assessed if the utility representative actually terminates service or if, in the course of the trip, the customer pays the delinquent bill to avoid termination. The charge may also be made if the utility representative agrees to delay termination based on the customer's agreement to pay the delinquent bill by a specific date. The utility may make a field collection charge only once in any billing period.

(d) Special meter reading charge. This charge may be assessed when a customer requests that a meter be reread, and the second reading shows the original reading was correct. No charge shall be assessed if the original reading was incorrect. This charge may also be assessed when a customer who reads his own meter fails to read the meter for three (3) consecutive months, and it is necessary for a utility representative to make a trip to read the meter.

(e) Meter resetting charge. A charge may be assessed for resetting a meter if the meter has been removed at the customer's request.

(f) Meter test charge. This charge may be assessed if a customer requests the meter be tested pursuant to Section 18 of this regulation, and the tests show the meter is not more than two (2) percent fast. No charge shall be made if the test shows the meter is more than two (2) percent fast.

(g) Returned check charge. A returned check charge may be assessed if a check accepted for payment of a utility bill is not honored by the customer's financial institution.

(h) Late payment penalty. A penalty may be assessed if a customer fails to pay a bill for services by the due date shown on the customer's bill. The penalty may be assessed only once on any bill for rendered services. Any payment received shall first be applied to the bill for service rendered. Additional penalty charges shall not be assessed on unpaid penalty charges.

Section 9. [8.] Customer Complaints to the Utility. Upon complaint to the utility by a customer [either] at the utility's [its] office, by telephone or in writing, the utility shall make a prompt and complete investigation and advise the complainant of its findings. The utility [thereof. It] shall keep a record of all written [such] complaints concerning its [utility] service. This record [which] shall show the name and address of the complainant, the date and nature of the complaint, and the adjustment or disposition of the complaint [thereof]. [Such] Records shall be maintained for two (2) [five (5)] years from the date of [the] resolution of the complaint. If a written complaint or a complaint made in person at the utility's office is not resolved, the utility shall provide written notice to the complainant of his right to file a complaint with the commission, and shall provide him with the address and telephone number of the commission. If a telephonic complaint is not resolved, the utility shall provide at least oral notice to the complainant of his right to file a complaint with the commission and the address and telephone number of the commission.

Section 10. [9.] Bill Adjustment for Gas, Electric and Water Utilities. (1) If [Whenever a meter in service is found] upon periodic test, request test, or complaint test a meter in service is found to be more than two (2) percent fast, additional tests shall be made [at once] to determine the average error of the meter. Said tests shall be made in accordance with [the] commission['s] regulations applicable to the type of meter involved.

(2) If test [the] results [of tests] on a customer's meter show an average error greater than two (2) percent fast or slow, or if a customer has been incorrectly billed for any other reason, except in an instance where a utility has filed a verified complaint with the appropriate law enforcement agency alleging fraud or theft by a customer, the utility shall immediately determine the period during which

the error has existed, and shall recompute and adjust the customer's bill to either provide a refund to the customer or collect an additional amount of revenue from the underbilled customer. The utility shall readjust the account based upon the period during which the error is known to have existed. If the period during which the error existed cannot be determined with reasonable precision, the time period shall be estimated using such data as elapsed time since the last meter test, if applicable, and historical usage data for the customer. If that data is not available, the average usage of similar customer loads shall be used for comparison purposes in calculating the time period. If the customer and the utility are unable to agree on an estimate of the time period during which the error existed, the commission shall determine the issue. In all instances of customer overbilling, the customer's account shall be credited or the overbilled amount refunded at the discretion of the customer within thirty (30) days after final meter test results. A utility shall not require customer repayment of any underbilling to be made over a period shorter than a period coextensive with the underbilling. [, then the customer's bills, for the period during which the meter error is known to have existed, shall be recomputed and the account adjusted on the basis of the test. In the event the period during which the meter error existed is unknown, then the customer's bill shall be recomputed for one-half (1/2) of the elapsed time since the last previous test or for the past twelve (12) month period, whichever is less. (See exception in subsection (5) of this section.)]

[(3) If the result of tests on a customer's meter shows an average error greater than two (2) percent slow, then the customer's bill, for the period during which the meter error is known to have existed, may be recomputed and the account adjusted on the basis of the test. In the event the period during which the meter error existed is unknown, then the customer's bill may be recomputed for one-half (1/2) of the elapsed time since the last previous test but in no case to exceed twelve (12) months.]

[(4) It shall be understood that when a meter is found to have an error in excess of two (2) percent fast or slow the figure for calculating the amount of refund or the amount to be collected by the utility shall be that percentage of error as determined by the test; i.e., it is the duty of the utility to maintain the accuracy of its measuring devices as nearly 100 percent as is commercially practicable. Therefore, percent error shall be that amount of error as is indicated by the test.]

[(5) The burden of maintaining measuring equipment so that it will register accurately is upon the utility; therefore, if meters are found upon test to register fast and if time for periodic test has passed the refund shall be for the twelve (12) months specified in subsection (2) of this section plus the time exceeding the periodic test period; provided, however, that the commission may relieve the utility from this requirement in any particular case in which it is shown that the failure to make the periodic test was due to causes beyond the utility's control.]

(3) Monitoring usage. [(6)] Each utility shall [establish procedures, to be included in its rules and regulations, to] monitor customers' usage at least annually according to [and shall file the] procedures which shall be included in its tariff on file with the commission [for review]. The procedures shall be designed to draw the utility's attention to unusual deviations in a customer's usage and shall provide for reasonable means by which the utility can [may] determine the reasons for the unusual deviation. If a customer's usage is unduly high and the deviation is not otherwise explained, the utility shall test the customer's meter to determine whether the meter shows an average error greater than two (2) percent fast or slow [in accordance with subsection (2), (3) or (5) of this section].

(4) Usage investigation. If [(7) In instances in which] the utility's procedure for monitoring usage indicates that an investigation of a customer's usage is necessary, the utility shall notify the customer in writing either during or immediately after the investigation of the reasons for the investigation, and of the findings of the investigation. If [In those instances where] knowledge of a serious situation requires more expeditious [immediate] notice, the utility shall notify the customer by the most expedient means available.

(5) Customer notification. If [(8) When] a meter is tested and it is found necessary to make a refund or back bill a customer, the customer shall be notified in substantially the following form:

On _____, 19_____, the meter bearing identification No._____ installed in your building located at _____ (Street and Number) in _____ (City) was tested at _____ (on premises or elsewhere) and found to register _____ (Percent fast or slow). The meter was tested on _____ (Periodic, Request, Complaint) test.

Based upon this we herewith _____ (Charge or Credit) you with the sum of $_____, which amount has been noted on your regular bill. If you desire a cash refund, rather than a credit to your account, of any amount overbilled, you must notify this office in writing within seven (7) days of the date of this notice.

[(9) Whenever it is determined that a customer has been incorrectly billed for any reason, other than a meter which was registering incorrectly due to being out of tolerance or in an instance where a utility has filed a verified complaint with the appropriate law enforcement agency alleging fraud or theft by a customer, the utility may immediately attempt to determine the period during which the error has existed, and the customer's bill for the period during which the error is known to have existed may be recomputed, and the account readjusted to give a refund or collect an additional amount of revenue from the underbilled. The basis for recomputing the customer bills shall be based upon the historic usage data for the customer

over the previous time period, unless that information is not available; and in that case, then an average usage of similar customer loads over the previous time period involved shall be used in this adjustment. In the event the period during which the meter error existed is unknown, the customer's bill may be recomputed for one-half (1/2) of the elapsed time since the last previous test, or the past twelve (12) month period, whichever is less. Customer repayment of any underbilling shall be made over a period coextensive with the underbilling, not to exceed twelve (12) months.]

(6) [(10)] Customer accounts shall be considered to be current while a dispute is pending pursuant to this section, as long as a customer continues to make payments for the disputed period in accordance with historic usage, or if that data is not available, the average usage of similar customer loads, and stays current on subsequent bills.

Section 11. Status of Customer Accounts During Billing Dispute. With respect to any billing dispute to which Section 10 of this regulation does not apply, customer accounts shall be considered to be current while the dispute is pending as long as a customer continues to make undisputed payments and stays current on subsequent bills.

Section 12. [10.] Customer's Request for Termination [Discontinuance] of Service. (1) Any customer desiring service terminated [discontinued] or changed from one address to another shall give the utility three (3) working days' notice in person, [or] in writing, or by telephone, provided such notice does not violate contractual obligations or tariff provisions. The customer shall not be responsible for charges for service beyond the three (3) day notice period if the customer provides reasonable access to the meter during the notice period. If the customer notifies the utility of his request for termination by telephone, the burden of proof is on the customer to prove that service termination was requested if a dispute arises.

(2) Upon request that service be reconnected at any premises subsequent to the initial installation or connection to its service lines, the utility may, subject to subsection (3) of this section, charge the applicant a reconnect fee set out in its filed tariff [an amount not to exceed the actual average cost as approved by this commission of making such reconnection].

(3) Any utility desiring to establish a termination [disconnection and/] or reconnection charge under the provisions of subsection (2) of this section, shall apply [submit] for commission approval of such charge in accordance with the provisions of 807 KAR 5:011, Section 10. [a formal application setting out:]

[(a) The actual average cost of making such reconnections; and]

[(b) The effect of such charges on the utility's revenues.]

Section 13. Utility Customer Relations. (1) A utility shall post and maintain regular business hours and provide representatives available to assist its customers.

(a) Available telephone numbers. Each utility shall maintain a telephone, shall publish the telephone number in all service areas, and shall permit all customers to contact the utility's designated representative without charge.

(b) Designated representatives. Each utility shall designate at least one (1) representative to be available to answer customer questions, resolve disputes and negotiate partial payment plans at the utility's office. The designated representative shall be knowledgeable of the commission's regulations regarding customer bills and service and shall be authorized to negotiate and accept partial payment plans.

1. Each major gas or electric utility (as defined by the Uniform System of Accounts) and each water and sewer utility having annual operating revenues of $250,000 or more shall make the designated representative available during the utility's established working hours not fewer than seven (7) hours per day, five (5) days per week, excluding holidays.

2. Each nonmajor gas or electric utility (as defined by the Uniform System of Accounts) and each water or sewer utility having annual operating revenues of less than $250,000 shall make the designated representative available during the utility's established working hours not fewer than seven (7) hours per day, one (1) day per week. Additionally, during the months of November through March, each previously defined nonmajor utility providing gas or electric service shall make available the designated representative during the utility's established working hours not fewer than five (5) days per week.

(c) Display of customer rights. Each utility shall prominently display in each office in which payment is received a summary, to be prepared and provided by the commission, of the customer's rights under this section and Section 15 of this regulation. If a customer indicates to any utility personnel that he is experiencing difficulty in paying a current utility bill, that employee shall refer the customer to the designated representative for explanation of the customer's rights.

(d) Utility personnel training. The chief operating officer of each electric and gas utility providing service to residential customers shall be required to certify each year the training of utility personnel assigned to counsel persons presenting themselves for utility service under the provisions of this section. Training is hereby defined as an annual review of commission regulations and policies regarding winter hardship and disconnect regulations, Cabinet for Human Resources policy and programs for issuing certificates of need, and the utility's policies regarding collection, arrears repayment plans, budget billing procedures, and weather/health disconnect policies. Certification is defined as written notice to the commission by no later than October 31 of each year identifying the personnel trained, the date training occurred, and that the training met the requirements of this section.

(2) Partial payment plans. Each utility shall negotiate and accept reasonable partial payment plans at the request of residential customers who have received a termination notice for failure to pay as provided in Section 14 of this regulation, except that a utility is not required to negotiate a partial payment plan with a customer who is delinquent under a previous partial payment plan. Partial payment plans shall be mutually agreed upon and subject

to the conditions in this section and Section 14 of this regulation. Partial payment plans which extend for a period longer than thirty (30) days shall be in writing and shall advise customers that service may be terminated without additional notice if the customer fails to meet the obligations of the plan.

(a) Budget payment plans for gas and electric utilities. Each gas and electric utility shall develop and offer to its residential customers a budget payment plan based on historical or estimated usage whereby a customer may elect to pay a fixed amount each month in lieu of monthly billings based on actual usage. Under such plans, utilities shall issue bills which adjust accounts so as to bring each participating customer current once each twelve (12) month period. The customer's account may be adjusted at the end of the twelve (12) month period or through a series of levelized adjustments on a monthly basis if usage indicates that the account will not be current upon payment of the last budget amount. Budget payment plans shall be offered to residential customers but may be extended to other classes of customers. The provisions of the budget plan shall be included in the utility's tariffed rules. The utility shall provide information to its customers regarding the availability of such budget payment plans.

(b) Partial payment plans for customers with medical certificates or certificates of need. For customers presenting certificates under the provisions of Sections 14(3) and 15 of this regulation, gas and electric utilities shall negotiate partial payment plans based upon the customer's ability to pay, requiring accounts to become current not later than the following October 15. Such plans may include, but are not limited to, budget payment plans and plans that defer payment of a portion of the arrearage until after the end of the heating season through a schedule of unequal payments.

(3) Utility inspections of service conditions prior to providing service. Each electric, gas, water and sewer utility shall inspect the condition of the meter and service connections before making service connections to a new customer so that prior unsafe, faulty, or illegal use of the facilities will not be attributed to the new customer. The new customer shall be afforded the opportunity to be present at such inspections. The utility shall not be required to render service to any customer until any defects in the customer-owned portion of the service facilities have been corrected.

(4) Prompt connection of service. Except as provided in Section 15 of this regulation, the utility shall reconnect existing service within twenty-four (24) hours, and shall install and connect new service within seventy-two (72) hours, when the cause for refusal or discontinuance of service has been corrected and the utility's tariffed rules and commission regulations have been met.

(5) Advance termination notice. When advance termination notice is required, the termination notice shall be mailed or otherwise delivered to the last known address of the customer. The termination notice shall be in writing, distinguishable and separate from any bill. The termination notice shall plainly state the reason for termination, that the termination date will not be affected by receipt of any subsequent bill, and that the customer has the right to dispute the reasons for termination. The termination notice shall also comply with the applicable requirements of Section 14 of this regulation.

Section 14. Refusal or Termination [11. Discontinuance] of Service. (1) A [The] utility may refuse or terminate service to a [discontinue to serve an applicant or] customer only under the following conditions except as provided in subsections (2), (3) and (4) of this section:

(a) For noncompliance with the utility's tariffed rules or commission['s rules and] regulations. A utility may terminate service for failure to comply with applicable tariffed rules or commission regulations pertaining to that service. However, no utility shall terminate [discontinue] or refuse service to any customer [or applicant] for noncompliance with [violation of] its tariffed rules or commission regulations without first having made a reasonable effort to obtain [induce the] customer compliance. [or applicant to comply with its rules and regulations as filed with the commission.] After such effort by [on the part of] the utility, service may be terminated [discontinued] or refused only after the customer has [shall have] been given at least ten (10) days written termination notice pursuant to Section 13(5) of this regulation [of such intention, delivered to an adult member of his or her household or mailed to his or her last known address].

(b) For dangerous conditions. If [When] a dangerous condition relating to the utility's service which could subject any person to imminent harm or result in substantial damage to the property of the utility or others, is found to exist on the customer's [or applicant's] premises, the service shall be [cut off without notice or] refused or terminated without advance notice. The utility shall [, provided that the utility] notify the customer [or applicant] immediately in writing and, if possible, orally of the reasons for the termination [discontinuance] or refusal. Such notice shall be recorded by the utility and shall include [and] the corrective action to be taken by the [applicant or] customer or utility before service can be restored or provided. However, if the dangerous condition, such as gas piping or a gas-fired appliance, can be effectively isolated or secured from the rest of the system, the utility need discontinue service only to the affected piping or appliance.

(c) For refusal of access. When a customer [or applicant] refuses or neglects to provide reasonable access to the premises for [the purpose of] installation, operation, meter reading, maintenance or removal of utility property, the utility may terminate [discontinue] or refuse service. Such action shall be taken only when corrective action negotiated between the utility and customer has failed to resolve the situation and after the customer has [or applicant shall have] been given at least ten (10) [fifteen (15)] days' written notice of termination pursuant to Section 13(5) of this regulation [such intention].

(d) For outstanding indebtedness. Except as provided in Section 15 of this regulation [subsection (2) of this section], a utility shall not be required to furnish new service to any customer who [applicant when such applicant]

is indebted to the utility for service furnished or other tariffed charges until that customer has [such applicant shall have] paid his [such] indebtedness.

(e) For noncompliance with state, local or other codes. A utility may refuse or terminate [discontinue] service to a customer [or applicant] if the customer [or applicant] does not comply with state, municipal or other codes, rules and regulations applying to such service. A utility may terminate service pursuant to this subsection only after ten (10) days' written notice is provided pursuant to Section 13(5) of this regulation, unless ordered to terminate immediately by a governmental official.

[(2) A gas or electric utility may discontinue service under the following conditions:]

(f) [(a)] For nonpayment of bills [– ten (10) day notice]. A utility may terminate service at a point of delivery for nonpayment of charges incurred for utility service at that point of delivery; however, no utility shall terminate [discontinue] service to any customer for nonpayment of bills for any tariffed [(including delayed] charge[s)] without first having mailed or otherwise delivered an advance termination notice which complies with the requirements of Section 13(5) of this regulation.

1. Termination notice requirements for electric or gas service. Each electric or gas utility proposing to terminate customer service for nonpayment shall mail or otherwise deliver to that customer [made a reasonable effort to induce the customer to pay same. The customer shall be given at least] ten (10) days' written notice of intent to terminate. Under no circumstances shall service be terminated [, but the cutoff shall not be effected] before twenty-seven (27) days after the mailing date of the original unpaid bill. The [Such] termination notice to residential customers shall [be exclusive of and separate from any bill. The termination notice shall] include written notification to the customer [in writing] of the existence of local, state and federal programs providing for the payment of utility bills under certain conditions, and of the address and telephone number of the Department for Social Insurance of the Cabinet for Human Resources [offices] to contact for [such] possible assistance.

2. Termination notice requirements for water, sewer, or telephone service. Each water, sewer, or telephone utility proposing to terminate customer service for nonpayment shall mail or otherwise deliver to that customer five (5) days' written notice of intent to terminate. Under no circumstances shall service be terminated before twenty (20) days after the mailing date of the original unpaid bill.

3. The termination notice requirements of this subsection shall not apply if termination notice requirements to a particular customer or customers are otherwise dictated by the terms of a special contract between the utility and customer which has been approved by the commission.

(g) For illegal use or theft of service. A utility may terminate service to a customer without advance notice if it has evidence that a customer has obtained unauthorized service by illegal use or theft. Within twenty-four (24) hours after such termination, the utility shall send written notification to the customer of the reasons for termination or refusal of service upon which the utility relies, and of the customer's right to challenge the termination by filing a formal complaint with the commission. This right of termination is separate from and in addition to any other legal remedies which the utility may pursue for illegal use or theft of service. The utility shall not be required to restore service until the customer has complied with all tariffed rules of the utility and laws and regulations of the commission.

(2) A utility shall not terminate service to a customer if the following conditions exist:

(a) If payment for services is made. If, following receipt of a termination notice for nonpayment but prior to the actual termination of service, there is delivered to the utility office payment of the amount in arrears, service shall not be terminated.

(b) If a payment agreement is in effect. Service shall not be terminated for nonpayment if the customer and the utility have entered into a partial payment plan in accordance with Section 13 of this regulation and the customer is meeting the requirements of the plan.

(c) If a medical certificate is presented. Service shall not be terminated for thirty (30) days beyond the termination date if [If prior to discontinuance of service, there is delivered to the utility office, payment of the amount in arrears, then discontinuance of service shall not be made, or where a written certificate is filed signed by] a physician, [a] registered nurse or [a] public health officer certifies in writing [stating] that termination [, in the opinion of the person making the certification discontinuance] of service will aggravate a debilitating [an existing] illness or infirmity on the affected premises. A utility may refuse to grant consecutive extensions for medical certificates past the original [, service shall not be discontinued until the affected resident can make other living arrangements or until] thirty (30) days unless the certificate is accompanied by an agreed partial payment plan in accordance with Section 13 of this regulation.

(3) A gas or electric utility shall not terminate service for thirty (30) days beyond the termination date if the Kentucky Cabinet for Human Resources (or its designee) certifies in writing that the customer is eligible for the cabinet's energy assistance program or household income is at or below 130 percent of the poverty level, and the customer presents such certificate to the utility. Customers eligible for such certification from the Cabinet for Human Resources shall have been issued a termination notice between November 1 and March 31. Certificates shall be presented to the utility during the initial ten (10) day termination notice period. As a condition of the thirty (30) day extension, the customer shall exhibit good faith in paying his indebtedness by making a present payment in accordance with his ability to do so. In addition, the customer shall agree to a repayment plan in accordance with Section 13 of this regulation which will permit the customer to become current in the payment of his bill as soon as possible but not later than October 15. [elapse from the time of the utility's notification to the customer in writing of the existence of local, state and federal programs, providing for the payment of utility bills under certain conditions and of the offices to contact for such possible assistance. Service shall not be discontinued

when the customer and the utility have reached agreement on a partial payment plan pursuant to subparagraph 1 of this paragraph and the customer is meeting the requirements of the plan. The written notice for any discontinuance of service shall advise the customer of his or her rights under this paragraph and of his or her right to dispute the reasons for such discontinuance.]

[1. Employee available to answer consumer questions and negotiate partial payment plan.]

[a. Every gas and electric utility shall have an employee available to answer questions regarding a customer's bill and to resolve disputes over the amount of such bill. Utilities shall keep the designated employee informed of the commission's regulations regarding customer bills. If a customer indicates to any utility personnel that he or she is experiencing difficulty in meeting a current utility bill, that employee shall be able to refer the customer to the designated employee for explanation of the customer's rights under this paragraph and 807 KAR 5:008. The designated employee shall be authorized to negotiate partial payment plans of an outstanding bill and accept payments where the customer has shown good faith in attempting to meet his or her financial obligations to the utility. Said employee shall be authorized by the utility to consider and shall consider proposals by the customer for a partial payment plan and retention of service. Each gas and electric utility shall also prominently display in each office in which payment is received a summary of the customer's rights under this section and 807 KAR 5:008.]

[b. Each utility shall maintain a telephone, shall publish the telephone number in all service areas, and shall make the necessary provisions so that all customers may contact the utility employee without charge. Such provisions may include a policy allowing customers to make collect calls to the utility.]

[c. Each major utility (as defined by the Uniform System of Accounts) shall have at least one (1) employee available to answer consumer questions and negotiate partial payment plans at the utility's office during the utility's established working hours but not less than seven (7) hours per day, five (5) days per week excluding holidays.]

[d. Each minor utility (as defined as all utilities that are not major utilities under the Uniform System of Accounts) shall have an employee available to answer consumer questions and negotiate partial payment plans at the utility's office during the utility's established office hours but not less than seven (7) hours per day, one (1) day per week.]

[2. Certificate of need from Department for Social Insurance. Federal and statewide energy assistance programs are administered by the Kentucky Cabinet for Human Resources, Department for Social Insurance. Upon written certification from the Department for Social Insurance, issued at one (1) of its offices or the office of its designee, a customer who is eligible for energy assistance under the department's guidelines or is certified as being in genuine financial need, defined as any household with gross income at or below 130 percent of the poverty level, and who has been issued a ten (10) day notice between December 1 and March 1 for nonpayment of a gas or electric bill and who presents such notice to the Department for Social Insurance or its designee, shall be allowed thirty (30) days in addition to such ten (10) day period in which to negotiate a partial payment plan with the utility provided such certification is delivered to the utility during the initial ten (10) day notice period by the applicant in person, by his or her agent, by mail, or by a telephone call from an employee of the Department for Social Insurance or its designee. The thirty (30) day period shall begin to run at the end of the tenth day of the ten (10) day period. When the customer exhibits good faith by offering to make a present payment commensurate with his or her ability to do so and by agreeing to a repayment schedule which would permit the customer to become current in the payment of his or her gas or electric bill as soon as possible but not later than October 15, the utility shall accept such partial payment plan. In addition to advising the customer of his or her rights under this paragraph, the ten (10) day notice or a bill insert sent with the ten (10) day notice shall inform the customer of the telephone number and address of the nearest office of the Kentucky Cabinet for Human Resources, Department for Social Insurance. Referral of such customer to such office of the department may be made by a church, by a charitable or social organization, by a unit of state or local government, or by any other person.]

[3. Budget payment plan. Each jurisdictional gas and electric utility shall develop a budget payment plan whereby a customer may elect to pay a fixed amount each month on a yearly basis in lieu of monthly billings based on actual usage. The provisions of this section relating to partial payments and budget plans shall apply primarily to a utility's residential customers; however, a utility may offer budget payment plans to other classes of customers. It shall be the responsibility of the utility to disseminate information to its customers regarding the availability of such budget payment plan. If the commission finds, upon application, a budget plan for residential customers would materially impair or damage the utility's credit or operations, then it may grant the utility an exemption from the requirements of the budget plan. No exemption may extend beyond one (1) year without another application by the utility and a finding by the commission that said exemption should be allowed.]

[(b) For fraudulent or illegal use of service. When the utility has discovered evidence that by fraudulent or illegal means a customer has obtained unauthorized service or has diverted the service for unauthorized use or has obtained service without same being properly measured, the service to the customer may be discontinued without notice. The utility shall not be required to restore service until the customer has complied with all rules of the utility and regulations of the commission and the utility has been reimbursed for the estimated amount of the service rendered and the cost to the utility incurred by reason of the fraudulent use.]

[(3) A water, sewage or telephone utility may discontinue service under the following conditions:]

[(a) For nonpayment of bills. However, no utility shall discontinue service to any customer for nonpayment of bills (including delayed charges) without first having made a reasonable effort to induce the customer to pay

same. The customer shall be given at least forty-eight (48) hours written notice, but the cutoff shall not be effected before twenty (20) days after the mailing date of the original bill. Such termination notice shall be exclusive of and separate from any bill. The termination notice shall include notification to the customer in writing of the existence of local, state and federal programs providing for the payment of utility bills under certain conditions and of the offices to contact for such possible assistance. If prior to discontinuance of service, there is delivered to the utility office payment of the amount in arrears, then discontinuance of service shall not be made, or where a written certificate is filed signed by a physician, a registered nurse or a public health officer stating that, in the opinion of the person making the certification discontinuance of service will aggravate an existing illness or infirmity on the affected premises, service shall not be discontinued until the affected resident can make other living arrangements or until ten (10) days elapse from the time of the utility's notification.]

[(b) For fraudulent or illegal use of service. When the utility has discovered evidence that by fraudulent or illegal means a customer has obtained unauthorized service or has diverted the service for unauthorized use or has obtained service without same being properly measured, the service to the customer may be discontinued without notice. The utility shall not be required to restore service until the customer has complied with all rules of the utility and regulations of the commission and the utility has been reimbursed for the estimated amount of the service rendered and the cost to the utility incurred by reason of the fraudulent use.]

[(4) It shall be the duty of the utility before making service connections to a new customer to ascertain the condition of the meter and service facilities for such customer in order that prior fraudulent use of the facilities, if any, will not be attributed to the new customer, and the new customer shall be afforded the opportunity to be present at such inspections. The utility shall not be required to render service to such customer until all defects in the customer-owned portion of the service, if any, shall have been corrected.]

[(5) Reconnection. For all cases of refusal or discontinuance of service as herein defined, except as provided in 807 KAR 5:008, where the cause for refusal or discontinuance has been corrected and all rules and regulations of the utility and the commission have been complied with, the utility shall promptly render service to the customer or applicant.]

[(6) When advance notice is required, such notice may be given by the utility by mailing by United States mail, postage prepaid, to the last known address of the applicant or customer.]

Section 15. Winter Hardship Reconnection. (1) Notwithstanding the provisions of Section 13(4) of this regulation to the contrary, an electric or gas utility shall reconnect service to a residential customer who has been disconnected for nonpayment of bills pursuant to Section 14(1)(f) of this regulation prior to application for reconnection, and who applies for such reconnection during the months from November through March if the customer or his agent:

(a) Presents a certificate of need from the Cabinet for Human Resources, Department for Social Insurance, including a certification that a referral for weatherization services has been made in accordance with subsection (3) of this section;

(b) Pays one-third (1/3) of his outstanding bill or $200, whichever is less; and

(c) Agrees to a repayment schedule which would permit the customer to become current in the payment of his electric or gas bill as soon as possible but no later than October 15. However, if, at the time of application for reconnection, the customer has an outstanding bill in excess of $600 and agrees to a repayment plan that would pay current charges and makes a good faith reduction in the outstanding bill consistent with his ability to pay, then such plan shall be accepted. In addition to payment of current charges, repayment schedules shall provide an option to the customer to select either one (1) payment of arrearages per month or more than one (1) payment of arrearages per month.

(2) Certificate of need for reconnection. Federal and statewide energy assistance programs are administered by the Kentucky Cabinet for Human Resources, Department for Social Insurance. A customer who is eligible for energy assistance under the department's guidelines or is certified as being in genuine financial need, which is defined as any household with gross income at or below 130 percent of the poverty level, may obtain a certificate of need from the department to be used in obtaining a service reconnection from the utility.

(3) Weatherization program. Customers obtaining a certificate of need under this regulation shall agree to accept referral to and utilize weatherization services which are administered by the Cabinet for Human Resources. The provision and acceptance of weatherization services is contingent on the availability of funds and other program guidelines. Weatherization services include, but are not limited to, weather stripping, insulation and caulking.

(4) Customers who are current in their payment plans under subsection 1(c) of this section shall not be disconnected.

[Section 12. Special Charges. (1) A utility may make a reasonable charge for each of the following trips:]

[(a) To read a meter when the customer has failed to read the meter for three (3) consecutive billing periods. This pertains only to those utilities whose customers ordinarily read their own meters.]

[(b) To collect a delinquent bill. This trip may be made only after written notice has been sent to the customer stating that if the bill is not paid by a certain date, the service will be disconnected.]

[(c) To reconnect a service that has been disconnected for nonpayment of bills or for violation of the utility's or commission's rules and regulations. This charge may include the cost of disconnecting the service and, in accordance with Section 10 of this regulation, shall not exceed the actual average cost.]

[(2) The charges, however, shall be applied uniformly within reasonable classifications throughout the entire area served by the utility, shall be incorporated in the utility's rules and regulations, shall be subject to the

approval of the commission, and shall yield only enough revenue to pay the expenses incurred in rendering these services.]

Section 16. [13.] Meter Testing. (1) All electric, gas and water utilities furnishing metered service shall provide meter standards and test facilities, as more specifically set out under 807 KAR 5:022, 807 KAR 5:041 and 807 KAR 5:066. Before being installed for [the] use by [of] any customer, all electric, gas and water meters shall be tested and in good working order and shall be adjusted as close to the optimum operating tolerance as possible, as more specifically set out in 807 KAR 5:022, Section 8(3)(a), 807 KAR 5:041, Section 17(1)(a)-(c) and 807 KAR 5:066, Section 15 [16](2)(a)-(b).

(2) A utility may have all or part of its testing of meters performed by another utility or agency approved by the commission for that [such] purpose. Each utility having tests made by another agency or utility shall notify the commission of those [said] arrangements in detail to include make, type and serial number of standards used to make the [said] checks or tests.

(3) No utility shall place in service any basic measurement standard required by these rules unless the calibration [it] has been approved [calibrated] by the commission['s Meter Standards Laboratory]. All utilities or agencies making tests or checks for utility purposes shall notify the commission promptly of the adoption or deletion of any basic standards requiring commission approval of the calibration [by the commission].

(4) Each electric, gas and water utility or agency doing meter testing for a utility shall have in its employ meter testers certified by the [this] commission. These certified meter testers shall perform [such] tests as [may be] necessary to determine the accuracy of the utility's meters and to adjust the utility's meters to the degree of accuracy required by [the regulations of the] commission regulations.

(5) A utility or agency desiring to have its employees certified as meter testers shall submit the names of applicants on the commission's form entitled "Application for Appointment of Meter Testers", and after compliance with the requirements noted in this form, the applicant may be certified as a meter tester and furnished with a card authorizing him [or her] to perform meter tests. This form is hereby incorporated by reference, and may be obtained at the commission's offices at 730 Schenkel Lane, Frankfort, Kentucky, on Monday through Friday between the hours of 8 a.m. and 4:30 p.m. local time.

(6) A utility or agency may employ apprentices in training for certification as meter testers. The apprentice period shall be a minimum of six (6) months, after which the meter tester apprentice shall comply with subsection (5) of this section. All tests performed during this period by an apprentice shall be witnessed by a certified meter tester.

[Section 14. Access to Property. The utility shall at all reasonable hours have access to meters, service connections and other property owned by it and located on customer's premises for purposes of installation, maintenance, meter reading, operation or removal of its property at the time service is to be terminated. Any employee of the utility whose duties require him or her to enter the customer's premises shall wear a distinguishing uniform or other insignia, identifying him or her as an employee of the utility, or carry a badge or other identification which will identify him or her as an employee of the utility, the same to be shown by him or her upon request.]

Section 17. [15.] Meter Test Records. (1)(a) [Test cards.] A complete record of all meter tests and adjustments and data sufficient to allow checking of test calculations shall be recorded by the meter tester. Such record shall include: Information to identify the unit and its location; [the] date of tests; [the] reason for such tests; readings before and after [the] test; [a] statement of "as found" and "as left" accuracies sufficiently complete to permit checking of [the] calculations employed; notations [indications] showing that all required checks have been made; [a] statement of repairs made, if any; [the] identifying number of the meter; [the] type and capacity of the meter; and the meter constant [of the meter].

(b) The complete record of tests of each meter shall be continuous for at least two (2) periodic test periods and shall in no case be less than two (2) years.

(2) Historical records [History]. Each utility shall keep numerically arranged and properly classified records [giving] for each meter owned, [and] used and inventoried by the utility. [for any purpose] The identification number, date of purchase, name of manufacturer, serial number, type, rating, and [the] name and address of each customer on whose premises the meter has been in service with date of installation and removal shall be included in the records. These records shall also contain [give] condensed information concerning all tests and adjustments including dates and general results of such adjustments. The records shall reflect [be of such character that a system can be used that will record] the date of the last test and indicate the proper date for the next periodic test required by the applicable [regulation of the] commission regulation.

(3) Sealing of meters. Upon completion of adjustment and test of any meter pursuant to [under the provisions of the regulations of the] commission regulations, the utility shall affix to the meter [thereto] a suitable seal in such a manner that adjustments or registration of the meter cannot be altered [tampered with] without breaking the seal. [The seal shall be of a type acceptable to the commission.]

(4) A utility may store any or all of the meter test and historical data described or required in subsections (1) and (2) of this section in a computer storage and retrieval system upon notification to the commission. If a utility elects to use a computer storage and retrieval system, a back-up copy of the identical information shall be retained.

[Section 16. Pole Identification. (1) Each utility owning poles or other structures supporting the company's wires, shall mark every pole or structure located within a built-up community with the initials or other distinguishing mark by which the owner of every such structure may be readily determined. For the purpose of this rule the term "built-up

community" shall mean urban areas and those areas immediately adjacent thereto.]

[(2) Identification marks may be of any type but must be of a permanent material and shall be of such size and so spaced and hereafter maintained so as to be easily read from the surface of the ground at a distance of six (6) feet from the structure.]

[(3) When utilities' structures are located outside of a built-up community only every tenth structure need be so marked.]

[(4) All junction structures shall bear the identification mark and structure number of the owner.]

[(5) Poles need not be marked if they are clearly and unmistakably identifiable as the property of the utility.]

[(6) Each utility shall either number their structures and maintain a numbering system or use some other method of identification so that each structure in the system may be easily identified.]

[(7) The requirements herein shall apply to all existing structures and those hereafter erected and to all changes in ownership.]

Section 18. Request Tests. (1) Each utility shall make a test of any meter upon written request of any customer if the request is not made more frequently than once each twelve (12) months. The customer shall be given the opportunity to be present at the request tests. If the tests show that the meter was not more than two (2) percent fast, the utility may make a reasonable charge for the test. The amount of the charge shall be approved by the commission and set out in the utility's filed tariff.

(2) After having first obtained a test from the utility, any customer of the utility may request a meter test by the commission upon written application. Such request shall not be made more frequently than once each twelve (12) months.

[Section 17. Cable Television Pole Attachments and Conduit Use. (1) Each utility owning poles or other facilities conducting the company's wires shall permit cable television system operators who have all necessary licenses and permits to attach cables to such poles and to use such facilities, as customers, for transmission of signals to their patrons.]

[(2) The rates, terms and conditions on which such use of the utility's facilities are made shall be set forth in the tariffs of the utilities, which shall be prepared and filed in accordance with the regulations of the commission governing tariffs generally.]

[(3) With respect to a complaint proceeding in any individual matter concerning cable television pole attachments before the commission, final action shall be taken on the same within a reasonable time, but in no event to exceed 360 days.]

Section 19. Access to Property. The utility shall at all reasonable hours have access to meters, service connections and other property owned by it and located on customer's premises for purposes of installation, maintenance, meter reading, operation, replacement or removal of its property at the time service is to be terminated. Any employee of the utility whose duties require him to enter the customer's premises shall wear a distinguishing uniform or other insignia, identifying him as an employee of the utility, or show a badge or other identification which will identify him as an employee of the utility.

[Section 18. System Maps and Records. (1) Each utility shall have on file at its principal office located within the state and shall file upon request with the commission a map or maps of suitable scale of the general territory it serves or holds itself ready to serve showing the following:]

[(a) Operating districts.]

[(b) Rate districts.]

[(c) Communities served.]

[(d) Location and size of transmission lines, distribution lines and service connections.]

[(e) Location and layout of all principal items of plant.]

[(f) The date of construction of all items of plant by year and month.]

[(2) In each division or district office there shall be available such information relative to the utility's system as will enable the local representative to furnish necessary information regarding the rendering of service to existing and prospective customers.]

[(3) In lieu of showing the above information on maps a card record or suitable means may be used. For all construction the records shall also show the date of construction by month and year.]

Section 20. Pole Identification. (1) Each utility owning poles or other structures supporting its wires, shall mark every pole or structure located within a built-up community with the initials or other distinguishing mark by which the owner of every such structure can be readily determined. For the purpose of this rule the term "built-up community" shall mean urban areas and those areas immediately adjacent thereto.

(2) Identification marks may be of any type but shall be of a permanent material and shall be easily read from the ground at a distance of six (6) feet from the structure.

(3) If utilities' structures are located outside of a built-up community, at least every tenth structure shall be marked as set forth in subsection (2) of this section.

(4) All junction structures shall bear the identification mark and structure number of the owner.

(5) Poles need not be marked if they are clearly and unmistakably identifiable as the property of the utility.

(6) Each utility shall either number its structures and maintain a numbering system or use some other method of identification so that each structure in the system can be easily identified.

[Section 19. Location of Records. All records required by the regulations of the commission shall be kept in the principal office of the utility or other acceptable safe storage place, and shall be made available to representatives, agents or employees of the commission upon reasonable notice and at all reasonable hours.]

Section 21. Cable Television Pole Attachments and Conduit Use. (1) Each utility owning poles or other facilities supporting its wires shall permit cable television system operators who

have all necessary licenses and permits to attach cables to poles and to use facilities, as customers, for transmission of signals to their patrons.

(2) The tariffs of the utility shall set forth the rates, terms and conditions under which the utility's facilities may be used.

(3) With respect to a complaint before the commission in any individual matter concerning cable television pole attachments final action shall be taken on the matter within a reasonable time, but no later than 360 days after filing of the complaint.

(4) If a regulated utility attaches its facilities to a pole it does not own, the regulated utility shall be responsible for assuring that its facilities comply with commission regulations and applicable codes. If the owner of the pole is a regulated utility, the pole owner shall be jointly responsible with the utility attaching its facilities for assuring that the attached facilities comply with commission regulations and applicable codes. However, the pole owner shall be jointly responsible for noncompliance only if it has actual knowledge of noncompliance or is charged with constructive knowledge through the regular inspections of its facilities prescribed in Section 25 of this regulation.

(5) If a party which is not subject to commission jurisdiction attaches its facilities to a pole owned by a regulated utility, the owner of the pole shall be responsible for compliance with commission regulations and applicable codes. However, the pole owner shall be responsible for noncompliance only if it has actual knowledge of noncompliance or is charged with constructive knowledge through the regular inspections of its facilities prescribed in Section 25 of this regulation.

[Section 20. Request Tests. Each utility shall make a test of any meter upon written request of any customer provided such request is not made more frequently than once each twelve (12) months. The customer shall be given the opportunity of being present at such request tests. If such tests show that the meter was not more than two (2) percent fast, the utility may make a reasonable charge for the test, the amount of such charge to be set out in the utility's rules and regulations filed with the commission, and subject to the approval of the commission.]

Section 22. System Maps and Records. (1) Each utility shall have on file at its principal office located within the state and shall file upon request with the commission a map or maps of suitable scale of the general territory it serves or holds itself ready to serve showing the following:

(a) Operating districts.

(b) Rate districts.

(c) Communities served.

(d) Location and size of transmission lines, distribution lines and service connections.

(e) Location and layout of all principal items of plant.

(f) Date of construction of all items of plant by year and month.

(2) In each division or district office there shall be available information relative to the utility's system that will enable the local representative to furnish necessary information regarding the rendering of service to existing and prospective customers.

(3) In lieu of showing the above information on maps, a card record or other suitable means may be used. For all construction the records shall also show the date of construction by month and year.

[Section 21. Complaint Tests. Any customer of the utility may request a meter test by written application to the commission, after having first obtained a test from the utility. Such request may not be made more frequently than once each twelve (12) months.]

Section 23. Location of Records. All records required by commission regulations shall be kept in the office of the utility and shall be made available to representatives, agents or staff of the commission upon reasonable notice at all reasonable hours.

Section 24. [22.] Safety Program. Each utility shall adopt and execute a safety program, appropriate [fitted] to the size and type of its operations. At [As] a minimum, the safety program shall:

(1) Establish a safety manual with written guidelines for safe working practices and procedures to be followed by utility employees [Require employees to use suitable tools and equipment in order that they may perform their work in a safe manner].

(2) Instruct employees in safe methods of performing their work.

(3) Instruct employees who, in the course of their work, are subject to the hazard of electrical shock, asphyxiation or drowning, in accepted methods of artificial respiration.

Section 25. [23.] Inspection of Systems. (1) Each utility shall adopt inspection procedures [for inspection] to assure safe and adequate operation of its facilities and compliance with commission rules and regulations. These procedures shall [must] be filed with [approved by] the commission for review.

(2) Upon receipt of a report of a potentially hazardous condition at any utility facility made by a qualified employee, public official, or customer, the utility shall inspect all portions of the system which are the subject of the report.

(3) Appropriate records shall be kept by each utility to identify the inspection made, deficiencies found and action taken to correct the deficiencies.

(4) Electric utility inspection. Each electric utility shall make systematic inspections of its system in the manner set out below to insure [for the purpose of insuring] that the commission's safety requirements are being met. These [Such] inspections shall be made as often as necessary but not [in no event] less frequently than is set forth below for various classes of facilities and types of inspection.

(a) As a part of operating procedure, each utility shall continuously monitor and inspect all production facilities regularly operated and manned.

(b) At intervals not to exceed six (6) months, the utility shall inspect:

[1. Production facilities regularly operated and manned; continuous surveillance, monitoring and inspection as a part of operating procedure.]

1. [2.] Unmanned production facilities, including peaking units not on standby status, [; units shall be operated and inspected] and all monitoring devices, for any [shall be checked to determine that there is no] evidence of abnormality.

2. [3.] Substations where the primary voltage is sixty-nine (69) KV or greater, for [; examination for the purpose of discovering] damage to or deterioration of components including structures, fences, gauges [and fences; checking of all gauges and] monitoring devices.

3. [4.] Underground network transformers and network protectors in vaults located in buildings or under sidewalks, [examination] for leaks, condition of case, connections, temperature and overloading.

4. [5.] Electric lines operating at sixty-nine (69) KV or greater, including insulators, conductors, and supporting facilities, for damage or deterioration.

(c) [(b)] At intervals not to exceed one (1) year, the utility shall inspect:

1. Production facilities maintained on a standby status. [; also inspection and examination prior to any start up,] Except for remotely controlled facilities, all production facilities shall also be thoroughly inspected.

2. Substations with [where the] primary voltage of [is less than sixty-nine (69) KV but is] fifteen (15) to sixty-eight (68) KV [or greater].

(d) [(c)] At intervals not to exceed two (2) years, the utility shall inspect [:] electric lines operating at voltages of less than sixty-nine (69) KV, including insulators, conductors and supporting facilities.

(e) [(d)] The utility shall inspect other facilities as follows.

1. Utility buildings shall be inspected for compliance with safety codes at least annually [intervals not greater than one (1) year].

2. Construction equipment shall be inspected for defects, wear and operational hazards at least [intervals not greater than] quarterly.

(f) [(e)] Aerial inspections shall not be used as the sole basis for evidence of compliance with commission regulations. [On the receipt of a report of a potentially hazardous condition made by a qualified employee or public official or by a customer, all portions of the system (including those listed above) which are the subject of the report.]

[(f) Appropriate records shall be kept by each utility to identify the inspections made, deficiencies found and action taken to correct such deficiencies.]

(5) Gas utility inspection. [(3)] Each gas utility shall make systematic inspections of its system to insure [for the purpose of insuring] that the commission's safety requirements are being met. These [Such] inspections shall be made as often as necessary but not [in no event] less frequently than is prescribed or recommended by the Department of Transportation, 49 CFR Part 192 Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards, for the various classes of facilities [as defined in said standards, in accordance with the inspection procedures described therein].

(a) [(4)] The following maximum time intervals are prescribed for certain inspections provided for in 49 CFR Part 192 Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards, with respect to which intervals are not specified, and for certain additional inspections not provided for in such code.

1. [(a)] At intervals not to exceed every fifteen (15) months but at least once each calendar year, the utility shall inspect and visually examine [one (1) year]:

a. [1.] Production wells, storage wells, and well equipment, including their [; visual inspection and examination of all] exterior components.

b. [2.] Pressure limiting stations, relief devices, [and] pressure regulating stations, and [including] vaults.

c. Accessibility of [3.] the curb box and valve on a service line [shall be inspected for accessibility].

2. The utility shall inspect [(b)] other facilities as follows:

a. [1.] Utility buildings shall be inspected for compliance with safety codes at least annually.

b. [2.] Construction equipment under the control of the utility shall be inspected for defects, wear and operational hazards at least quarterly.

(b) [(c)] At intervals not to exceed the periodic meter test intervals, individual residential customer service regulators, vents and relief valve vents shall be checked for satisfactory operation.

(c) [(d)] At intervals not to exceed the periodic meter test intervals, the curb box and valve on the service line shall be inspected for operable condition.

(d) Aerial inspections shall not be used as the sole basis for evidence of compliance with commission regulations.

[(e) On the receipt of a report of a potentially hazardous condition made by a qualified employee or public official or by a customer, all portions of the system (including those listed above) which are the subject of the report.]

[(f) Appropriate records shall be kept by each utility to identify the inspections made, deficiencies found and action taken to correct such deficiencies.]

(6) [(5)(a)] Water utility inspections. Each water utility shall make systematic inspections of its system in the manner set out below to insure [for the purpose of insuring] that the commission's safety requirements are being met. These [Such] inspections shall be made as often as necessary but not [in no event] less frequently than is set forth below for various classes of facilities and types of inspection.

(a) The utility shall annually inspect all structures pertaining to source of supply for their safety and physical and structural integrity, including dams, intakes, and traveling screens. The utility shall semiannually inspect supply wells, their motors and structures, including electric power wiring and controls for proper and safe operation.

(b) The utility shall annually inspect all structures pertaining to purification for their safety, physical and structural integrity and for leaks, including sedimentation basins, filters, and clear wells; chemical feed equipment; pumping equipment and water storage facilities, including electric power wiring and controls; hydrants, mains, and valves.

(c) The utility shall monthly inspect construction equipment and vehicles for defects, wear, operational hazards, lubrication, and safety features.

[1. Source of supply.]

[a. Dams, physical and structural, annually.]

[b. Intake structures, physical and structural, annually.]

[c. Traveling screens, physical and structural and safety of operation, annually.]

[2. Purification.]

[a. Sedimentation basins filters and clear wells, physical and structural and safety of operation, annually.]

[b. Chemical feed equipment, for proper and safe operation, annually.]

[c. Pumping equipment including electric power wiring and controls, for proper and safe operation, annually.]

[d. Hydrants, for proper and safe operation, annually.]

[e. Utility buildings, inspection for compliance with safety codes, annually.]

[f. Construction equipment, inspection for defects, wear and operational hazards, quarterly.]

[g. Mains and valves, leaks, annually.]

[(b) On the receipt of a report of a potentially hazardous condition made by a qualified employee or public official or by a customer, all portions of the system (including those listed above) which are the subject of the report.]

[(c) Appropriate records shall be kept by each utility to identify the inspections made, deficiencies found and action taken to correct such deficiencies.]

(7) Telephone utility inspection. [(6)(a)] Each telephone utility shall make systematic inspections of its system in the manner set out below to insure [for the purpose of insuring] that the commission's safety requirements are being met. Such inspections shall be made as often as necessary but not [in no event] less frequently than is set forth below for various classes of facilities and types of inspection.

(a) The utility shall inspect [1.] aerial plant[. Inspection] for electrical hazards, proper clearance for electric facilities and climbing safety every two (2) years.

(b) The utility shall inspect [2.] underground plant[. Inspection] for presence of gas, proper clearance from electric facilities and safe working conditions at least annually.

(c) The utility shall inspect [3.] utility-provided station equipment and connections[. Inspection] for external electrical hazards, damaged instruments or wiring, appropriate protection from lightning and safe location of equipment and wiring when on a customer's premises.

(d) The utility shall inspect [4.] utility buildings[. Inspection] for compliance with safety codes at least annually.

(e) The utility shall inspect [5.] construction equipment[. Inspection] for defects, wear and operational hazards at least quarterly.

(f) Aerial inspections shall not be used as the sole basis for evidence of compliance with commission regulations.

[(b) On the receipt of a report of a potentially hazardous condition made by a qualified employee or public official or by a customer, all portions of the system (including those listed above) which are the subject of the report.]

[(c) Appropriate records shall be kept by each utility to identify the inspections made, deficiencies found and action taken to correct such deficiencies.]

(8) Sewage utility inspection. Each sewage utility shall make systematic inspections of its system in the manner set out below to insure that the commission's safety requirements are being met. Such inspections shall be made as often as necessary but not less frequently than is set out below for the various types of inspections, or as otherwise required in 807 KAR 5:071.

(a) The utility shall annually inspect collecting sewers and manholes on a scheduled basis unless conditions warrant more frequent inspections.

(b) The utility shall weekly inspect all mechanical equipment unless otherwise authorized by the commission.

Section 26. [24.] Reporting of Accidents, Property Damage or Loss of Service. (1) Within two (2) hours following discovery each utility, other than a natural gas utility, shall notify the commission by telephone or electronic mail of any utility related accident which results in:

(a) Death; or shock or burn requiring medical treatment at a hospital or similar medical facility, or any accident requiring inpatient overnight hospitalization [serious injury to any person];

(b) Actual or potential [or any other incident which has or may result in substantial] property damage [or substantial loss] of $25,000 or more; or

(c) Loss of service for four (4) or more hours to ten (10) percent or 500 or more of the utility's customers, whichever is less [Prompt notice of fatal accidents shall be given to the commission by telephone or telegraph].

(2) A summary written report shall be submitted by the utility to the commission within seven (7) calendar days of the utility related accident.

(3) Natural gas utilities shall report utility related accidents in accordance with the provisions of 807 KAR 5:027.

Section 27. [25.] Deviations from Regulation [Rules]. In special cases, for good cause shown, the commission may permit deviations from this regulation [these rules].

Section 28. 807 KAR 5:008, Winter hardship reconnection of residential electric and gas service, is hereby repealed.

ROBERT M. DAVIS, Vice Chairman
THEODORE T. COLLEY, Secretary

APPROVED BY AGENCY: November 15, 1991

FILED WITH LRC: November 15, 1991 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 23, 1991 at 10 a.m., Eastern Standard Time, in Hearing Room 1 of the Commission's offices at 730 Schenkel Lane, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by December 18, 1991, five days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be

cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is 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: Lee M. MacCracken, Executive Director, Public Service Commission, 730 Schenkel Lane, P.O. Box 615, Frankfort, Kentucky 40602.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Lee M. MacCracken

(1) Type and number of entities affected: This regulation affects in varying degrees all types and forms of gas, electric, telephone, water and sewer utilities under the jurisdiction of the commission.

(a) Direct and indirect costs or savings to those affected: Amendments to certain sections of this regulation increase reporting requirements or actions by the utilities with regard to customer service-related actions. Other amendments clarify the utility's or customer's responsibility in certain situations which either decrease the existing costs on the utility or customer or do not affect the costs related to compliance. Most changes to this regulation represent editorial or language changes which do not affect the substance of the regulation but clarify the meaning and conform the language to KRS Chapter 13A requirements.

1. First year: Any increase or decrease in costs will be incurred the first year, but such costs are not considered significant.

2. Continuing costs or savings: Any increase in costs incurred or decrease in costs realized will occur on a continuing basis.

3. Additional factors increasing or decreasing costs (note any effects upon competition): The extent to which additional costs, if any, are incurred due to certain amendments proposed in this regulation will depend upon the particular rules and regulations of each utility which exist in its tariff on file with the commission. Since the regulation applies to each type of utility equally, none of the proposed changes should affect the utility's ability to compete.

(b) Reporting and paperwork requirements: A few of the proposed amendments require additional reporting requirements with regard to customer service-related actions.

(2) Effects on the promulgating administrative body: There will be no effects on the agency except as related to monitoring of additional reports required to be filed.

(a) Direct and indirect costs or savings: There will be no fiscal impact on the agency.

1. First year: No fiscal impact the first year.

2. Continuing costs or savings: There are no continuing costs or savings.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There are none which will have a significant cost impact on the agency.

(3) Assessment of anticipated effect on state and local revenues: There should be no impact on state and local revenues from the proposed amendments to this regulation.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The amendments proposed to this regulation are the product of a review process which included the utility industry, representatives of the general public and commission staff. Virtually all of the proposed amendments represent a consensus among the parties who participated in the review. In the few instances where a disagreement remains regarding a proposed change which has or has not been proposed, the commission has concluded the proposed amendments submitted are in the best interests of the utilities' customers; are not unduly burdensome to the type of utility affected; and will allow utilities to provide their service in the most economical, efficient, and safe manner to its customers.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: The proposed changes do not conflict with current laws and regulations.

(a) Necessity of proposed regulation if in conflict: No conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict.

(6) Any additional information or comments: No additional comments.

TIERING: Was tiering applied? No. Tiering was not necessary since this is not a new regulation.

PUBLIC PROTECTION AND REGULATION CABINET
Public Service Commission
(Proposed Amendment)

807 KAR 5:066. Water.

RELATES TO: KRS Chapter 278
STATUTORY AUTHORITY: KRS 278.280(2)
NECESSITY AND FUNCTION: KRS 278.280(2) provides that the Public Service Commission (hereinafter referred to as "commission") shall prescribe rules for the performance of any service or the furnishing of any commodity by the utility. This regulation establishes general rules which apply to water utilities.

[Section 1. General. The purpose of this regulation is to provide standard rules and regulations governing the service of water utilities operating under the jurisdiction of the Public Service Commission.]

Section 1. [2.] Definitions. (1) "Customer" means, in addition to the definition in 807 KAR 5:006, Section 1(2), a person who purchases water from a utility's water loading station.

(2) [(3)] "Distribution main" means a line from which service connections with customers are taken at frequent intervals.

(3) "Fire hydrant" means an installation which a member of the public could reasonably expect to provide fire protection.

(4) [(1)] "Meter" means any device used for the purpose of measuring the quantity of water delivered by a utility to a customer.

(5) " [(6) "Department for] Natural Resources Cabinet" means the state [Kentucky Department for] Natural Resources and Environmental Protection Cabinet, Department for Environmental Protection, [Bureau of Environmental Quality,] Division of Water [Sanitary Engineering].

(6) "Point of service" means the outlet of a customer's water meter, or valve if no meter is placed.

(7) [(5)] "Service connection" means the line from the main to the customer's point of service [property line], and shall include [all of] the pipe fittings and valves necessary to make the connection.

(8) [(4)] "Service line" means the water line from the point of service [property line] to the place of consumption.

(9) [(2)] "Transmission main" means a line which is used for conveying water to the distribution system, reservoirs, tanks or stand pipes, and has generally no service connections with customers.

Section 2. [3.] Information Available to Customers. A utility shall provide the following information to any customer upon request:

(1) Characteristics of water. A description in writing of [the treated water as to] chemical constituents and bacteriological standards of the treated water as required by the Natural Resources Cabinet.

(2) Rates. A schedule of rates for water service applicable to the service to be rendered to the customer.

(3) Reading meters. Information about method of reading meters.

(4) Bill analysis. A statement of the past readings of a customer's meter for a period of two (2) years.

Section 3. [4.] Quality of Water. [(1) General. Any utility furnishing water service for human consumption or for domestic uses shall provide water that is wholesome, potable, free from objectionable odors and taste, and not harmful or dangerous to public health.]

(1) [(2)] Compliance with [Department for] Natural Resources Cabinet. Any utility furnishing water service for human consumption or domestic use shall conform to all legal requirements of the [Department for] Natural Resources Cabinet for construction and operation of its water system as pertains to sanitation and potability of the water.

(2) [(3)] Water supply. In absence of comparable requirements of the [Department for] Natural Resources Cabinet, water supplied by any utility shall be:

(a) Adequately protected by artificial treatment to include continuous disinfection throughout the distribution system;

(b) Free from objectionable color, turbidity, taste, and odor; and

(c) From a source reasonably adequate to provide a continuous supply of water.

[(d) Of such quality at all times as to meet the "Public Health Service Drinking Water Standards," Revised 1962 edition, Publication No. 956, U. S. Government Printing Office, Washington, D. C. 20402; herein filed by reference.]

(3) [(4)] Operation of supply system.

(a) Sanitary conditions. The water supply system, including wells, reservoirs, pumping equipment, treatment works, mains, and service pipes shall be free from sanitary defects.

(b) Potable water connections. No utility shall make a physical connection between its [the] distribution system and that of any other [a public potable] water supply [and that of any other water supply shall be permitted,] unless the [such] other water supply maintains a safe sanitary quality in accordance with this regulation, and the utility provides notice to the commission prior to any such interconnections [of the supplies are approved by the commission].

(c) Algae growth. The growth of algae in [the] water at the source of supply, in reservoirs or other basins, and in [the] water mains, shall be controlled by proper treatment.

(d) Well integrity. Utilities obtaining water supplies from driven or drilled wells must maintain the tightness of well casings and provide protection at the ground surface [of the ground] to prevent [the] infiltration of water other than that from [the] strata tapped by such wells. Wells shall be a minimum of [and] 300 feet from any source of pollution.

(4) [(5)] Testing of water.

(a) Test. Each utility shall have representative samples of its water [supplied by it] examined by the appropriate state or local agency [department for natural resources] or by a competent chemist and bacteriologist skilled in the sanitary examination of water, under methods approved by the [State Department for] Natural Resources Cabinet, [at intervals sufficient] to insure a safe water supply.

(b) Report to the commission. If a utility is required by the Natural Resources Cabinet to make a public notification pursuant to regulations of the Natural Resources Cabinet, the utility shall provide the commission with a copy of the public notification when it is made. [In the event that the above prescribed tests show that the water furnished by the utility is contaminated or otherwise unsafe for human consumption, the utility shall forward a report of such test to the commission or other state agency having correctional jurisdiction without delay, and shall take immediate steps to correct the condition.]

Section 4. [5.] Continuity of Service. (1) Emergency interruptions. Each utility shall make all reasonable efforts to prevent interruptions of service and when such interruptions occur shall endeavor to reestablish service with the shortest possible delay consistent with the safety of its consumers and the general public. If [Where] an emergency interruption of service affects [the] service to any public fire protection device, the utility shall immediately notify the fire chief or other public official responsible for [the] fire protection.

(2) Scheduled interruptions. If [Whenever] any utility finds it necessary to schedule an interruption of its service, it shall notify all customers to be affected by the interruption, stating the time and anticipated duration of the interruption. Whenever possible, scheduled interruptions shall be made at [such] hours of [as will provide] least inconvenience to [the] customers. If [Where] public fire protection is provided by [the] mains affected by the interruptions, the utility shall notify the fire chief or other officials responsible for fire protection of the interruption, stating the time and anticipated duration. The fire chief or other official responsible for fire protection shall be notified immediately upon restoration of service.

(3) Standby equipment. The utility shall have available standby pumps capable of providing the maximum daily pumping demand of the system for

use when any pump is out of service. [When the system pressure is maintained by mechanical means, emergency standby pumping equipment shall be provided to maintain a reasonable pressure in the main in the event of failure of the primary pumping facilities.]

(4) Storage. The minimum storage capacity for systems shall be equal to the average daily consumption. [Each utility shall provide water storage to insure a minimum of one (1) days supply of its average daily water usage or such minimum amount deemed adequate by the commission.]

(5) Record of interruptions. Each utility shall keep a complete record of all interruptions on its entire system or on major divisions of that system [thereof]. This record shall show the cause of interruption, date, time, duration, remedy and steps taken to prevent recurrence.

Section 5. [6.] Pressures. (1) Standard pressure. Each utility shall, subject to the approval of the commission, adopt and maintain a standard pressure in its distribution system at locations to be designated as the point or points of "standard pressure." The selection of such points shall be confined to locations fairly representative of average conditions. In selecting points for fixed standard pressure, a utility may divide its distribution system into districts if [, when] division is necessary due to differences of elevation or loss of pressure because of friction, or [due to] both, [of said causes;] and may either adopt a standard pressure for each [such] division or [it may] establish a single standard pressure for its distribution system as a whole. In no case shall the constant difference between the highest and lowest pressures in a district for which a standard has been adopted exceed fifty (50) percent of such standard. In the interpretation of this rule it shall be understood that in districts of widely varying elevations or low customer density a utility may undertake to furnish a service which does not comply with the foregoing specifications if the customer is fully advised of the conditions under which average service may be expected. It shall be understood that nothing shall prevent the commission from requiring improvements when, upon investigation, it appears right and proper that such betterments should be made. In no event, however, shall the pressure at the customer's service pipe under normal conditions fall below thirty (30) psig nor shall the static pressure exceed 150 psig.

(2) Pressure gauges. Each utility shall provide itself with one (1) or more recording pressure gauges to make [for the purpose of making] pressure surveys as required by these rules. These gauges shall be suitable to record the pressure experienced on the utility's system and shall be able to record a continuous twenty-four (24) hour test. One (1) of these recording pressure gauges shall be maintained for a minimum of one (1) week per month in continuous service at some representative point on the utility's mains.

(3) Pressure surveys. At least once annually, each utility shall make a survey of pressures in its distribution system of sufficient magnitude to indicate the quality of service being rendered at representative points in its system. [The] Pressure charts for these surveys shall show the date and time of beginning and end of the test and the location at which the test was made. Records of these pressure surveys shall be maintained at the utility's principal office in Kentucky [the state] and shall be made available to the commission upon request.

Section 6. [7.] Water Supply Measurement. (1) Measuring devices. Each utility shall install a suitable measuring device at each source of supply so [in order] that a record may be maintained of the quantity of water produced by each source.

(2) Records. [At least once each month,] The quantity of water produced or purchased for resale to customers from each source of supply shall be determined on a monthly basis. The volumes of water distributed to customers and the volume used by the utility shall be determined in the same manner. Twelve (12) month totals of the volumes produced or purchased from each source of supply, distributed to customers, and used by the utility shall be recorded separately and transmitted to the commission [by sources shall be recorded and transmitted to the commission] in the utility's annual report to the commission.

(3) Unaccounted-for water loss. Except for purchased water rate adjustments for water districts and water associations, and rate adjustments pursuant to KRS 278.023(4), for rate making purposes a utility's unaccounted-for water loss shall not exceed fifteen (15) percent of total water produced and purchased, excluding water used by a utility in its own operations. Upon application by a utility in a rate case filing or by separate filing, or upon motion by the commission, an alternative level of reasonable unaccounted-for water loss may be established by the commission. A utility proposing an alternative level shall have the burden of demonstrating that the alternative level is more reasonable than the level prescribed in this section.

Section 7. [8.] Standards of Construction. [The] Design and construction of the utility's facilities [water plant] shall conform to good standard engineering practice. [The] Plans and specifications for water supplies shall be prepared by an engineer registered in [the State of] Kentucky, with the submitted plans bearing the engineer's seal. The utility's facilities [plant] shall be designed, constructed and operated so as to provide adequate and safe service to its customers and shall conform to [the] requirements of the [Department for] Natural Resources Cabinet with reference to sanitation and potability of water.

Section 8. [9.] Distribution Mains. (1) Depth of mains. Water mains shall be placed a minimum of twenty-four (24) inches below ground level and shall be protected sufficiently to prevent freezing during the coldest weather normally experienced in the community in which laid, and to prevent damage by traffic.

(2) Dead ends. In order to provide increased reliability of service and reduce head loss, dead ends shall be minimized by making appropriate tie-ins whenever practicable. Where dead ends occur they shall be provided with a fire hydrant, if flow and pressure are sufficient to meet the requirements of Section 10(2)(b) of this regulation, or with an approved

flushing hydrant or blowoff for flushing purposes. Flushing devices shall be sized to provide flows which will give a velocity of at least two and one-half (2.5) feet per second in the water main being flushed. No flushing device shall be directly connected to any sewer. Mains with dead ends shall be flushed at least once each year but more often if necessary to maintain the quality of the water. [Insofar as practicable, the utility shall design its distribution system so as to avoid dead ends in its mains. Where dead ends are necessary, the utility shall provide hydrants or valves for the purpose of flushing the mains. Mains with dead ends shall be flushed as often as necessary to maintain the quality of the water; but in any event they shall be flushed at least once each year.]

(3) Segmentation of system. Valves or stopcocks shall be provided at reasonable intervals in the mains so that repairs may be made with the least possible interruption of service. [affected with interruptions to the service of as few customers as is practicable.]

(4) Disinfection of water mains. All new mains shall be thoroughly disinfected before being connected to the system. The method of disinfecting shall comply [be in compliance] with requirements of the [Department of] Natural Resources Cabinet.

(5) Grid systems. Wherever feasible the distribution system shall be laid out in a grid to facilitate identification of line location and minimize service interruptions caused by [so that in case of] breaks or repairs [the interruptions of service to the customers will be at a minimum].

Section 9. [10.] Service Lines. (1) Size of service line. The size, design, [and] material and installation of the service line shall conform to such reasonable requirements of the utility as may be incorporated in its rules and regulations. [, provided,] However, [that] the minimum size of the line shall not be less than three-fourths (3/4) inch nominal size except under unusual circumstances which shall be clearly defined.

(2) Depth of service line. All service lines shall be laid at a depth sufficient to prevent freezing during the coldest weather normally experienced except where services are not intended for use during freezing weather and are actually drained during such periods.

(3) Inspection of service line. In the installation of the [a] service line, the utility shall require the customer to [shall] leave the trench open and pipe uncovered, and the utility shall inspect the line to determine it is [until it is inspected by the utility and shown to be] free from any tee, branch connection, irregularity or defect. The utility may substitute for its inspection an inspection by the appropriate state or local plumbing inspector, if proof of that inspection is presented to the utility by the customer.

Section 10. [11.] Construction Requirements. (1) The system shall be adequate to deliver all reasonable water requirements of its customers and meet the requirements of Section 5 [6](1) of this regulation except under emergency conditions.

(2) Distribution system.

(a) Minimum pipe sizes. The distribution system shall be of adequate size and so designed in conjunction with related facilities to maintain the minimum pressures required by Sections 5 [6](1) and 7 of this regulation. The maximum length of any individual small pipe line shall be as follows:

	Circulating	Non-Circulating
1 inch nominal size	150 feet	100 feet
1 1/2 inch nominal size	300 feet	200 feet
2 inch nominal size	500 feet	250 feet

In the case of rural water lines, if [where] hydraulic studies indicate they can comply with Section 5 [6](1) of this regulation and can provide adequate flow of water to serve the peak requirements of customers, the above maximum extension lengths may be extended with approval of the commission.

(b) Fire protection. Fire hydrants may be installed by a utility only on six (6) inch or larger water mains and only when a professional engineer with a Kentucky registration certifies that adequate and reliable fire flows can be obtained in conformance with good standard engineering practice. The [Specifications,] location, installation, and the responsibility for [the] maintenance of fire hydrants, public and private fire protection facilities, connecting mains, and their ownership may be subject to negotiation between the utility and the applicant. Fire hydrants and public and private fire protection facilities shall be installed as required by the utility and if [when] owned by the utility shall be subject to any [such] conditions [as] the commission may impose, based upon the compensation received for this service.

(3) Transmission systems. [The] Transmission pipe lines from sources of supply shall be designed to deliver in combination with related storage facilities and to the limits of the capacity of those sources of supply the maximum requirements of that portion of the system which is dependent upon such transmission pipe lines.

(4) Water supply requirements. The quantity of water delivered to the utility's distribution system from all source facilities shall be sufficient to supply adequately, dependably and safely the total reasonable requirements of its customers under maximum consumption[, and shall be determined so as to maintain the specified pressures as required by Section 6(1) of this regulation].

(5) Materials. Metallic and nonmetallic materials may be used separately and in combination to construct component parts of a water system including, but not limited to, conduits, pipes, couplings, caulking materials, protective linings and coatings, services, valves, hydrants, pumps, tanks and reservoirs, provided:

(a) The material shall have a reasonable useful service life.

(b) The material shall be capable of withstanding with ample safety factors the internal and external forces to which it may be subjected in service.

(c) The material shall not cause the deterioration of the potability of the water supply.

(d) Materials and equipment shall be so selected as to mitigate corrosion, electrolysis and deterioration.

Section 11. [12.] Extension of Service. (1) Normal extension. An extension of fifty (50) feet or less shall be made by a utility to its existing distribution main without charge for a prospective customer who shall apply for and contract to use service for one (1) year or more [and provides a guarantee for such service].

(2) Other extensions.

(a) When an extension of the utility's main to serve an applicant or group of applicants amounts to more than fifty (50) feet per applicant, the utility may if not inconsistent with its filed tariff require the total cost of the excessive footage over fifty (50) feet per customer to be deposited with the utility by the applicant or the applicants, based on the average estimated cost per foot of the total extension.

(b) Each customer who paid for [receiving] service under such extension shall [will] be reimbursed under one (1) of the following plans, which shall be included in the utility's filed tariff:

1. Each year, for a refund period of not less than ten (10) years, [which for the purpose of this rule shall be the refund period,] the utility shall refund to the customer or customers who paid for the excessive footage the cost of fifty (50) feet of the extension in place for each additional customer connected during the year whose service line is directly connected to the extension installed and not to extensions or laterals therefrom. [, but in no case shall the] Total amount refunded shall not exceed the amount paid the utility. [After the end of the refund period,] No refund shall [will be required to] be made after the refund period ends.

2. As an alternative to the refund plan outlined in subparagraph 1 of this paragraph, the utility may use the following plan: for a period of five (5) years after construction of the extension, each additional customer whose service line is directly connected to the extension installed, and not to extensions or laterals therefrom, shall be required to contribute to the cost of the extension based on a recomputation of both the utility's portion of the total cost and the amount contributed by the customers. The utility shall refund to those customers that have previously contributed to the cost of the extension that amount necessary to reduce their contribution to the currently calculated amount for each customer connected to the extension. All customers directly connected to the extension for a five (5) year period after it is placed in service shall contribute equally to the cost of construction of the extension. In addition, each customer shall pay the approved tap-on fee applicable at the time of his application for the meter connection. The tap-on fee shall not be considered part of the refundable cost of the extension and may be changed during the refund period. After the five (5) year refund period expires, any additional customer shall be connected to the extension for the amount of the approved tap-on fee only. After the five (5) year refund period expires, the utility shall be required to make refunds for an additional five (5) year period in accordance with subparagraph 1 of this paragraph.

(3) An applicant desiring an extension to a proposed real estate subdivision may be required to pay the entire cost of the extension. Each year, for a refund period of not less than ten (10) years, the utility shall refund to the applicant who paid for the extension a sum equal to the cost of fifty (50) feet of the extension installed for each new [additional] customer connected during the year whose service line is directly connected to the extension installed by the developer, and not to extensions or laterals therefrom. [but in no case shall the] Total amount refunded shall not exceed the amount paid to the utility. [After the end of the refund period from the completion of the extension,] No refund shall [will be required to] be made after the refund period ends.

(4) Nothing contained herein shall be construed to prohibit the utility from making extensions under different arrangements if [provided] such arrangements have receive the prior approval of [been approved by] the commission.

(5) Nothing contained herein shall [be construed as to] prohibit a utility from making at its expense greater extensions than herein prescribed, [should its judgment so dictate,] provided like free extensions are made to other customers under similar conditions. The conditions under which such extensions will be made shall be stated in the utility's filed tariff.

(6) Upon complaint to and investigation by the commission a utility may be required to construct extensions greater than fifty (50) feet upon a finding by the commission that such extension is reasonable and that an extension of fifty (50) feet or less is unreasonable under the circumstances.

Section 12. [13.] Service Connections. (1) Ownership of service.

(a) Utility's responsibility. [In urban areas with well-defined streets] The utility shall furnish and install at its own expense for the purpose of connecting its distribution system to the customer's premises that portion of the service connection from its main to and including the meter and meter box. The utility may recoup this expense from the customer in accordance with KRS 278.0152. [line from its main to and including the curb box, if a curb box is used, otherwise to the curb stop. The curb stop may be installed at a convenient place between the property line and the curb. All services shall include a curb stop.]

(b) In areas where the distribution system follows well-defined streets and roads, the customer's point of service shall be located at that point on or near the street right-of-way or property line most accessible to the utility from its distribution system. In areas where the distribution system does not follow streets and roads, the point of service shall be located as near the customer's property line as practicable. Prior to installation of the meter the utility shall consult with the customer as to the most practical location.

(2) Customer's responsibility. The customer shall furnish and lay the necessary pipe to make the connection from the point of service [curb stop] to the place of consumption and shall keep the service line in good repair and in accordance with such reasonable requirements of the utility as may be incorporated in its rules and regulations.

[(2) Location of service. The customer's service line shall extend to that point on the curb line easiest of access to the utility from

its distribution system. When a reasonable doubt exists as to the proper location of the service line, the utility shall be consulted and its approval of the location secured.]

Section 13. [14.] Measurement of Service. (1) Metering. Each customer's premises served [All water sold] by a utility shall be individually [upon the basis of] metered per occupancy unit except as set forth in subsection (2) of this section and 807 KAR 5:007. [volume sales except that the utility may at its option provide flat rate or estimated service for the following:]

(2) Unmetered service. If water usage can be readily estimated, the utility may, subject to commission approval, provide unmetered service. For unmetered service the utility shall develop standard methods for estimating the volume of water used and maintaining records which show volumes used and associated revenues and expenses. Methods proposed to be used shall be submitted to the commission for approval. Flat rates conforming to the requirements set forth in 807 KAR 5:006, Section 6(3), may be charged for the following:

(a) Temporary service of such duration that installation of a meter is not feasible [where the water used can be readily estimated].

(b) Public and private fire protection service.

(c) Water used for street sprinkling and sewer flushing, when provided for in a contract between the utility and a municipality or other local government[al] authority.

(d) Service to water haulers if installation of coin-operated or other metered stations is not feasible.

(3) [(2)] Registration of meter. All meters used for metered sales shall have registration devices indicating the volume of water measured in either cubic feet or U.S. gallons. Where a constant or multiplier is necessary to convert the meter reading to cubic feet or gallons, the constant shall be indicated upon the face of the meter.

[(3) Charge for service line and meter installation.]

[(a) No utility shall charge for the installation or the use of its portion of the service line or of any devices for metering service to a customer, except for temporary service where the utility may charge its actual cost of installation and removal of service lines and metering devices.]

[(b) A water district, organized under KRS Chapter 74, may, subject to the approval of the commission, make a charge or "tapping fee" for installing service to its customers. Said "tapping fee" shall include a service tap, meter, meter vault, and installation thereof.]

(4) Standard method of meter and service line installation. Each utility shall adopt a standard method of installing meters and service lines and shall file with the commission a written description and[/or] drawings in sufficient detail that the requirements are clearly understandable. Copies of these standard methods shall be made available to prospective customers and contractors or others engaged in the business of placing pipe for water utilization. All meters shall be set in place by the utility.

Section 14. [15.] Meter Test Facilities and Equipment. (1) Test facilities. Except as provided in 807 KAR 5:006, Section 15(2), each utility furnishing metered water service shall have [provide] the necessary standard facilities, instruments and other equipment for testing its meters in compliance with this regulation.

(2) Shop equipment. The utility's meter test shop shall, insofar as practicable, simulate [the] actual service conditions of temperature, inlet pressure, and outlet pressure. It shall be provided with [the] necessary equipment, including valves on the inlet and outlet sides of the meter test bench, calibrated tanks, a device for regulating flow, a gauge to measure flow rate, pressure gauges and pressure relief valves. [fittings, including a quick acting valve for controlling the starting and stopping of the test and a device for regulating the flow of water through the meter under test within the requirements of this regulation. The overall accuracy of the test equipment and test procedures shall be sufficient to enable test of service meters within the requirements of this regulation. In any event] The [inherent] overall error [accuracy] of the calibrated test tanks shall not [equipment shall permit tests with an overall error not to] exceed three-tenths (.3) of one (1) percent.

(3) Test measurement standards.

(a) Basic standard. Measuring devices for testing meters shall consist of a calibrated tank for volumetric measurement or a tank mounted upon scales for weight measurement. If a volumetric standard is used, it shall be certified [certificated] as to its accuracy by the commission within the preceding thirty-six (36) [twenty-four (24)] months. If a weight standard is used, the scales shall be tested and calibrated at least once a year and certified as to accuracy by the commission.

(b) Size of basic standards. When meters are tested by weight method, [it is required that] utilities whose measure of quantity is the cubic foot shall use test equipment capable of holding not less than one (1) [two (2)] cubic foot [feet] of water. Utilities whose measure of quantity is the U.S. gallon shall use equipment holding not less than ten (10) [twenty (20)] U.S. gallons.

(c) Standard meter. With [By special permission of the] commission approval, a standard meter may be provided and used by any utility for the purpose of testing meters in place. This standard meter shall be tested and calibrated to a basic standard periodically to insure its accuracy within the limits required by this regulation. In any event, such test shall be made at least once every other [each] week while the standard meter is in use and a record of such tests shall be kept by both the utility and, if applicable, the organization doing the meter testing.

Section 15. [16.] Accuracy Requirements of Water Meters. (1) General. All meters used for measuring the quantity of water delivered to a customer shall be in good mechanical condition and shall be adequate in size and design for the type of service which they measure.

(2) Testing of [New or repaired] meters. All new meters, and any [all] meter[s] removed from service for any cause [repairs or test in accordance with this regulation], shall be tested for accuracy as specified herein prior to being placed in service.

(a) Test flows. The test flow and normal test flow limits for the various types of cold water meters shall be [, are] as follows:

TEST REQUIREMENTS FOR NEW, REBUILT, AND REPAIRED COLD WATER METERS*

	Maximum Rate (All Meters)				Intermediate Rate (All Meters)				Minimum Rate (New and Rebuilt)				Minimum (Repaired)
Size in.	Flow Rate gpm	Test Quantity gal	Test Quantity ft^3	Accuracy Limits Percent	Flow Rate gpm	Test Quantity gal	Test Quantity ft^3	Accuracy Limits Percent	Flow Rate gpm	Test Quantity gal	Test Quantity ft^3	Accuracy Limits Percent	Accuracy Limits Percent (min.)
Displacement Meters													
5/8	15	100	10	98.5–101.5	2	10	1	98.5–101.5	1/4	10	1	95–101	90
5/8 x 3/4	15	100	10	98.5–101.5	2	10	1	98.5–101.5	1/4	10	1	95–101	90
3/4	25	100	10	98.5–101.5	3	10	1	98.5–101.5	1/2	10	1	95–101	90
1	40	100	10	98.5–101.5	4	10	1	98.5–101.5	3/4	10	1	95–101	90
1 1/2	50	100	10	98.5–101.5	8	100	10	98.5–101.5	1 1/2	100	10	95–101	90
2	100	100	10	98.5–101.5	15	100	10	98.5–101.5	2	100	10	95–101	90
3	150	500	50	98.5–101.5	20	100	10	98.5–101.5	4	100	10	95–101	90
4	200	500	50	98.5–101.5	40	100	10	98.5–101.5	7	100	10	95–101	90
6	500	1000	100	98.5–101.5	60	100	10	98.5–101.5	12	100	10	95–101	90
Multijet Meters													
5/8	15	100	10	98.5–101.5	1	10	1	98.5–101.5	1/4	10	1	97–103	90
5/8 x 3/4	15	100	10	98.5–101.5	1	10	1	98.5–101.5	1/4	10	1	97–103	90
3/4	25	100	10	98.5–101.5	2	10	1	98.5–101.5	1/2	10	1	97–103	90
1	35	100	10	98.5–101.5	3	10	1	98.5–101.5	3/4	10	1	97–103	90
1 1/2	70	100	10	98.5–101.5	5	100	10	98.5–101.5	1 1/2	100	10	97–103	90
2	100	100	10	98.5–101.5	8	100	10	98.5–101.5	2	100	10	97–103	90
Class I Turbine Meters													
1 1/2	80	200	20	98–102					12	100	10	98–102	=
2	120	300	30	98–102					16	100	10	98–102	=
3	250	500	50	98–102					24	100	10	98–102	=
4	400	1000	100	98–102					40	100	10	98–102	=
6	1000	2000	200	98–102	Not Required				80	1000	100	98–102	=
8	1500	3000	300	98–102					140	1000	100	98–102	=
10	2200	5000	500	98–102					225	1000	100	98–102	=
12	3300	7000	700	98–102					400	1000	100	98–102	=
Class II Turbine Meters													
2	120	300	30	98.5–101.5					4	100	10	98.5–101.5	=
3	275	600	60	98.5–101.5					8	100	10	98.5–101.5	=
4	500	1000	100	98.5–101.5					15	100	10	98.5–101.5	=
6	1100	2500	250	98.5–101.5	Not Required				30	1000	100	98.5–101.5	=
8	1800	4000	400	98.5–101.5					50	1000	100	98.5–101.5	=
10	3000	6000	600	98.5–101.5					75	1000	100	98.5–101.5	=
12	4000	8000	800	98.5–101.5					120	1000	100	98.5–101.5	=
Propeller Meters													
2	100	200	20	98–102	35	100	10	98–102	30	100	10	95	90
3	150	300	30	98–102	40	100	10	98–102	35	100	10	95	90
4	200	500	60	98–102	50	100	10	98–102	45	100	10	95	90
5	400	1000	100	98–102	75	200	20	98–102	70	200	20	95	90
6	500	1000	100	98–102	90	300	30	98–102	85	300	30	95	90
8	600	2000	200	98–102	100	300	30	98–102	90	300	30	95	90
10	900	3000	300	98–102	125	300	30	98–102	110	300	30	95	90
12	1000	5000	500	98–102	150	400	50	98–102	140	400	50	95	90
14	1100	5000	500	98–102	250	1000	100	98–102	225	1000	100	95	90
16	1400	5000	600	98–102	350	1000	100	98–102	315	1000	100	95	90
18	1600	5000	600	98–102	450	2000	200	98–102	405	2000	200	95	90
20	2000	10000	1000	98–102	550	2000	200	98–102	495	2000	200	95	90
24	3000	10000	1000	98–102	800	5000	500	98–102	720	5000	500	95	90
30	4500	20000	2000	98–102	1200	5000	500	98–102	1080	5000	500	95	90
36	6000	20000	2000	98–102	1500	5000	500	98–102	1350	5000	500	95	90

Size in.	Maximum Rate (All Meters) Flow Rate gpm	Test Quantity gal	Test Quantity ft³	Accuracy Limits Percent	Intermediate Rate (All Meters) Flow Rate gpm	Test Quantity gal ft³	Accuracy Limits Percent	Change Over Point Rate Flow Rate gpm	Test Quantity gal	Test Quantity ft³	Accuracy Limits Percent	Minimum (Repaired) Accuracy Limits Percent (min.)
					Compound Meters							
2	100	100	10	97–103		§		100	10		90–103	=
3	150	500	50	97–103				100	10		90–103	=
4	200	500	50	97–103				100	10		90–103	=
6	500	1000	100	97–103				100	10		90–103	=
8	600	2000	200	97–103				200	20		90–103	=
10	900	2000	200	97–103				1000	100		90–103	=
					Fire-Service Type							
3	100	500	50	97–103		§		§			Not Less	=
4	200	500	100	97–103							than 85%	=
6	500	3000	200	97–103								=
8	600	3000	300	97–103								=
10	900	5000	500	97–103								=

* – A rebuilt meter is one that has had the measuring element replaced with a factory-made new unit. A repaired meter is one that has had the old measuring element cleaned and refurbished in a utility repair shop.

§ – Quantity should be one or more full revolution of the test hand but not less than two (2) min running.

[DISPLACEMENT TYPE

Nominal Meter Size Inches	Minimum Test Flow Gallons per Minute	Normal Test Flow Gallons per Minute
5/8	1/4	1 to 20
3/4	1/2	2 to 30
1	3/4	3 to 50
1 1/2	1 1/2	5 to 100
2	2	8 to 160
3	4	16 to 300
4	7	28 to 500
6	12	48 to 1000]

[CURRENT TYPE Nominal Meter

Size Inches	Flow Gallons per Minute	Flow Gallons per Minute
1 1/2	7	12 to 100
2	10	16 to 160
3	15	24 to 350
4	20	40 to 600
6	30	80 to 1400
8	50	144 to 2500
10	75	224 to 3800
12	100	320 to 5800
16	150	400 to 11500]

[COMPOUND TYPE Nominal Meter

Size Inches	Flow Gallons per minute	Flow Gallons per Minute
1 1/2	1/2	2 to 100
2	1/2	2 to 160
3	1	4 to 320
4	1 1/2	6 to 500
6	3	10 to 1000
8	4	16 to 1600
10	8	32 to 2300
12	14	32 to 3100]

[FIRE SERVICE TYPE Nominal Meter

Size Inches	Flow Gallons per Minute	Flow Gallons per Minute
3	2	8 to 400
4	2	8 to 700
6	4	16 to 1600
8	7	28 to 2800
10	12	48 to 4400
12	12	48 to 6400]

[PROPELLER-DRIVEN CURRENT TYPE

Meter Size Inches	Gallons per Minute
2	15 to 80
3	30 to 200
4	45 to 400
5	75 to 600
6	90 to 900
8	100 to 1200
10	125 to 1500
12	150 to 2000
14	250 to 2500
16	275 to 3500
18	400 to 4500
20	475 to 5500
24	700 to 8000
30	1200 to 12000
36	1500 to 16000]

(b) Determination of meter accuracy. [Meters shall be tested at the minimum test flow and at least two (2) test flows in the normal test flow limits, one (1) of which shall be not less than seventy-five (75) percent of the rated maximum capacity of the meter and the other shall be at approximately twenty-five (25) percent of the rated maximum capacity.] No new, rebuilt or repaired meter shall be placed in service if the following required tests show that it does not register within the accuracy limits specified in paragraph (a) of this subsection. [it registers less than ninety-five (95) percent of the water passed through it at the minimum test flow or over registers or under registers more than one and one-half (1 1/2) percent in the normal test flow limits as set out in paragraph (a) of this subsection. No repaired or reconditioned meter shall be placed in service if it registers less

than eighty (80) percent of the water passed through it at the minimum test flow or over registers or under registers more than one and one-half (1 1/2) percent in the normal test flow limits as set out in paragraph (a) of this subsection.]

1. Displacement, multijet, compound, fire service and propeller type meters. Meters of the displacement, multijet, compound, fire service and propeller type shall be tested at the minimum, intermediate and high test flow rates shown in paragraph (a) of this subsection. At least one (1) additional test shall be performed within the range of flows of compound and fire service meters to determine overall operational efficiency and accuracy of registration.

2. Class I and Class II turbine type meters. Meters of the Class I and Class II turbine type shall be tested at the minimum and high test flow rates shown in paragraph (a) of this subsection.

(3) As found tests. All meters tested in accordance with the rules for periodic, request or complaint tests, shall be tested in the condition as found in the customer's service prior to any alteration or adjustment [in order to determine the average meter error]. This test shall consist of three (3) [two (2)] rates of flow in the minimum, intermediate and high [normal test] flow range for that type of meter as set out in subsection (2)(a) of this section. [and the average meter error shall be the algebraic average of the errors of the two (2) tests. (For example, a meter testing one (1) percent fast at one (1) rate of flow and three (3) percent slow at the other would have an average meter error of one (1) percent slow.)]

(4) Determination of meter error for bill adjustment purposes. When upon periodic, request or complaint test, a meter is found to be in error in excess of the limits allowed by the commission's regulations, three (3) additional tests shall be made: one (1) at seventy-five (75) percent of rated maximum capacity; one (1) at fifty (50) percent of rated maximum capacity; one (1) at twenty-five (25) percent of the rated maximum capacity. The average meter error shall be the algebraic average of the errors of the three (3) tests.

Section 16. [17.] Periodic Tests. (1) Each utility shall test periodically all water meters so that no meter will remain in service without test for a period longer than specified in the following table:

Size of Meter Inches	Interval Between Tests Years
5/8	10 [5]
5/8 x 3/4	10
3/4	10 [5]
1	10 [5]
1 1/4	4
1 1/2	4
2	4
3	2
4 and larger	1

[(2) "Periodic test periods" for testing meters in the systems of utilities supplying water of high turbidity, or of peculiar characteristics, will be determined by the commission from time to time.]

(2) [(3)] Meters of the current and compound type shall be cleaned at a minimum of the frequency listed in subsection (1) of this section for testing. If meters are tested in place at the frequency listed in subsection (1) of this section and during the test are flushed at a high rate of flow, the meter shall be considered to be in compliance with this section. [least once each year. When filtered or exceptionally clear water is delivered, the interval between cleaning may, upon application to the commission and upon receipt of authority therefor, be made longer.]

(3) If [(4) Whenever] the number of meters of any type which register in error beyond the limits specified in this regulation is found by the commission to be excessive, then that [this] type shall be tested with such additional frequency as the commission may direct.

Section 17. Water Shortage Response Plans. Each utility which files a water shortage response plan with the Natural Resources Cabinet shall simultaneously file a copy of the plan with the commission. Any utility which has already filed a plan with the Natural Resources Cabinet shall file the plan with the commission within sixty (60) days of the effective date of this regulation.

Section 18. Deviations from Regulation. In special cases, for good cause shown, the commission may permit deviations from this regulation.

ROBERT M. DAVIS, Vice Cchairman
THEODORE T. COLLEY, Secretary
APPROVED BY AGENCY: November 15, 1991
FILED WITH LRC: November 15, 1991 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 23, 1991 at 10 a.m., Eastern Standard Time, in Hearing Room 1 of the Commission's offices at 730 Schenkel Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by December 18, 1991, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Lee M. MacCracken, Executive Director, Public Service Commission, 730 Schenkel Lane, P.O. Box 615, Frankfort, Kentucky 40602.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Lee M. MacCracken

(1) Type and number of entities affected: This regulation affects all 33 water associations, 35 water companies, and 143 water districts under the jurisdiction of the commission.

(a) Direct and indirect costs or savings to those affected: The majority of the changes made to this regulation reflect editorial changes

which do not affect the substance of the regulation but clarify the meaning and conform the language to KRS Chapter 13A requirements. The remaining changes reflect changes and improvement in technology. The water utilities should see a substantial savings since this will allow the utility to substitute for its inspection of the installation of the service line with an inspection by the appropriate state or local plumbing inspector when the customer presents proof of that inspection to the utility. The utilities will also see a savings since recording pressure gauges need only be maintained for a minimum of one week per month in continuous service as opposed to continuous service. The utilities should see a substantial savings with the periodic testing of all water meters being increased to ten year intervals between testing instead of five years. This change recognizes the improvement in reliability of meters and ten years is the most common interval used by other state commissions. The utilities should have only minimal cost in maintaining records showing volumes used and associated revenues and expenses associated with unmetered service. The cost of the utilities should be minimal for: providing notice to the commission prior to making any potable water connection, providing the commission with a copy of the public notification if such notification is required by the Natural Resources Cabinet, and providing the commission with a copy of the utility's water shortage response plan. The utilities should have minimal cost associated with testing all meters removed from service for any cause when prior testing was required for all meters taken out of service for repair or test.

1. First year: A minimal cost should be incurred by the utility in the first year for developing standard methods for estimating the volume of water used and maintaining records which show volumes used and associated revenues and expenses for unmetered service.

2. Continuing costs or savings: Except for establishing methods for unmetered service, the continuing costs or savings should remain virtually the same as the first year costs or savings incurred by each utility.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional known factors which will increase or decrease costs. Since this regulation applies to all water utilities under the jurisdiction of the commission, there are no effects upon competition.

(b) Reporting and paperwork requirements: The utility is now required to file with the commission a copy of the public notification and also a copy of the utility's water shortage response plan, if one exists. If the utility provides unmetered service, it must maintain records showing volumes used and associated revenues and expenses.

(2) Effects on the promulgating administrative body: No substantial effects.

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: There are no other factors which would increase costs.

(b) Reporting and paperwork requirements: No additional reporting or paperwork requirements will be necessary.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were available.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: No conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict.

(6) Any additional information or comments: No additional information or comments.

TIERING: Was tiering applied? No. Tiering was not necessary since this regulation applies to all water utilities under the jurisdiction of the commission.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes_X_ No___ (If yes, complete questions 2-4) Local plumbing inspectors only.

2. State what unit, part or division of local government this administrative regulation will affect. The regulation recognizes a service already provided by state or local plumbing inspectors for inspection of service line installation.

3. State the aspect or service of local government to which this administrative regulation relates. State or local plumbing inspectors relating to the inspection of service lines only.

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 regulation has no additional affect on local government, the inspection of service line installation by state or local plumbing inspectors is already required by state plumbing code.

PUBLIC PROTECTION AND REGULATION CABINET
Kentucky State Racing Commission
(Proposed Amendment)

810 KAR 1:001. Definitions.

RELATES TO: KRS 230.210 to 230.360

STATUTORY AUTHORITY: KRS 230.260

NECESSITY AND FUNCTION: To regulate conditions under which thoroughbred racing shall be conducted in Kentucky. The function of this administrative regulation is to define the terms used in the commission's administrative regulations.

Section 1. Definitions. (1) "Added money" means cash, exclusive of trophy or other award, added by the association to stakes fees paid by subscribers to form the total purse for a stakes race.

(2) "Age" means the number of years since a

horse was foaled, reckoned as if the [such] horse was foaled on January 1 of the year in which the [such] horse was foaled.

(3) "Arrears" means all sums due by a licensee as reflected by his account with the horsemen's bookkeeper, including subscriptions, jockey fees, forfeitures, and any default incident to these administrative regulations [rules].

(4) "Association" means any person[, or persons,] or legal entity, required to be licensed under KRS 230.300 to conduct a race meeting, and when used herein, the association conducting a race meeting where such rule is applicable.

(5) "Authorized agent" means any person currently licensed as an agent for a licensed owner principal by virtue of notarized appointment of agency lodged with the commission.

(6) "Betting interest" means a single horse, or more than one (1) horse joined as a mutuel entry or joined in the mutuel field, on which a single pari-mutuel wager may be placed.

(7) "Bleeder" means any horse known to have bled internally or from its nostrils during a workout or race.

(8) "Breeder" means the owner of the dam of a horse at the time the [such] horse was foaled. A horse is "bred" at the place of its foaling.

(9) "Claiming race" means any race in which every horse running therein may be transferred in conformity with these administrative regulations [rules].

(10) "Closing" means the time published by the association after which entries for a race will not be accepted by the racing secretary.

(11) "Commission" means the Kentucky State Racing Commission. Commissioner is a member of the commission.

(12) "Day" means any twenty-four (24) hour period beginning at 12:01 a.m. and ending at midnight. Racing day means [is] a day on which races are conducted. Calendar days means consecutive days counted irrespective of number of racing days.

(13) "Declaration" means the withdrawal of a horse entered in a race prior to time of closing of entries therefor in conformance with these administrative regulations.

(14) "Disciplinary action" means action taken by the stewards or the commission for a violation of an administrative regulation and can include suspension, revocation, voidance of a license, [or] ejection or exclusion from association grounds, [or] assessment of a forfeiture, or reprimand, [or] any combination thereof.

(15) "Disqualification" means a ruling [an order] of the stewards or the commission revising the order of finish of a race.

(16) "Entry" means the act of nominating a horse for a race in conformance with these administrative regulations.

(17) "Equipment" means accouterments other than ordinary saddle, girth, pad, saddle cloth, and bridle carried by a horse, and includes whip, blinkers, tongue strap, muzzle, hood, noseband, bit, shadow roll, martingale, breast plate, bandages, boots, and racing plates or shoes.

(18) "Exhibition race" means a race between horses of diverse ownership for which a purse is offered by the association, but on which no pari-mutuel wagering is permitted.

(19) "Field, or mutuel field" means a single betting interest involving more than one (1) horse formed when the number of horses starting in a race exceeds the numbering capacity of the totalizator, and the highest numbered horse within the numbering capacity of the totalizator and all horses of a higher number are grouped in the mutuel field.

(20) "Forfeit" means money due by a licensee because of an error, fault, neglect of duty, breach of contract, or alternative ruling [order] of the stewards or the commission.

(21) "Handicap race" means a race in which the weights to be carried by the horses therein are assigned by the association handicapper with the intent of equalizing the chances of winning for all horses entered in the race [therein]. A "free handicap" means a handicap for which no nominating fee is required to be weighted, but an entrance or starting fee may be required for starting therein.

(22) "Horse" means a thoroughbred registered [as such] with the Jockey Club in New York and when used in these administrative regulations, any thoroughbred irrespective of age or sex designation.

(23) "Ineligible" means a horse or person not qualified under these administrative regulations [rules] or conditions of a race to participate in a specified racing activity.

(24) "Jockey" means a rider currently licensed to ride in races as a jockey, [or] apprentice jockey, [or] amateur jockey, or a provisional jockey permitted by the stewards to ride in three (3) races prior to applying for a license.

(25) "Lessee" means a licensed owner whose interest in a horse is a leaseholder [leasehold].

(26) "Licensee" means a person or association that has been duly issued a currently valid license to participate in racing in this Commonwealth.

(27) "Maiden" means[:

(a)] a horse which has never won a race on the flat at a recognized meeting in any country. [;

(b)] A maiden which was disqualified after finishing first remains a maiden. [; and

(c)] Race conditions referring to maidens shall be interpreted as meaning maidens at the time of starting.

(28) "Match race" means a race between two (2) horses, for which no other horses are eligible.

(29) "Meeting" means the entire period of consecutive days, exclusive of dark days, granted by the commission to a licensed association for the conduct of racing. A meeting shall begin at 10 a.m. of the first racing day and extend through a period ending one (1) hour after the last scheduled race of the last day.

(30) "Month" means calendar month.

(31) "Mutuel entry" means a single betting interest involving two (2) or more horses entered in the same race and joined for pari-mutuel purposes because of common ties as to ownership or training so that a wager on one (1) horse joined in a mutuel entry is a wager on all horses joined in the same mutuel entry.

(32) "Mutuel field" means the same as "field."

(33) "Nominator" means the person in whose name a horse in entered for a race. "Nomination" is a subscription or entry of a horse in a stakes or early closing race.

(34) "Owner" means any person who holds, in whole or in part, any right, title, or interest in a horse, or any lessee of a horse, who has been duly issued a currently valid owner's license as a person responsible for the [such] horse.

(35) "Place"[:
(a)] when used in the context of a single position in the order of finish in a race, means second; [.
(b)] when used in the context of pari-mutuel wagering, a "place" wager means one involving a payoff on a betting interest which finished first or second in a race; [.
(c)] when used in the context of multiple positions in the order of finish in a race, "place or placing" means finishing first, or second[, or third].
(36) "Post" means the starting point of a race.
(37) "Post position" means the relative place assigned to each horse, numbered from the inner rail across the track at the starting line, from which each horse is to start a race.
(38) "Post time" means the advertised moment scheduled for the arrival of all horses at the starting point for a race.
(39) "Prize" means the combined total of any cash, premium, trophy, and object of value awarded to the owners of horses according to order of finish in a race.
(40) "Purse" means the gross cash portion of the prize for which a race is run.
(41) "Purse race" means any race for which entries close less than seventy-two (72) hours prior to its running, and for which owners of horses entered are not required by its conditions to contribute money toward its purse.
(42) "Race" means a running contest between thoroughbreds, ridden by jockeys, over a prescribed course free of obstacles or jumps, at a recognized meeting, during regular racing hours, for a prize.
(43) "Racing official" means a racing commissioner, commission staff as duties require, and all association racing department employees, as duties require.
(44) "Recognized meeting" means any meeting with regularly scheduled races for thoroughbreds on the flat, licensed by and conducted under administrative regulations [rules] promulgated by a governmental regulatory body, to include foreign countries which are regulated by a racing authority which has reciprocal relations with the Jockey Club of New York and whose race records can be provided an association by the Jockey Club.
(45) "Registration certificate" means the document issued by the Jockey Club of New York certifying as to the name, age, color, sex, pedigree, and breeder of a horse as registered by number with the Jockey Club. It shall be deemed to refer also to the document known as a "racing permit" issued by the Jockey Club in lieu of a registration certificate when a horse is recognized as a thoroughbred for racing purposes in the United States, but is not recognized as a thoroughbred for breeding purposes insofar as registering its progeny with the Jockey Club.
(46) "Administrative regulations" when used in the plural, shall be deemed to mean all current administrative regulations promulgated by the commission; when used in the singular, shall be deemed to be confined to the numbered administrative regulation[, and subparagraphs thereof, wherein such mention is made].
(47) "Rulings" means all determinations, decisions, or orders of the stewards or of the commission duly issued in writing and posted.
(48) "Scratch" means the withdrawal of a horse entered for a race after the time of closing of entries therefor in conformance with these administrative regulations [and rulings].
(49) "Scratch time" means the time set by the racing secretary as a deadline for horsemen to indicate their desire to scratch out of a race.
(50) "Secretary" means the duly appointed and currently serving secretary of the commission.
(51) "Specimen" means a sample of blood, urine, or other specimen [saliva] taken or drawn from a horse for chemical testing.
(52) "Stakes" means all fees paid by subscribers to an added-money or stakes race for nominating, eligibility, entrance, or starting, as may be required by the conditions of the [such] race. These fees shall [to] be included in the purse.
(53) "Stakes race" means a race which closes more than seventy-two (72) hours in advance of its running and for which subscribers contribute money towards its purse, or a race for which horses are invited by an association to run for a guaranteed purse of $50,000 or more without payment of stakes.
(54) "Stewards" means duly appointed racing officials with powers and duties specified in 810 KAR 1:004 serving at a current meeting in this Commonwealth.
(55) "Starter" means a horse in a race when the starting-gate doors open in front of it at the moment the starter dispatches the horses for a race.
(56) "Subscription" means nomination or entry of a horse in a stakes race.
(57) [(56)] "Thoroughbred racing" means running contests between horses[:
(a)] registered with the Jockey Club of New York, [;
(b)] certified as having a thoroughbred pedigree, [;] and
[(c)] ridden by a jockey. Thoroughbred racing shall be licensed by a governmental regulatory body.
(58) [(57)] "Unplaced" means not among the first three (3) horses finishing a race.
(59) [(58)] "Walkover" means a race in which the only starter or all starters represent single ownership.
(60) [(59)] "Weigh in" means the presentation of a jockey to the clerk of scales for weighing after a race.
(61) [(60)] "Weigh out" means the presentation of a jockey to the clerk of scales for weighing prior to a race.
(62) [(61)] "Weight for age" means the standard assignment of pounds to be carried by horses in races at specified distances during specified months of the year, scaled according to the age of the horse as set out in 810 KAR 1:014(12).
(63) [(62)] "Workout" means the training exercise of a horse on the training track or main track of an association during which the horse is timed for speed over a specified distance.
(64) [(63)] "Year" means twelve (12) consecutive months beginning with January and ending with December.

LYLE G. ROBEY, Chairman
APPROVED BY AGENCY: November 12, 1991
FILED WITH LRC: November 13, 1991 at 3 p.m.
PUBLIC HEARING: A public hearing will be held on December 23, 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, Lexington, Kentucky 40511.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Michael W. Lankford
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected: N/A
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: N/A
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs: N/A
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues:
(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: 810 KAR 1:001.
(a) Necessity of proposed regulation if in conflict: Per quadrennial review.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Yes
(6) Any additional information or comments:
TIERING: Was tiering applied? No. N/A.

PUBLIC PROTECTION AND REGULATION CABINET
Kentucky State Racing Commission
(Proposed Amendment)

810 KAR 1:002. Racing commission.

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 <u>administrative</u> regulation is to outline the positions and duties of the commission.

Section 1. Statutory Powers of the Commission. (1) The commission as constituted in KRS 230.220 shall be responsible as a body for the regulation of thoroughbred racing in Kentucky, under the terms defined in KRS 230.210 and other statutes pertaining to thoroughbred racing.
(2) Individual members of the commission may be assigned specific areas of responsibility; and, with the consent of the commission, <u>may</u> [can] act with full authority of the commission in such areas.

Section 2. Commission Secretary. The secretary of the commission shall be appointed by the Governor, for a term not to exceed four (4) years. He shall possess the powers and perform the duties imposed upon him by KRS 230.210 to 230.360, and shall perform [such] other duties as the commission may direct.

Section 3. Administrative Staff. The following positions and duties compose, with secretary, the administrative staff of the commission:
(1) Senior steward and chief administrator, in overall supervision of all commission matters pertaining to racing.
(2) State steward, responsible for all commission matters at the race meetings to which he is assigned, and for [such] other duties as may be directed.
(3) Associate steward, who may be assigned by the commission to serve under the state steward as they may direct.
(4) Executive director, responsible under the chief administrator for the administration of commission programs.
(5) Public relations director, responsible for the promotion of the thoroughbred industry in Kentucky.

Section 4. Commission License Administrator. The commission may employ a person or persons who shall be responsible for processing license applications of all persons, other than associations, required to be licensed by 810 KAR 1:003 and collecting fees therefor. All license applications received by the license administrator shall be subject to approval by the licensing committee and the commission. The licensing administrator and his assistants shall:
(1) Be present on association grounds prior to the opening of a race meeting to accept license applications and shall maintain an office on association grounds to accept license applications during <u>the</u> [such] race meeting;
(2) File daily reports to the commission on license applications received with accountings of fees received and forwarded to the commission;
(3) Be responsible for the photographing of license applicants for whom same is required;
(4) Be bonded.

Section 5. Commission Supervisor of Pari-mutuel Betting. (1) The commission shall employ a supervisor with accounting experience who shall be responsible for ascertaining whether the proper amounts have been paid from pari-mutuel pools to the betting public, to the association, and to the Commonwealth, by checking, auditing, and filing with the commission verified reports accounting for daily pari-mutuel handle distribution and attendance for each preceding racing day and a final report at the conclusion of each race meeting in the Commonwealth.
(2) [Such] Daily reports to the commission shall show[:] for each race: number of horses started, number of betting interests, total money wagered in each betting pool, and refunds, if any for each day. The sum of all betting pools, and total refunds also, total pari-mutuel handle for the comparable racing day for the preceding year, and cumulative total and daily average pari-mutuel handle for the race meeting.
(3) [Such] Daily reports also shall show: amount of state pari-mutuel tax due, taxable admissions, tax exempt admissions, total admissions, temperature, weather, and track conditions, post time of first race, program purses, distance and conditions of each race, <u>and</u> any minus pools resulting with explanation.
(4) The commission supervisor of pari-mutuel

betting shall submit to the commission on or before thirty (30) days after the close of each race meeting a final verified report giving in summary form a recapitulation of the daily reports for each race meeting and [such] other information as the commission may require.

(5) The commission supervisor of pari-mutuel betting or his representative shall have access to all association books, records, and pari-mutuel equipment for checking accuracy of same.

Section 6. Commission Veterinarian[(s)]. The commission shall employ a graduate veterinarian[(s)] licensed in Kentucky and experienced in equine medicine and practice. He [(they)] shall advise the commission and the stewards on all equine veterinary matters. The commission veterinarian's prime responsibility shall be the supervision and control of the detention area and for the collection of samples for the testing of horses for prohibited medication as outlined in 810 KAR 1:018. The commission may employ persons to assist the commission veterinarian[(s)] in maintaining the detention area and collecting specimens. The commission veterinarian[(s)] shall not treat, [or] prescribe, or sell any drug supplies for any horse registered to race at any race track where he [(they)] is employed, except in case of emergency; nor shall he [(they)] buy or sell, for himself or another, any horse under his supervision; nor shall he be employed by or receive any compensation whether directly or indirectly from any licensed owner or trainer; nor shall he [(they)] wager on a race under his supervision; nor shall he sell insurance; [,] nor shall he be licensed to participate in racing in any other capacity.

(1) The commission veterinarian[(s)] shall be responsible for inspecting and reporting all horses entered for racing soundness; maintaining and posting in the racing secretary's office a veterinary list of horses ineligible to race because of sickness or unsoundness; control of communicable equine diseases; insect control; sanitary conditions in the stable area, and shall observe and report all cruel or inhumane treatment of horses to the stewards.

(2) The commission veterinarian[(s)] shall be attendant on the stewards and the racing secretary at scratch time each day, and shall examine [such] horses as [such] racing officials may request, and shall make reports to the [such] racing officials as promptly as possible.

(3) The commission veterinarian[(s)] shall be responsible for inspecting every horse entered on the day of the race for which the [such] horse is entered. Inspections [Such inspection] shall be for physical fitness, general conditions, and for any noticeable unsoundness or peculiarities that may affect the racing condition of the horse or be considered for scratching a horse on a muddy or sloppy track. Such prerace examinations shall be recorded on a health record for every starter at the race meeting.

(4) The commission veterinarian[(s)] shall be present in the paddock for saddling, shall accompany each field to the starting post, and observe all horses after the finish of each race. If, in the opinion of the commission veterinarian[(s)], a horse suffers an injury while in the paddock, during the post parade, or at the starting gate, which [injury] shall render the [such] horse unfit to race, he shall recommend to the stewards that the horse be excused and placed on the veterinary list. All horses requested to be scratched for physical reasons after scratch time shall be inspected by the commission veterinarian[(s)], who shall report the condition of the [such] horse to the stewards.

Section 7. Commission Chemist. (1) The commission may acquire, operate and maintain [is authorized to acquire, operate and maintain or to provide by contract for the maintenance of] a testing laboratory and related facilities, for the purpose of performing [such] tests as the commission may require. The [Such] commission chemist shall be a graduate chemist experienced in chemical testing techniques for conducting tests on urine, sweat, blood, and other specimens from thoroughbreds delivered to the commission chemist or his representative by the commission veterinarian.

(2) The commission chemist shall report to the state steward all substances he might find in his tests which are not normal in the body of the horse as outlined in 810 KAR 1:018. His duties shall [will] be limited to these reports and need not include the possible effects on the physiology of a horse.

Section 8. Chief Investigative Officer. The commission may employ an investigator experienced in police work who shall advise the commission as to any person on association grounds, or among license applicants, whose conduct or reputation is such that the [such] person's presence on association grounds may reflect on the honesty and integrity of thoroughbred racing or interfere with the orderly conduct of thoroughbred racing. The chief investigative officer shall:

(1) Maintain a current file on persons against whom rulings have been issued in racing jurisdictions and reported through the [National] Association of [State] Racing Commissioners International. The [Said] file also shall contain reports received from the Thoroughbred Racing Protective Bureau as to investigations, arrest records, and other information. The [; said] file [also] shall also contain reports as to ejections or exclusions from association grounds in Kentucky and other racing jurisdictions.

(2) Investigate and ascertain the truth of statements made on license applications;

(3) Investigate possible infractions of administrative regulations [racing rules] at the request of the commission or stewards;

(4) Participate and cooperate with members of the track security police, Thoroughbred Racing Protective Bureau, state and local police on all other investigations pertaining to racing in the Commonwealth.

Section 9. Commission Inspector. The commission may employ a person or persons who shall be responsible for ascertaining that all persons required to be licensed under 810 KAR 1:003 have same in their possession on association grounds, and for conducting investigations on association grounds at the request of the stewards or the director of security.

Section 10. Horse Identifier. The commission may employ a person [one (1)] or [more] persons who shall be responsible for the [to be charged with the responsibility of] proper identification of all horses entered to be raced. A horse identifier may accompany the commission veterinarian on the prerace examination of all starters. Every starter shall be examined in the paddock by a horse identifier for sex, age, color, markings, and lip tattoo, for comparison with its registration certificate; photographs may be used as an aid in identification. If a horse identifier has any doubt as to the identity of a horse entered to be raced, the horse identifier shall so notify the paddock judge and the stewards. The horse identifier shall also be responsible for safekeeping of registration certificate and racing permits for horses, recording information required thereon, and returning same to owners at the conclusion of the race meeting.

Section 11. Investigative Powers. To insure compliance with these administrative regulations [rules] or to investigate possible infraction of these administrative regulations [rules], the commission and its representatives shall have free access to all offices, files, records, enclosures, barns, and other facilities owned or possessed by associations. The commission and its representatives shall have the power to conduct a reasonable search of the person and property in the possession of licensed persons, the [such] property being restricted to that property on association grounds and including, without limiting thereby, tack rooms, living or sleeping quarters.

Section 12. Publication of Administrative Regulation [Rule] Changes. All administrative regulations [rules] adopted, revised, or repealed subsequent to the publication of a rule book shall be signed by the secretary and published by posting same with the effective date, in compliance with the statutes, of the [such] change on the bulletin board on the racing secretary's office of each association, and by forwarding a copy of same to the [National] Association of [State] Racing Commissioners International, Racing Times, and to the Daily Racing Form or such publication as the commission may deem appropriate to advise the public of such changes for publication therein.

LYLE G. ROBEY, Chairman
APPROVED BY AGENCY: November 12, 1991
FILED WITH LRC: November 13, 1991 at 3 p.m.
PUBLIC HEARING: A public hearing will be held on December 23, 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, Lexington, Kentucky 40511.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Michael W. Lankford
(1) Type and number of entities affected: N/A
(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: N/A
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs:
(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: 810 KAR 1:002.
(a) Necessity of proposed regulation if in conflict: Per quadrennial review and to define conflict of interest for commission veterinarians.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Yes
(6) Any additional information or comments:
TIERING: Was tiering applied? Yes. The veterinarian's job description has a direct bearing on race outcomes. The vet's must be above any suspicion of a conflict of interest or impropriety.

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 administrative 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 established in these administrative regulations. 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 the [such] license:

(1) Representations made on [or] with license application shall be [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 the [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 of an administrative regulation. 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 the [such] horses from tampering. Upon a finding of a positive for a prohibited medication, drug, or substance, in a saliva, urine, [or] blood, or other specimen taken from a horse, the trainer of the [such] horse shall have the burden of proof showing freedom from negligence in the exercise of a high degree of care in safeguarding the [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 a license [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 the [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 the [such] association proposed to conduct a race meeting, and capability to comply with the administrative regulations [rules] and rulings of the commission, the licensing of the [such] association would serve to nurture, promote, develop, and improve the thoroughbred industry in the Commonwealth. As a condition precedent to the issuance of the [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 a license [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 statute or administrative 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 examinations 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 administrative regulations [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; or
(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, may [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 administrative regulation [rule] of the commission, or aiding or abetting any person in violation of any such administrative regulation [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. The [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. The [Such] application shall contain:
(1) Name and location of track. Initial applications shall be accompanied by other [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 the [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 administrative regulation and desiring to participate in thoroughbred racing in the Commonwealth may apply to the commission for a license. The [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 shall [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. Fingerprint identification shall not be required of [(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 (1) individual person desiring to race horses in the Commonwealth shall, in addition to designating the person or

persons to represent the entire ownership of the [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 the [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 the [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 shall [will] attest to the technical competence of the [such] applicant and under whose sponsorship and direction the [such] applicant shall [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 the [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 the [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. The [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. The [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 the [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. License [and any such] renewal shall not be construed to be a waiver of or to condone any violation which occurred prior to the [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 administrative regulations [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 the license [same] in his possession. All licenses specified under Section 7(9)(b) to (f) of this administrative 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. Administrative regulations [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 the [such] affected person shall [will] in no way circumvent the intent of the administrative regulation [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 his [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 administrative regulations [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: November 12, 1991
FILED WITH LRC: November 13, 1991 at 3 p.m.
PUBLIC HEARING: A public hearing will be held on December 23, 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
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: $50,000 increased revenue.
2. Continuing costs or savings: $50,000
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: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: 810 KAR 1:003.
(a) Necessity of proposed regulation if in conflict: Per quadrennial review and redefine licensing fees.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Yes
(6) Any additional information or comments:
TIERING: Was tiering applied? Yes. Different license categories have different fee structures.

PUBLIC PROTECTION AND REGULATION CABINET
Kentucky State Racing Commission
(Proposed Amendment)

810 KAR 1:004. Stewards.

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 administrative regulation is to outline the qualifications, duties, powers, and responsibilities of the stewards.

Section 1. Qualifications for a Steward. No person shall qualify for commission appointment or approval as a steward unless:

(1) He has served as a steward, [or] racing secretary, [or] assistant racing secretary, [or] starter, [or] placing judge, [or] patrol judge, [or] paddock judge, or clerk of scales, at one (1) or more recognized race meetings for a period of not less than sixty (60) racing days per year during at least three (3) of the five (5) preceding calendar years; provided, however, if no person is available to serve who possesses the [aforesaid] experience as a racing official, then, the commission may consider for appointment and[/or] approval persons who have engaged in racing as an owner, [or] trainer, [or] jockey, [or] veterinarian, or breeder, and as an observer in the stewards stand for a period satisfactory to the commission;

(2) He has satisfactorily passed an optical examination within one (1) year prior to approval as a steward evidencing corrected twenty-twenty (20-20) vision and ability to distinguish colors correctly;

(3) The commission is satisfied that income, other than salary as a steward, which may accrue to a person under consideration for appointment as a steward is independent of and unrelated to patronage of or employment by any licensee under the supervision of the [such] steward, so as to avoid the appearance of any conflict of interest or suggestion of preferential treatment of a licensee.

Section 2. Appointment of Stewards. (1) There shall be three (3) stewards for each race meeting, one (1) of whom shall be appointed by the commission and two (2) of whom shall be nominated by the association for approval by the commission. Names of association nominees for steward shall be submitted at the time of application for association license if possible, but no later than thirty (30) days before commencement of a race meeting and be accompanied by biographical data setting out the experience and qualifications of the nominees. The association shall submit successive nominees until two (2) persons are approved by the commission as qualified to serve as stewards. No steward shall serve until approved by the commission.

(2) Stewards shall serve from one (1) minute after midnight on the day before the first racing day until one (1) minute before midnight on the day after the last racing day of the race meeting for which they are appointed. If [; provided, in the event] a dispute or controversy arises during a race meeting which is not settled at the conclusion of the race meeting, then the power of the stewards shall be extended over the period necessary to resolve the matter, or until the matter is referred or appealed to the commission.

(3) Stewards shall be responsible only to the commission and may be replaced by the commission at any time for failure to perform their duties to the satisfaction of the commission.

(4) If [In the event] a steward becomes ill, resigns, or is unable to serve for any reason, then the remaining stewards shall nominate a successor or temporary steward to the commission for approval. In emergencies, a single commissioner by telephone may approve appointment of a successor steward.

Section 3. General Powers of Stewards. The stewards shall exercise immediate supervision, control, and regulation of racing at each licensed race meeting on behalf of and responsible only to the commission. [By way of illustration and without limiting thereby,] The powers of the stewards shall include:

(1) Authority over all horses and all persons, licensed or unlicensed, on association grounds during a race meeting as to all matters relating to racing;

(2) To determine all questions, disputes, protests, complaints, or objections concerning racing which arise during a race meeting and to enforce the [such] determinations;

(3) To suspend the license of a participant in racing or eject or exclude from association grounds or any part thereof licensed or unlicensed persons, upon reasonable belief that a violation of these administrative regulations [rules] has or is about to occur;

(4) To interpret and enforce these administrative regulations [rules] and determine all questions pertaining to a racing matter not specifically covered by these administrative regulations [rules] in conformity with justice and the customs of the turf, the same being subject to the powers and duties of the commission;

(5) To issue decisions or rulings pertaining to racing which shall supersede orders of the officers, directors, and officials of the association and which shall, if the stewards deem proper, vary any arrangement for the conduct of a race meeting, to include without limiting thereby, postponing [a race,] or cancelling a race, or ruling a race run as "no contest."

(6) To request and receive assistance from commission employees, racing officials, members of the Thoroughbred Racing Protective Bureau, track security police, or state or local police, in the investigation of possible rule infractions;

(7) To conduct hearings on all questions, disputes, protests, complaints, or objections concerning racing matters.

(8) If [In the event] a regularly named rider, [or] trainer, or racing official other than a steward is unable for any reason to perform, the stewards may select a substitute. [therefor;] Upon suspicion of fraud or misconduct, the stewards may excuse a horse or replace any rider, [or] trainer, or racing official other than a steward; and

(9) All other powers enumerated in these administrative regulations [rules].

Section 4. Duties and Responsibilities of Stewards. In addition to the duties and responsibilities necessary and pertinent to general supervision, control, and regulation of race meetings, and without limiting the authority of the stewards to perform these [same] and other duties enumerated in these administrative regulations [rules], the stewards shall have the following specific duties and responsibilities:

(1) To take cognizance of all misconduct or

administrative regulation [rule] infractions irrespective of whether complained of, and to cause investigations to be made of all instances of possible rule infractions; to take such action as the stewards may deem necessary to prevent an administrative regulation [a rule] infraction;

(2) At least one (1) steward shall be on association grounds from scratch time or if not a racing day, when entries are first taken until entries are closed. At least one (1) steward shall be present for the regular showing of racing films or video tapes. All three (3) stewards shall be on association grounds no less than ninety (90) minutes before post time until conclusion of the last race. All three (3) stewards shall be present in the stewards' stand during the running of each race;

(3) [Unless prevented by more pressing duties,] At least one (1) steward, or a designated representative of the stewards, shall be present in the paddock at least twenty (20) minutes before each race and shall remain there until the horses leave for the starting gate, to observe the conduct of all persons in and around the paddock and inspect, with the paddock judge and commission veterinarian, all horses for fitness;

(4) To inspect all applications for licenses to participate in racing, and administer, or cause to be administered by technically qualified persons, standard examinations to all first-time applicants for a trainer, jockey, apprentice jockey, veterinarian, dental technician, or farrier license, and make recommendations to the commission as to the qualifications of all applicants for licenses to participate in racing;

(5) To review all licenses, registration certificates, and all contracts, papers, and other documents pertaining to the sale or ownership of a horse, payment of purse money, jockey and apprentice jockey contracts, appointments of agents, adoptions of racing colors or stable name, and determine the eligibility and appropriateness [thereof] for participation in racing under supervision of the stewards;

(6) To call for proof of eligibility of a horse or person to participate in a race, if eligibility [such] is in question and in absence of sufficient proof to establish eligibility, the stewards may rule such horse or person ineligible;

(7) To review stall applications and advise the association of undesirable persons, if any, among owners and trainers applying for stalls and provide the association with information pertaining to the [such] undesirable persons;

(8) To supervise the taking of entries and receive all declarations and scratches and determine all questions arising and pertaining to same. [;] The stewards may in their discretion refuse the entry of any horse by any person, [or] refuse to permit a declaration or scratch, or may limit entries [in any way];

(9) To lock all pari-mutuel betting machines not later than the moment the starting gate is opened for the commencement of a race, to cause the "inquiry" sign to be posted on the infield odds board immediately after the horses have crossed the finish line in a race if any doubt is held by any steward or patrol judge as to the fairness of the running of such race, to cause the objection sign to be posted on the infield odds board upon the lodging of same, and to cause the "official" sign to be posted on the infield odds board after determining the official order of finish for purposes of pari-mutuel payoff;

(10) To review the patrol films or video tapes of each day's races before commencement of the successive day's races and to draw up a list of riders including all apprentice jockeys whom the stewards feel should review the [such] films for instructional purposes and cause same to be posted in the jockey's room. The patrol judges shall assist in making up the film list and attend all film showings whenever their other duties permit;

(11) To maintain a daily log, reporting all actions taken by the stewards on all controversies which arise during the day, such report to show name of track, date, weather, track condition, claims, rulings issued, and any other circumstance or condition regarded as unusual. The [, such] reports shall [to] be signed by all three (3) stewards and filed within twenty-four (24) hours at the commission general office;

(12) To make periodic inspections of the barn area and check track security and [;] to make occasional, informal visits to the jockeys' room and observe weighing out and check security. [; such] Inspections and observations made pursuant to this section shall be noted in the stewards' report;

(13) To maintain a minute book which shall contain a detailed written record of all questions, disputes, protests, complaints, or objections brought to the attention of the stewards, summary of interviews taken [thereon], reports of investigations [thereon], together with rulings issued. [thereon;] If a ruling is not unanimous, the dissenting steward shall record reasons for his [such] dissent. The [; such] stewards' minute book shall be available to the commission for inspection at all times, but shall not be considered part of commission papers open to public inspection;

(14) Within seven (7) days after the conclusion of a race meeting, the stewards shall submit to the commission a written report setting out the condition of the meeting and association grounds, together with any recommendation for the improvement [thereof] which they may deem appropriate.

LYLE G. ROBEY, Chairman
APPROVED BY AGENCY: November 12, 1991
FILED WITH LRC: November 13, 1991 at 3 p.m.
PUBLIC HEARING: A public hearing will be held on December 23, 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, Lexington, Kentucky 40511.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Michael W. 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:
(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: Expand steward's report.
(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: 810 KAR 1:004.
(a) Necessity of proposed regulation if in conflict: Per quadrennial review and further insure integrity of racing in Kentucky.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Yes
(6) Any additional information or comments:
TIERING: Was tiering applied? No. N/A.

PUBLIC PROTECTION AND REGULATION CABINET
Kentucky State Racing Commission
(Proposed Amendment)

810 KAR 1:005. Racing officials.

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 qualifications, duties, powers and responsibilities of the racing officials.

Section 1. Racing Officials. (1) Persons appointed by the association to serve as racing officials during a race meeting shall [must] first be approved by the commission, shall serve only so long as approved by the commission, and shall be under the supervision of the stewards. For purposes of these administrative regulations [rules], racing officials shall include those persons serving as steward, racing secretary, assistant racing secretary, clerk of the scales, paddock judge, starter, patrol judge, placing judge, [and] timer, identifier and veterinarian.
(2) No person while serving as a racing official shall, indirectly or directly, own a beneficial interest in a thoroughbred, [or] jockey contract, or association under his supervision; nor shall he cause to be bought or sold, for himself or another, any thoroughbred under his supervision; nor shall he buy or sell, for himself or another, any right to or in a contract with a jockey or apprentice jockey under his supervision; nor shall he wager on any race under his supervision; nor shall he write or solicit horse insurance or have any monetary interest in any business which seeks the patronage of horsemen or racing associations [as such]. For the purposes of this subsection [the above], the following racing department employees shall also be deemed racing officials: assistant starter, jockey room custodian, jockey room employees, valets, outriders.
(3) Racing officials serving in the capacity of stewards, placing and[/or] patrol judges, clerk of scales, starter and horse identifier shall take and satisfactorily pass an optical examination within one (1) year prior to the race meeting at which they serve. The [, such] examination shall show [evidencing] corrected twenty-twenty (20-20) vision and an ability to distinguish colors correctly.
(4) Any racing official who desires to leave his employment during the race meeting shall [must] first obtain permission from the commission; if [in the event] a vacancy occurs among racing officials other than stewards, the association shall promptly appoint a successor, subject to approval of the commission. If [; in the event] the association does not appoint a successor in time to permit the orderly conduct of racing, then the stewards shall immediately appoint a temporary successor.

Section 2. Racing Secretary. The racing secretary shall be responsible for the programming of races during the race meeting, compiling and publishing condition books, assigning weights for handicap races, and shall receive all entries, subscriptions, declarations, and scratches. [Among] The [duties for which the] racing secretary and his staff shall be [are] responsible for [are]:
(1) Safekeeping of registration certificates and racing permits for horses, recording information required thereon, and returning same to owners at the conclusion of the race meeting;
(2) [(1)] Maintaining a record of all stakes fees received, and all arrears, jockeys' fees, purchase money in claiming races, and all other monies received incident to the racing meeting and payment [pay over same] to those persons entitled thereto within fourteen (14) days after race meeting concluded;
(3) [(2)] Supervision of the horsemen's bookkeeper handling of the "horseman's account;"
(4) [(3)] Daily posting of entries for the benefit of the public as soon as possible after the entries have been closed and declarations have been made;
(5) Assigning [(4) To assign] stall applicants such stabling as he may deem proper after consultation with the stewards, and to maintain a record of arrival and departure of all horses stabled on association grounds;
(6) Publishing [(5) To publish] the official daily program, insuring the accuracy therein of the following information:
(a) Sequence of races to be run and post time for the first race;
(b) Purse, conditions, and distance for each race, and current track record for the [such] distance;
(c) The full name of licensed owners of each horse, indicated as leased if applicable, and description of racing colors to be carried;
(d) The full name of the trainer and the full name of the jockey named for each horse together with the weight to be carried;
(e) The saddle cloth number or designation for each horse, and the post position for each horse, if there is a variance with the saddle cloth designation;
(f) Identification of each horse by name, color, sex, age, sire and dam;
(g) Such other information as may be requested

from time to time by the association or the commission.

Section 3. Clerk of the Scales. One (1) racing official shall serve as clerk of the scales who shall be responsible for the security, regulation, and control of the jockeys room, the equipment therein, and personnel permitted access thereto. [Among] The [duties for which the] clerk of scales shall be [is] responsible for [are]:

(1) Weighing out every jockey no later than fifteen (15) minutes prior to the race the jockey is scheduled to ride and recording all overweights which shall immediately be posted and announced to the public before each race;

(2) Weighing in every jockey immediately after the finish of each race and promptly notifying the stewards whether any jockey weighed in more than two (2) pounds underweight;

(3) Safekeeping of all racing colors;

(4) Reporting all color changes or jockey changes from that listed in the official daily program and causing same to be posted and announced to the public before each race;

(5) Supervision of all valets and the issuance of numbered saddle cloths and equipment for each horse;

(6) Accuracy of the scales and periodic tests thereof;

(7) Submitting to the racing secretary at the close of each racing day a statement of weight carried in each race by each jockey, noting overweight, if any;

(8) All complaints, protests, objections, or disputes submitted to the clerk of the scales shall be immediately transmitted to the stewards, and if the stewards are unavailable, [then] to the commission.

Section 4. Paddock Judge. One (1) racing official shall serve as paddock judge who shall have general supervision of the paddock. The paddock judge shall [and] be responsible for:

(1) Assembling the horses and jockeys in the paddock no later than fifteen (15) minutes before the scheduled post time for each race;

(2) Maintaining a written record of all equipment and inspecting all equipment of each horse saddled and reporting any change thereof to the stewards;

(3) Inspection of bandages of a horse. [;] The paddock judge may order such bandages removed or replaced;

(4) Paddock schooling of all horses approved for schooling [such] by the stewards;

(5) Taking such measures as to insure that the saddling of all horses is orderly, open to public view, free from interference, and that horses are mounted at the same time, and leave the paddock for the post in proper sequence.

Section 5. Starter. (1) The starter shall be responsible for the fair and equal start of all horses in a race at the scheduled starting time by means of a starting gate and bell, or other device activated by his signal. So far as practical, the starter shall cause all horses to be loaded in order of post position, but the starter may in his discretion load an unruly or fractious horse out of order or may start the [such] unruly or fractious horse on the outside of the starting gate and one (1) length behind the starting line. By permission of the stewards a race may be started without a starting gate. The starter may employ such assistant starters as he may deem necessary and shall daily change the gate position of each assistant starter without notice to the assistant starters until the field for the first race shall come upon the track.

(2) No horse shall be permitted to start in a race unless approval is given by the starter. The starter shall maintain a schooling list which shall be posted in the racing secretary's office listing the names of all horses ineligible to start due to inadequate [for want of adequate] training at leaving the gate. Horses shall be schooled under the supervision of the starter or his assistants.

(3) The starter shall report to the stewards any disobedience of his orders or attempts to take unfair advantage at the starting gate and recommend penalties for offenders.

(4) No assistant starter shall handle a horse until instructed to do so by the starter. No assistant starter shall strike or use abusive language to a jockey.

(5) No starter or assistant starter shall accept any gratuity or payment other than his regular salary, directly or indirectly, for services in starting a race, nor shall he wager on a race.

(6) The starter shall maintain a written record showing the names of all starters during the day and the names of the assistant starters who handled each horse, this [such] record shall [to] be made available to the stewards upon request.

(7) The starter shall have constant radio or telephone communication with the stewards from the time the horses leave the paddock until the field is sent away.

Section 6. Patrol Judges. At least two (2) racing officials shall serve as [a] patrol judges who shall be stationed in elevated stands at points designated by the stewards to observe the running of each race. Each patrol judge shall have instant radio or telephone communication with the stewards to report observations, particularly as to any suspected foul riding, during the running of each race. Patrol judges shall assist in making up the film list and shall review all patrol films or video tapes before commencement of the next succeeding race program.

Section 7. Placing Judges. Three (3) racing officials shall serve as placing judges who shall occupy a stand directly above the finish line during the running of each race. The placing judges shall take special note of racing colors and distinguishing equipment carried by each horse. The placing judges shall determine the order of the horses as they cross the finish line by consideration of the respective noses of the [such] horses. The placing judges shall cause the numbers of the first four (4) horses to cross the finish line to be flashed on the result board. A photo finish camera approved by the commission shall be used as an aid by the placing judges in determining the order of the horses as they cross the finish line; placing judges may request a photo to assist in determining margins of less than a half-length.

Section 8. Timer. A racing official shall serve as timer who shall occupy a stand directly above the finish line during the running of each

race to [and] record the official time [thereof]. The timer shall record the fractional time of leading horses during each race and the final time of the first horse to cross the finish line. An electrical or mechanical timing device approved by the commission may be used as an aid by the timer in determining the official time of each race. The timer shall maintain a written record of fractional and finish times of each race and have same available for inspection by the stewards or commission on request.

LYLE G. ROBEY, Chairman
APPROVED BY AGENCY: November 12, 1991
FILED WITH LRC: November 13, 1991 at 3 p.m.
PUBLIC HEARING: A public hearing will be held on December 23, 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, Lexington, Kentucky 40511.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Michael W. 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: 810 KAR 1:005.
(a) Necessity of proposed regulation if in conflict: Per quadrennial review.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Yes
(6) Any additional information or comments:
TIERING: Was tiering applied? No. N/A.

PUBLIC PROTECTION AND REGULATION CABINET
Kentucky State Racing Commission
(Proposed Amendment)

810 KAR 1:006. Racing associations.

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 administrative regulation outlines the requirements for racing associations.

Section 1. Maintenance of Grounds, Facilities and Uniform Track. Each association shall at all times maintain its grounds and facilities so as to be neat and clean, painted and in good repair, with special consideration for the comfort and safety of patrons, employees, and other persons whose business requires their attendance; with special consideration for the health and safety of horses there stabled, exercising, or entered to race; and shall have available adequate and proper implements to maintain a uniform track, weather conditions permitting.

Section 2. Result Boards, Totalizators Required. Each association shall provide and maintain mechanically operated totalizators and electronic boards showing odds, results, and other race information located in plain view of patrons.

Section 3. Starting Gate. Each association shall provide and maintain a working starting gate on every day horses are permitted to exercise on its racing strip. Each association shall have in attendance one (1) or more persons [men] qualified to keep the [said] starting gates in good working order whenever the [said] gates are in use, and each association shall provide for periodic inspections of the [said] gates.

Section 4. Stabling. Each association shall be responsible for providing and maintaining fire-resistant barns and stalls in good repair, and in a clean, and sanitary condition. [;] Each barn and each stall shall be numbered in consecutive order for ready ascertainment of location and identification and adequate drainage therefor shall be maintained. The racing commission shall submit to the racing secretary prior to the opening of each race meeting a list of locations of approved off-track stabling facilities from which horses may be permitted to race. The [; such] locations shall be considered for purposes of these administrative regulations [rules] "association grounds."

Section 5. Stands for Officials. Each association shall provide and maintain stands commanding an uninterrupted view of the entire racing strip for racing officials. The [, such] stands and location shall [thereof to] be approved by the commission. Patrol judge stands shall be constructed so the floor [thereof] shall be at least six (6) feet higher than the track rail.

Section 6. Distance Pole Markings. Each association shall cause quarter poles to be painted red and white, eighth poles to be painted green and white, and 16th poles to be painted black and white.

Section 7. Lighting. Each association shall provide and maintain flood lights so as to insure adequate illumination in the stable area and parking area. Adequacy of track lighting for night racing shall be determined by the commission.

Section 8. Facilities for Stable Employees. Each association shall provide and maintain in good repair adequate living quarters and

conveniently located sanitary facilities, which shall include [such as] showers, toilets, and wash basins for stable employees. No personnel shall be permitted to sleep in any stall or barn loft.

Section 9. Facilities for Jockeys. Each association shall provide and maintain adequate facilities for jockeys scheduled to ride each day. The [, such] facilities shall [to] include accommodations for rest and recreation of jockeys on racing days, showers, toilets, wash basins, mirrors, arrangements for safekeeping of apparel and personal effects, snack bar, and other accommodations as requested by the clerk of scales.

Section 10. Facilities for Commission. Each association shall provide adequate office space for the commission on association grounds and shall make available to the commission, and mark accordingly, a season box of six (6) to eight (8) seats and appropriate parking places for use of the commission throughout each racing day. Each association shall honor for access to preferred parking facilities and all other areas on association grounds any ring, lapel button, or automobile emblem issued or designated as approved at any time by the commission[, or by the National Association of State Racing Commissioners].

Section 11. Sanitary Facilities for Patrons. Each association shall, on every racing day, provide adequate and sanitary toilets and wash rooms, and furnish free drinking water for patrons and persons having business at the association.

Section 12. Manure Removal. Each association shall provide and maintain adequate manure pits of the [such] size and construction to handle refuse from stalls. The contents of the [said] manure pits shall be removed from the stable areas as promptly as is possible.

Section 13. Photo Finish Cameras. Each association shall provide and maintain at the finish line two (2) photo finish cameras for photographing the finish of races; one (1) camera to be held in reserve. The photo finish photographer shall promptly furnish to the stewards and placing judges prints of all finishes as may be requested and in such number as may be required for public posting. The association shall maintain a one (1) year file of all [such] photo finishes.

Section 14. Patrol Films or Video Tapes. Each association shall at all times during a race meeting provide and maintain personnel and equipment necessary to produce adequate motion pictures or video tapes and record [with same] each race from start to finish.

(1) Projection or viewing equipment shall be adequate to permit simultaneous showing of head-on and side-angle views of the running of each race.

(2) [Such] Films and video tapes, shall be retained and secured by the association for not less than one (1) year and shall be available at all times to the commission and stewards. Each visual record of a race involving any questions, dispute, or controversy shall be filed with the commission upon order of the stewards.

(3) [Such] Films, and [or] video tapes, shall be made available for viewing at the track by licensees who owned, trained, or rode a horse in the race requested to be viewed, and to members of the press.

Section 15. Ambulances. Each association shall provide and maintain at least one (1) man-ambulance and at least one (1) horse-ambulance during times horses are permitted to exercise or race. The [Said] ambulances shall be equipped, manned, and ready for immediate duty, and shall be located at an entrance to the racing strip.

Section 16. First Aid Room. Each association shall equip and maintain adequate first aid facilities with not less than two (2) beds and attendance of a competent physician and registered nurse during race hours unless the association can transport injured individuals to a fully-equipped hospital emergency room in five (5) minutes or less in an ambulance manned by a certified paramedic and certified emergency medical technician. The ambulance shall be on standby on association premises during race hours. In the absence of a competent physician, paramedics shall be equipped, at a minimum, with the following equipment: heart monitor and defibrillator, cellular phone, and airways intubation equipment.

Section 17. Track Kitchen. Each association shall provide adequate eating facilities within the stable area, maintained in a clean and sanitary manner at all times horses are stabled on association grounds.

Section 18. Communication System. Each association shall install and maintain in good working service communication system[s] between the stewards' stand and patrol judges, pari-mutuel department, starting gate, public address announcer, and clerk of scales.

Section 19. Fire Prevention. Each association shall be responsible for maintaining an adequate program for fire prevention and fire suppression. Each association within fifteen (15) days before commencement of a race meeting shall be inspected by the state or local fire marshal whose certification that the association plant and stable area meet fire safety requirements is necessary for the commission to approve commencement of the race meeting. Each association shall maintain a firefighting unit of trained personnel equipped with high-expansion foam fire extinguishers and other equipment as may be recommended by local fire inspection authority. Each association shall prohibit:

(1) Smoking in stalls, under shed rows, and in feed rooms;

(2) Open fires, oil or gas lamps in stable area; and

(3) Locking of stalls occupied by horses.

Section 20. Association Police. Each association shall provide and maintain competent police and watchman services, night and day, in and about association grounds, and shall furnish daily to the commission a report on any disturbances, drunkenness, or disorderly conduct committed by any person on association grounds.

Section 21. Security. Each association shall cause to be excluded from association grounds all persons designated by order of the commission or stewards to be excluded. Each association shall take [such] measures [as] to maintain security of horses on association grounds so as to protect from injury due to frightening of or tampering with said horses. Each association shall exclude from the paddock area, race strip, and winner's entrance all persons who have no immediate connection with the horses entered except members of the commission, racing officials, and duly accredited members of the news media.

Section 22. Vendors and Suppliers. Each association shall supervise the practice and procedures of all vendors of food, horse feed, medication, and tack, who have entry to the stable area. No association by virtue of this section [rule] shall attempt to control or monopolize proper selling to owners, trainers, or stable employees, nor shall an association grant a concession to any vendor of feed, racing supplies, or racing services. Every [Any] vendor of horse feeds or medications shall file with the commission veterinarian a list of products which he proposes to sell, including any new preparation or medication. No association shall permit the sale of any alcoholic beverage, beer excepted, within the stable area.

Section 23. Ejection or Exclusion From Association Grounds. (1) Associations may eject or exclude any persons, licensed or unlicensed, from association grounds or a part thereof solely of its own volition and without any reason or excuse given therefor, provided, however, the [such] ejection or exclusion is not founded on race, creed, color, sex, or national origin.

(2) Associations shall eject or exclude from association grounds all persons believed to be engaged in a bookmaking activity or solicitation of bets or touting, and a report thereof shall be submitted promptly to the commission, to the stewards, and to the local police. Associations shall eject or exclude from association grounds all persons who as a business or for any compensation, shall, directly or indirectly, accept any thing of value to be wagered or to be transmitted or delivered for wager to any pari-mutuel wagering enterprise, or participate in any such transmission.

(3) Associations shall eject or exclude from the stable areas on association grounds all persons, except those whose presence in the stable area is authorized as:

(a) Persons licensed to conduct an activity, the conduct of which requires the presence of the [such] licensee in the stable area;

(b) Duly accredited members of the news media;

(c) Guests of licensed owner or licensed trainer physically in the company of the [such] owner or trainer;

(d) Persons physically in the company of and under the control and supervision of a racing official, [or] association security guard, [or] association public relations department representative.

(4) Reports of all ejections or exclusions from association grounds for any reason shall be made immediately to the commission and the stewards. The [, such] reports shall state [stating] the name of all persons and circumstances [involved].

(5) Ejection or exclusion from association grounds of a licensee of the Kentucky State Racing Commission shall be subject to review by the commission under the procedures provided for in 810 KAR 1:020.

(6) In no event shall an association eject or exclude a licensee as a result of circumstances or conduct which occurred and was known by the commission prior to the date of licensure.

Section 24. Ownership of Associations. Each association shall file with the commission a revised list of persons whose identity is required by 810 KAR 1:003, Section 6(2), immediately upon transfer of any beneficial interest or control in the association as from time to time may occur.

Section 25. Plan of Association Grounds. Each association shall file with the commission existing maps and plans of association grounds, showing all structures, piping, fire hydrants, fixed equipment, racing strip, noting elevation as filled, drained, and gapped, and composition of track base and cushion. Each association shall file revised maps or plans of association grounds upon any material change as may occur from time to time.

Section 26. Attendance Report. (1) In addition to filing with the commission a copy of the report required by KRS 138.480 to be filed with the Department of Revenue on admission taxes, each association shall file with the commission daily attendance reports showing a turnstile count of all persons admitted to association grounds where pari-mutuel wagering is conducted. The [; such] attendance report shall indicate the daily number of paid admissions, taxed complimentary admissions, and tax exempt admissions.

(2) On request from the commission, each association shall file with the commission a current badge list showing the names of all persons issued tax exempt admission credentials.

(3) Tax exempt admission credentials shall not be transferable and associations shall exclude or eject from association grounds any person attempting to use [such] tax exempt admission credentials not issued to him by the association.

Section 27. Financial Report. In addition to filing with the commission copies of reports required by KRS 137.180 and 138.530 to be filed with the Department of Revenue on pari-mutuel and license taxes, each association shall furnish to the commission within sixty (60) days after the close [of its] fiscal year three (3) copies of its balance sheet and of its operating statement for the [such] fiscal year along with a comparison to the prior year, which shall [the same to] be duly sworn to by the treasurer of the association and certified by a licensed certified public accountant. The [Such] financial report shall be in a [such] form as may be prescribed from time to time by the commission.

Section 28. Horseman's Bookkeeper. (1) Each association shall maintain a separate bank account, to be known as the "horsemen's account," with at all times sufficient funds in the [such] account to pay all money owing to horsemen in regard to purses, stakes, rewards,

claims, and deposits. Withdrawals from this account shall at all times be subject to audit by the commission, and the horsemen's bookkeeper in charge of the [such] account shall be bonded.

(2) All portions of purse money shall be made available to earners thereof within forty-eight (48) hours, dark days excluded [(Sundays excluded)] after the result of the race in which the [such] money was earned has been declared official; except, however, when the stewards shall order money withheld until final adjudication of a dispute determining which persons are entitled to the [such] money in dispute.

(3) No portion of purse money other than jockey fees shall be deducted by the association for itself or for another, unless so requested in writing by the person to whom the [such] purse monies are payable, or his duly authorized representative. Irrespective of whether requested, the horsemen's bookkeeper shall mail to each owner a duplicate of each record of a deposit, withdrawal, or transfer of funds affecting such owner's racing account at the close of each race meeting.

Section 29. Outriders. Each association shall employ at least two (2) outriders to escort starters to the post and to assist in the returning of all horses to the unsaddling area. No outrider shall lead any horse that has not demonstrated unruliness, but shall assist in the control of any horse which might cause injury to a jockey or others. Each association shall provide [wear] traditional wearing apparel. Outriders shall be required to be present on the racing strip, mounted, and ready to assist in the control of any unruly horse or to recapture any loose horse, at all times horses are permitted on the racing strip for exercising or racing. All persons exercising horses during training hours, or accompanying horses to the starting gate during racing hours shall [must] wear a protective helmet. The term "exercising" includes [is defined to include] breezing, galloping, or ponying horses.

Section 30. Valets. Each association shall employ a sufficient number of persons licensed as valets to attend each individual rider on a day's racing program. The [Such] valets shall be under the immediate supervision and control of the clerk of scales. No rider shall employ a valet or be attended by any person other than the valet assigned to him by the clerk of scales. No valet shall be assigned to the same rider for more than two (2) consecutive racing days. Valets shall be responsible for the care and cleaning of his assigned riders apparel and equipment; shall insure his rider has the proper equipment and colors for each race; shall present the proper equipment and attend the saddling of rider's mount; and shall attend the weighing out of his rider. No valet or other jockey room attendant may place a wager for himself or another, directly or indirectly, on races run while he is serving as a valet. Each association shall provide uniform attire for valets who shall wear same at all times while performing their duties within public view.

Section 31. Minimum Purse and Stakes Values. No association shall program or run any race the purse for which is less than $2,000 in cash without special permission of the commission. No association shall program or run any stakes race the added value of which is less than $10,000 in cash added by the association to stakes fees paid by owners. The [Such] minimum cash amounts paid by the association shall be exclusive of nomination, eligibility, entrance, and starting fees, and exclusive of other cash awards, premiums, prizes, or objects of value.

Section 32. Maximum Number of Races. No association shall program or run more than nine (9) races on any single racing day without special permission of the commission.

Section 33. Two (2) Year[-] Old Races. Beginning on May 1, of each year, each association shall program in the conditions book at least four (4) two (2) year[-]old races each week.

Section 34. This administrative regulation shall expire on adjournment of the next regular session of the General Assembly.

LYLE G. ROBEY, Chairman
APPROVED BY AGENCY: November 12, 1991
FILED WITH LRC: November 13, 1991 at 3 p.m.
PUBLIC HEARING: A public hearing on this regulation will be held on December 23, 1991 at 10 a.m., at the offices of the Kentucky State Racing Commission at 4063 Iron Works Pike, Building B, Lexington, Kentucky 40511. Those interested in attending the hearing should contact in writing: Michael W. Lankford, Chief Administrative Officer, Kentucky State Racing Commission, 4063 Iron Works Pike, Lexington, Kentucky 40511.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Michael W. Lankford
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected:
1. First year: $25,000 savings
2. Continuing costs or savings: $25,000 savings per year.
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: Existing regulation did not provide the quality of first aid care, the associations wanted.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: 810 KAR 1:006.
(a) Necessity of proposed regulation if in conflict: Per quadrennial review and better and more economical first aid treatment of public.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Yes
(6) Any additional information or comments:

TIERING: Was tiering applied? Yes. If any association can transport injured individuals to a hospital within five minutes or less by ambulance, they are not required to have two beds, a physician, and a registered nurse.

PUBLIC PROTECTION AND REGULATION CABINET
Kentucky State Racing Commission
(Proposed Amendment)

810 KAR 1:007. Owners.

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 administrative regulation is to outline the requirements for owners.

Section 1. License Required. No horse may be entered or raced in this state unless the owner or each of the part owners has been granted a current owner's license; except that, the commission may, through its licensing committee as provided by 810 KAR 1:003, Section 8, issue [cause] a temporary license [to be issued] which shall [will] be valid for entering and racing pending administrative processing and final action by the commission on the [such] owner's license application. [, but in] No [event shall such] temporary license shall be considered valid later than thirty (30) days after the [such] license application was submitted.

Section 2. Requirements for Owner's License. (1) In addition to administrative regulations [rules] applicable to licensees under 810 KAR 1:003, a holder of an owner's license:
(a) Shall [Must] be a [an individual] person, eighteen (18) years or older; provided, however, the commission may grant an owner's license to a person less than eighteen (18) years of age who is a son or daughter of a licensed owner in this state, if the parent thereof holding an owner's license in this state files with the license application of the [such] minor an agreement whereby the [such] parent assumes responsibility for meeting all financial, contractual, or other obligations relating to racing of the [such] applicant son or daughter.
(b) Shall [Must] carry workers' [workmen's] compensation insurance covering employees in connection with racing as required by Kentucky law.
(c) Shall [Must] own or have under lease a horse eligible to race, and be prepared to prove same upon call of the stewards.
(d) Shall [Must] not engage in an activity directly or indirectly involving the racing performance of horses on association grounds owned by others.
(2) The commission may deny, suspend, or revoke an owner's license for the spouse or any member of the immediate family or household, of a person ineligible to be licensed as an owner, unless there is a showing on the part of the applicant or licensed owner, and the commission so finds, that his participation in racing as an owner shall [will] in no way circumvent the intent of the administrative regulation [rule] by permitting a person, under the control or direction of a person ineligible for an owner's license, to serve in essence as a substitute for the [such] ineligible person.
(3) A licensed owner or trainer may personally serve as a farrier or jockey for horses he owns or are registered as in his care, provided he has received from the stewards a certification of the [said] licensee's fitness as a competent farrier or jockey.

Section 3. Ownership Disclosure. (1) Licensed owners and licensed trainers shall be held jointly responsible for making a full disclosure of the entire ownership of each horse in their care.
(2) [Such] Disclosure under this section shall identify in writing all [individual] persons who directly, or indirectly[,] through a lien, [or a] lease [or] partnership, [or] corporate stockholding, [or] syndication, or other joint venture, hold any present or reversionary right, title, or interest in and to such horse, and those [individual] persons who by virtue of any form of interest may [might] exercise control over [such horse] or [can] benefit from the racing of the [such] horse. [,] The degree and time of such ownership held by each [individual] person shall also be designated.
(3) [Such] Disclosure under this section shall be made when registering each horse with the racing secretary upon arrival on association grounds[;] or at time of entry[,] whichever event occurs first[,] and shall be revised immediately upon any subsequent change in the [such] ownership.
(4) [Such] Disclosure under this section together with all written agreements, and affidavits setting out oral agreements, pertaining to the ownership of or rights to a horse, shall be attached to the registration certificate for the [such] horse and filed with the racing secretary, who shall be responsible for the care and security of all [such] papers while the horse is [such horses thereunto pertaining are] located on association grounds.
(5) [Such] Disclosure under this section is made for the benefit of the public and all documents pertaining to the ownership or lease of a horse filed with the racing secretary shall be available for public inspection.
(6) The stewards shall review the ownership of each horse entered to race to [and] insure that each registration certificate is properly endorsed by the transferor to the present owner. The stewards may determine the validity for racing purposes of all leases, transfers, and agreements pertaining to ownership of a horse[;] and may call for adequate evidence of ownership at any time. The stewards may declare ineligible to race any horse, the ownership or control of which, is in question.

Section 4. Joint Ownership. (1) No more than five (5) individual persons may be licensed as owners of a single horse.
(2) If [In the event] more than five (5) individual persons own interests in a single horse, through a partnership, [or] corporation, [or] syndication, or other joint venture, then those [such] individual persons may designate in writing a member of the partnership, corporation, syndicate, or joint venture to represent the entire ownership of and be responsible for the [such] horse as the licensed owner [thereof].
(3) An [Such] agreement under this section [,] or lease, shall accompany the application for an

owner's license. Each person designated as representing the entire ownership of a horse shall [must] be licensed.

(4) The commission may deny, suspend, or revoke the license of any owner whose ownership of a horse is qualified or limited in part by rights or interests in or to the [such] horse being held or controlled by any other individual person or persons who would be ineligible to be licensed as an owner under 810 KAR 1:003.

Section 5. Program Listing of Owners. Names of all [individual] persons licensed as owners of each horse shall be listed in the daily program. [;] If space limitations preclude listing of first names, then at least two (2) initials shall precede surnames. Stable names, or corporate names, registered in other racing jurisdictions may be shown parenthetically, if program space limitations permit. Lessees licensed as owners shall be designated on the program as lessees of each leased horse.

Section 6. Leases. A horse [Horses] may be raced under lease, provided the lease agreement is annexed to the horse's registration certificate and is approved by the stewards. Validity of a lease for the purposes of racing a horse in this state may be suspended temporarily or voided by the stewards at any time. No lease may be approved by the stewards for racing purposes unless:

(1) Lessee is licensed as an owner;

(2) Each of the signatures of the lessors and lessees on the lease agreement is subscribed and sworn to before a notary public;

(3) Term of the lease is no less than one (1) year, unless sooner terminated by claim or retirement of the horse [subject horses];

(4) Conditions of the lease specify, as to parties to the lease, whether the [subject] horse can be entered in a race to be claimed. If agreeable to lessor that the [subject] horse may be entered to be claimed[,] conditions of the lease shall [must] specify the minimum price for which the [subject] horse may [can] be entered and [,] the name of the payee of claiming price;

(5) Conditions of the lease specify that upon claim of the [subject] horse the lease shall terminate and all rights in and to the [such] horse shall pass to claimant as a bona fide purchaser;

(6) After reviewing the full ownership of the [such] leased horse[s], and the interests of all persons involved in the [such] lease[,] and the term and conditions of the [such] lease, the stewards in their discretion find that the [such] lease:

(a) Completely divests lessors or sublessors of further control or direction of the racing performance of the [such] horse while under lease; and

(b) The resultant program-listing of lessee would not mislead the betting public by reason of the absence in the program-listing of the name of a person or persons possessing a beneficial interest in the [such] leased horse.

Section 7. Racing Colors. (1) Owners shall be responsible for designing and providing individual racing colors, consisting of jackets and caps of distinctive color and pattern to be worn by jockeys during a race. [, such] Racing colors shall [to] be registered with the commission.

(2) Racing colors may be registered for the life of an owner upon payment of a thirty (30) [twenty-five (25)] dollar fee [therefor]. Upon death of a registrant of lifetime racing colors, no application for the same colors shall be accepted by the commission for twelve (12) months, except from members of the family of the deceased owner.

(3) Racing colors other than those registered for life must be registered annually. An [,] application for racing colors shall [therefor to] accompany application for an owner's license.

(4) Registration of racing colors shall be at the discretion of the commission. Disputes as to rights to particular racing colors shall be determined by the commission. The commission may refuse to accept for registration racing colors which:

(a) Are not readily distinguishable by color and pattern from racing colors currently registered in this state or with the Jockey Club of New York;

(b) Include advertising, or promotions, [promotional, or cartoon] symbols or words, or which otherwise, in the opinion of the commission, are not in keeping with the traditions of the turf.

(5) No horse may be raced in racing colors other than those registered in the name of the horse's owner without special permission of the stewards. If an owner races two (2) or more horses in the same race, jackets shall be identical while caps shall be varied in color or design. Any deviation from registered colors granted by the stewards shall be immediately posted on the public notice board.

(6) Owners and trainers shall be jointly responsible for the condition of racing colors; insuring that they are neat, clean, and in good repair: and that an adequate number of sets of racing colors are placed in the care of the clerk of scales.

(7) The clerk of scales, and the valet serving a jockey, shall be jointly responsible for having the correct jacket and cap on each rider when leaving the jockey room for the paddock.

(8) Racing colors shall not be assignable and registration of racing colors shall be cancelled automatically upon the death or license suspension of an owner.

Section 8. Employees Licensed. No owner or trainer may employ or contract with an unlicensed person to perform an activity on association grounds for which a license is required. An owner shall immediately notify the stewards upon change of trainer during a race meeting.

Section 9. Authorized Agent. A licensed owner may, as a principal, authorize any person, as an agent, to act in the [such] owner's behalf in all matters pertaining to racing in this state and ownership of horses on association grounds, provided by 810 KAR 1:010. A licensed owner, as a principal, shall be jointly liable and responsible with his licensed authorized agent for all acts and omissions of the [such] authorized agent serving in the [such] owner's behalf in a racing matter, until written notification from the [such] owner revoking the [such] agency is received by the commission.

Section 10. Suspension. If [In the event] the license of an owner is suspended or revoked, no

horse [all horses] owned wholly or in part by the [such] owner shall [not] be permitted to race during such suspension unless the horse is [such horses are] transferred to a licensed owner, and the [such] transfer is approved by the stewards as completely divesting the [such] suspended former owner of control of or benefit from the subsequent racing of the horse [such horses].

Section 11. Partnerships. (1) Partnerships shall [must] be registered with the commission. Partnership papers shall set forth the following:
(a) The name and address of every person having an interest in the horse [or horses] involved;
(b) The relative proportion of the [such] interests;
(c) To whom the winnings are payable;
(d) In whose name the horse [or horses] shall run;
(e) With whom the power of entry and declaration rests;
(f) The terms of any contingency, lease, or any other arrangement; and
(g) The names of the horse [or horses] involved.
(2) Any partner transacting business on behalf of a partnership shall [must] own an interest therein at least equal to that owned by any other partner.
(3) All partnership registrations shall [must] be signed by the principal partner or by his authorized agent.
(4) Any alteration in a recorded partnership shall [must] be reported in writing to the commission and signed by all the partners, or their authorized agent.
(5) All the parties in a partnership and each of them shall be jointly and severally liable for all stakes, fees, and other obligations.

LYLE G. ROBEY, Chairman
APPROVED BY AGENCY: November 12, 1991
FILED WITH LRC: November 13, 1991 at 3 p.m.
PUBLIC HEARING: A public hearing will be held on December 23, 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, Lexington, Kentucky 40511.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Michael W. Lankford
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected:
1. First year: $50
2. Continuing costs or savings: $50
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:
(b) Reporting and paperwork requirements: N/A
(3) Assessment of anticipated effect on state and local revenues:
(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: 810 KAR 1:007.
(a) Necessity of proposed regulation if in conflict: Per quadrennial review.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Yes
(6) Any additional information or comments:
TIERING: Was tiering applied? No. N/A.

PUBLIC PROTECTION AND REGULATION CABINET
Kentucky State Racing Commission
(Proposed Amendment)

810 KAR 1:008. Trainers.

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 administrative regulation is to outline the requirements for trainers.

Section 1. License Required. No horse may be raced in this state unless the trainer thereof has been granted a current trainer's license.

Section 2. Requirements for Trainer's License. (1) In addition to administrative regulations [rules] applicable to licensees under 810 KAR 1:003, a holder of a trainer's license:
(a) Shall [Must] be a [an individual] person eighteen (18) years of age or older. No trainer may be licensed to train under an assumed or stable name;
(b) Shall [Must] be qualified by experience or competence to care for and train race horses as determined by a standard examination prescribed and given at any time by the stewards;
(c) Shall [Must] have in his charge a horse eligible to race;
(d) Shall [Must] not engage in an activity directly or indirectly involving the racing performance of horses on association grounds other than those registered as being in his charge.
(2) A licensed trainer shall not [cannot] also be currently licensed to participate in racing in this state as a jockey, apprentice jockey, jockey's agent, veterinarian, assistant veterinarian, dental technician, farrier, apprentice farrier, or as an association racing department employee, except as provided by 810 KAR 1:009[, Section 3].
(3) The commission may deny, suspend, or revoke a trainer's license for the spouse, or any member of the immediate family or household, or a licensee ineligible to hold a trainer's license under subsection (1)(d) of this section, unless there is a showing on the part of the applicant or licensed trainer, and the commission so finds that his participation in racing as a trainer shall [will] in no way circumvent the intent of this administrative regulation [rule] by permitting a person, under the control or direction of a licensee ineligible to hold a trainer's license to serve

in essence as a substitute for the [such] ineligible person.

Section 3. Duties and Responsibilities. A licensed trainer shall bear primary responsibility for the proper care, health, training condition, safety, and protection against the administration of prohibited drugs or medication of horses in his charge. A licensed trainer:

(1) Shall register with the racing secretary all persons in his employ and insure that those persons [same] are duly licensed within twenty-four (24) hours after the [such] employees arrive on association grounds, or are employed. Upon discharge of an employee, a trainer shall [must] promptly notify the Thoroughbred Racing and Protective Bureau and[/or] track security and commission license administrator.

(2) Shall carry workers' [workmen's] compensation insurance covering his employees in connection with racing as required by KRS Chapter 342.

(3) Shall register with the racing secretary all horses in his charge in accordance with 810 KAR 1:007[, Section 3]. No licensed trainer may take or keep in his charge a horse owned wholly or in part, or controlled by, a person unlicensed as an owner. No licensed trainer shall assume responsibility for a horse not under his active care and supervision, except as provided by subsection (6) of this section.

(4) Shall bear primary responsibility for horses he enters as to eligibility; weight allowance claimed; physical fitness to perform creditably at the distance entered; absence of prohibited drugs or medications; proper shoes, bandages, and equipment; and timely arrival in the saddling paddock. A licensed trainer shall be jointly responsible with the licensed owner for horses he enters as to stakes payments and jockey fees due.

(5) Shall furnish the name of the jockey engaged to ride each horse entered, if possible at the time of entry, but not [in no event] later than scratch time. If no jockey has been named to ride a horse entered to race by scratch time, then the stewards shall select the best rider available to ride the [such] horse.

(6) Shall personally attend his horses in the paddock and supervise the saddling thereof, unless excused by the stewards. If a licensed trainer is to be absent from association grounds where his horses are stabled, he shall [must] provide a substitute, his licensed assistant trainer or another licensed trainer, to attend the saddling of horses already entered and to assume complete responsibility for horses to be entered. The [; such] substitute shall [must] be approved by the stewards and shall sign in the presence of the stewards a form furnished by the commission accepting complete responsibility for horses the [such] substitute enters.

(7) May attend the taking and testing of [a] urine, [or] blood, sweat, saliva specimen, or other sample from a horse in his charge by the commission veterinarian and commission chemist, or may delegate one of his licensed employees to do so.

(8) Shall maintain the stable area assigned to him in a clean, neat, and sanitary condition in all times, and insure that fire-prevention laws [rules] are strictly observed in his stable area.

(9) Shall promptly report to the commission veterinarian or horse identifier any sickness [serious illness], or death of any horse in his charge.

Section 4. Restrictions on Ownership. No licensed trainer shall have any interest, by ownership or lease in the racing or breeding qualities, in a horse of which he is not the trainer at any race meeting at which such trainer is in charge of a racing stable.

Section 5. [4.] Horses Suspended. No horse [All horses] in the charge of a trainer whose license has been revoked or suspended, shall [not] be permitted to race during the period of the [such] trainer's suspension. Upon application by the owners of the [such] suspended horse[s], the stewards may approve the transfer of the [such] horses to the care of another licensed trainer, and upon the [such] approved transfer, the [such] horse[s] may be entered to race.

Section 6. [5.] Assistant Trainer. A licensed owner or licensed trainer may employ an assistant trainer. The [Such] assistant trainer shall [must] be licensed before acting in such capacity on behalf of his employer. Qualifications for obtaining an assistant trainer's license shall be prescribed by the stewards. A licensed assistant trainer shall assume the same duties and responsibilities as imposed on the holder of a trainer's license. The licensed trainer shall be jointly responsible with his assistant trainer for all acts and omissions of the [such] assistant trainer involving a racing matter.

LYLE G. ROBEY, Chairman
APPROVED BY AGENCY: November 12, 1991
FILED WITH LRC: November 13, 1991 at 3 p.m.
PUBLIC HEARING: A public hearing will be held on December 23, 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, Lexington, Kentucky 40511.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Michael W. 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: 810 KAR 1:008.
(a) Necessity of proposed regulation if in conflict: Per quadrennial review and better define trainers, ownership position.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Yes
(6) Any additional information or comments:
TIERING: Was tiering applied? No. N/A.

PUBLIC PROTECTION AND REGULATION CABINET
Kentucky State Racing Commission
(Proposed Amendment)

810 KAR 1:009. Jockeys and apprentices.

RELATES TO: KRS 230.210 to 230.360
STATUTORY AUTHORITY: KRS 13A.350
NECESSITY AND FUNCTION: To regulate conditions under which thoroughbred racing shall be conducted in Kentucky. The function of this administrative regulation is to outline the requirements for jockeys and apprentice jockeys.

Section 1. Probationary Mounts. Any person desiring to participate in this state as a rider and who never previously has ridden in a race may be permitted to ride in three (3) races before applying for a license as a jockey or apprentice jockey; provided, however:
(1) The [Such] person is a licensee with at least one (1) year of service with a racing stable;
(2) A licensed trainer certifies in writing to the stewards that the [such] person has demonstrated sufficient horsemanship to be permitted the [such] probationary mounts;
(3) The starter has schooled the [such] person breaking from the starting gate with other horses and approves the [such] person as capable of starting a horse properly from the starting gate in a race;
(4) The stewards in their sole discretion are satisfied the [such] person intends to become a licensed jockey, possesses the physical ability and has demonstrated sufficient horsemanship to ride in a race without jeopardizing the safety of horses or other riders in the [such] race. No [such] person shall [be permitted to] ride in any [such] probationary races without prior approval of the stewards.

Section 2. Qualifications for License. In addition to the administrative regulations [rules] applicable to licensees under 810 KAR 1:003, a holder of a license as a jockey or apprentice jockey:
(1) Shall [Must] be [an individual person] sixteen (16) years of age or older and licensed under his legal name which shall be listed in the daily race program;
(2) Shall [Must] have served at least one (1) year with a racing stable;
(3) Shall [Must] have ridden in at least three (3) races;
(4) Shall [Must], when required by the stewards, provide a medical affidavit certifying the [such] person is physically and mentally capable of performing the activities and duties of a licensed jockey.

Section 3. Amateur or Provisional Jockey. An amateur wishing to ride in races on even terms with professional riders, but without accepting fees or gratuities therefor, shall [must] be approved by the stewards as to competency of horsemanship, shall [must] be granted an amateur [a] jockey's license, and his [such] amateur status shall [must] be duly noted on the daily race program. A licensed owner or licensed trainer, upon approval by the stewards, may be issued a provisional jockey's license to ride his own horse or horse registered in his care as trainer.

Section 4. Apprentice Allowance. Any person sixteen (16) years of age or older, who never previously has been licensed as a jockey in any jurisdiction [country], and who is qualified under Section 2 of this administrative regulation, may claim in all purse races except handicaps the following weight allowances:
(1) Ten (10) pounds until he has ridden five (5) winners, and seven (7) pounds until he has ridden an additional thirty (30) winners; if he has ridden a total of thirty-five (35) winners prior to the end of one (1) year from the date of riding his fifth winner, he shall have an allowance of five (5) pounds until the end of that year.
(2) After the completion of conditions in subsection (1) of this section a contracted apprentice for one (1) year may claim three (3) pounds when riding horses owned or trained by his original contract employer; provided, his contract has not been transferred or sold since his first winner. The [Such] original contract employer shall be deemed the party to the contract who was the employer at the time of the apprentice jockey's first winner. No apprentice allowances may be claimed for a period in excess of three (3) years from the date of the rider's fifth winner.
(3) An apprentice jockey may enter into a contract with a licensed owner or licensed trainer qualified under Section 5 of this administrative regulation for a period not to exceed five (5) years. The [Such] contracts shall [must] be approved by the stewards and filed with the racing commission[; such contracts] shall be binding in all respects on the signatories thereof. An apprentice who is not contracted shall be given an apprentice jockey certificate, on a form furnished by the commission.
(4) If [In the event] an apprentice jockey is unable to ride for a period of fourteen (14) consecutive days or more because of service in the armed forces of the United States, [or because of] physical disablement, or [because of] restrictions on racing, the commission upon recommendation of the stewards and after consultation with the racing authority which first approved the original apprentice contract, may extend the time during which the [such] apprentice weight allowance may be claimed for a period no longer than the period the [such] apprentice rider was unable to ride.
(5) After completion of conditions in subsection (1) of this section, the [such] rider shall [must] be issued a license as a jockey before accepting subsequent mounts. Under these circumstances, the commission may waive collection of an additional license fee.

Section 5. Rider Contracts. All contracts between an employer owner or trainer and employee rider shall be [are] subject to the administrative regulations of Kentucky State Racing Commission [rules of racing]. All riding contracts for terms longer than thirty (30) days, as well as any amendments thereto, [or] cancellation, or transfer thereof, shall [must] be in writing with signature of parties thereto notarized, and shall [must] be approved by the stewards and filed with the commission. The stewards may approve a riding contract and permit parties thereto to participate in racing in this state if the stewards find that:

(1) The contract employer is a licensed owner or licensed trainer who owns or trains at least three (3) horses eligible to race at the time of execution of the [such] contract;

(2) The contract employer possesses the [such] character, ability, facilities, and financial responsibility as may be conducive to developing a competent race rider;

(3) The [Such] contracts for apprentice jockeys provide for fair remuneration, adequate medical care, and an option equally available to both employer and apprentice jockey to cancel the [such] contract after two (2) years from date of execution.

Section 6. Restrictions as to Contract Riders. No rider may:

(1) Ride any horse not owned or trained by his contract employer in a race against a horse owned or trained by his contract employer;

(2) Ride or agree to ride any horse in a race without consent of his contract employer;

(3) Share any money earned from riding with his contract employer;

(4) Accept any present, money, or reward of any kind in connection with his riding of any race except through his contract employer.

Section 7. Calls and Engagements. Any rider not so prohibited by prior contract may agree to give first or second call on his race-riding services to any licensed owner or trainer. These [Such] agreements, if for terms of more than thirty (30) days, shall [must] be in writing, approved by the stewards, and filed with the commission. Any rider employed by a racing stable on a regular salaried basis may not ride against the stable which so employs him. No owner or trainer shall employ or engage a rider to prevent him from riding another horse.

Section 8. Jockey Fee. (1) The purpose of this section is not to establish [set] a minimum or maximum fee, but merely to provide a fee [in the event that] the parties have not made any other agreement to the contrary. The fee to a jockey shall be, in the absence of special agreement, as follows:

(a) Purse $2,000 to $3,400: Winning mount, ten (10) percent of win purse; Second mount, $45; Third mount, $35; Losing mount, $30 [33].

(b) Purse $3,500 to $4,900: Winning mount, ten (10) percent of win purse; Second mount, $55; Third mount, $45; Losing mount, $35.

(c) Purse $5,000 to $9,900: Winning mount, ten (10) percent of win purse; Second mount, $65; Third mount, $50; Losing mount, $40.

(d) Purse, $10,000 to $14,900: Winning mount, ten (10) percent of win purse; Second mount, five (5) percent of second purse; Third mount, five (5) percent of third purse; Losing mount, $45.

(e) Purse, $15,000 to $24,900: Winning mount, ten (10) percent of win purse; Second mount, five (5) percent of second purse; Third mount, five (5) percent of third purse; Losing mount, $50.

(f) Purse, $25,000 to $49,900: Winning mount, ten (10) percent of win purse; Second mount, five (5) percent of second purse; Third mount, five (5) percent of third purse; Losing mount, $60.

(g) Purse, $50,000 to $99,900: Winning mount, ten (10) percent of win purse; Second mount, five (5) percent of second purse; Third mount, five (5) percent of third purse; Losing mount, $75.

(h) Purse, $100,000 and up: Winning mount, ten (10) percent of win purse; Second mount, five (5) percent of second purse; Third mount, five (5) percent of third purse; Losing mount, $100.

(2) A jockey fee shall be considered earned by a rider when he is weighed out by the clerk of scales except:

(a) When a rider does not weigh out and ride in a race for which he has been engaged because an owner or trainer engaged more than one (1) rider for the same race; in such case, the owner or trainer shall pay an appropriate fee to each rider engaged for the [such] race.

(b) When a [such] rider capable of riding elects to take himself off the mount without, in the opinion of the stewards, proper cause [therefor].

(c) When a [such] rider is replaced by the stewards with a substitute rider for a reason other than a physical injury suffered by the [such] rider during the time between weighing out and start of the race.

Section 9. Revised Order of Finish After Race is Declared Official. If a winning purse is forfeited through subsequent ruling of the stewards or racing commission, after the result has originally been made official, the winning fee shall be paid to the jockey whose mount is ultimately adjudged the winner, and the original winner shall be credited only with a losing mount.

Section 10. [9.] Duty to Fulfill Engagements. Every rider shall fulfill his duly scheduled riding engagements, unless excused by the stewards. No rider shall be required [forced] to ride a horse he believes to be unsound, nor over a racing strip he believes to be unsafe, but if the stewards find a rider's refusal to fulfill a riding engagement is based on a personal belief unwarranted by the facts and circumstances, the [such] rider may be subject to disciplinary action.

Section 11. [10.] Presence in Jockey Room. (1) Each rider who has been engaged to ride in a race shall be [by] physically present in the jockey room no later than one (1) hour prior to post time for the first race on the day he is scheduled to ride, unless excused by the stewards, or the clerk of scales; and upon arrival shall report to the clerk of scales his engagements. If [In the event] a rider should fail for any reason to arrive in the jockey room prior to one (1) hour before post time of a race in which he is scheduled to ride, the clerk of scales shall so advise the stewards who [thereupon] may name a substitute rider and

shall cause a public announcement to be made of the [any such] rider substitution prior to opening of wagering on the [such] race.

(2) Each rider reporting to the jockey room shall remain in the jockey room until he has fulfilled all his riding engagements for the day, except to ride in a race, or except to view the running of a race from a location approved by the stewards. No [Such] rider shall have [no] contact or communication with any person outside the jockey room other than an owner or trainer for whom he is riding, [or] a racing official, or a representative of the regular news media, until the [such] rider has fulfilled all his riding engagements for the day.

(3) The association shall be responsible for [such] security of the jockey room so as to exclude all persons except riders scheduled to ride on the day's program, valets, authorized attendants, racing officials, duly accredited members of the news media, and persons having special permission of the stewards to enter the jockey room.

(4) Any rider intending to discontinue riding at a race meeting prior to its conclusion shall [so] notify the stewards of his intent to depart after fulfilling his final riding engagement of the day [he intends to depart].

Section 12. [11.] Weighing Out. (1) Each rider engaged to ride in a race shall report to the clerk of scales for weighing out not more than one (1) hour and not less than fifteen (15) minutes before post time for each race in which he is engaged to ride, and at the time of weighing out shall declare overweight, if any.

(2) No rider shall pass the scale with more than one (1) pound overweight, without consent of the owner or trainer of the horse he is engaged to ride; in no event shall a rider pass the scale with more than five (5) pounds overweight.

(3) No horse shall be disqualified because of overweight carried.

(4) Whip, blinkers, number cloth, bridle, goggles, and rider's safety helmet shall not be included in a rider's weight.

Section 13. [12.] Wagering. No rider shall place a wager, [or] cause a wager to be placed on his behalf, or accept any ticket or winnings from a wager on any race except on his own mount, and except through the owner or trainer of the horse he is riding. The [Such] owner or trainer placing wagers for his rider shall maintain a precise and complete record of all such wagers, and the [such] record shall be available for examination by the stewards at all times.

Section 14. [13.] Attire. Upon leaving the jockey room to ride in any race, each rider shall be neat and clean in appearance and wear the traditional jockey costume with all jacket buttons and catches fastened. Each jockey shall wear the cap and jacket racing colors registered in the name of the owner of the horse he is to ride, stock tie, white or light breeches, top boots, safety helmet approved by the commission, and a number on his right shoulder corresponding to his mount's number as shown on the saddle cloth and daily racing program. The clerk of scales and attending valet shall be held jointly responsible with a rider for his neat and clean appearance and proper attire.

Section 15. [14.] Viewing Films or Tapes of Races. Every rider shall be responsible for checking the film list posted by the stewards in the jockey room the day after riding in a race. [,] The posting of the film list shall [same to] be considered as notice to all riders whose names are listed thereon to present themselves at the time designated by the stewards to view the patrol films or video tapes of races. Any rider may be accompanied by a representative of the jockey organization of which he is a member in viewing the [such] films, or with the stewards' permission, be represented at the [such] viewing by his designated representative.

LYLE G. ROBEY, Chairman
APPROVED BY AGENCY: November 12, 1991
FILED WITH LRC: November 13, 1991 at 3 p.m.
PUBLIC HEARING: A public hearing will be held on December 23, 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, Lexington, Kentucky 40511.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Michael W. 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: 810 KAR 1:009.
(a) Necessity of proposed regulation if in conflict: Per quadrennial review.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Yes
(6) Any additional information or comments:
TIERING: Was tiering applied? No. N/A.

PUBLIC PROTECTION AND REGULATION CABINET
Kentucky State Racing Commission
(Proposed Amendment)

810 KAR 1:010. Authorized agents.

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 administrative regulation is to outline the requirements for authorized and jockey agents.

Section 1. Agents Permitted. Any licensed owner, or licensed jockey, [or] licensed apprentice jockey, may as a principal authorize another person as an agent to act in the [such] principal's behalf in all matters pertaining to racing in this state and transfer of horses on association grounds. [Such] Authorization shall be in writing and shall define the powers, limits, and term of the [such] agency.

Section 2. License Required. (1) No person may act as agent on behalf of another individual in a matter pertaining to racing in this state, or in the transfer of horses on association grounds, unless both principal and agent have been duly issued current licenses permitting the [such] activity.

(2) If an authorized agent is to act on behalf of more than one (1) principal, a separate license shall [must] be obtained as to each principal. Applications for an authorized agent license shall be accompanied by the written agency appointment, signed by the principal and notarized.

(3) If the [such] agency appointment is other than one authorizing broad general powers and qualifies or limits powers of the agent to act on behalf of the principal in any way [(for example: limitation as to transfer of money in the horsemen's account, or entry of a horse for a minimum claiming price, or sale or purchase or lease of a horse),] then the [such] license, if issued, shall indicate the [thereon such] limitation by the word "qualified" or "limited."

(4) No racing official shall permit any authorized agent whose license indicates a qualified agency to act as an authorized agent until the [such] racing official has inspected a copy of the agency appointment and ascertains whether the [such] act is empowered by [such] agency.

(5) No jockey agent shall make engagements for more than two (2) riders, except that a single jockey agent may represent all riders under contract employment to a single employer. No rider may be represented by two (2) jockey agents at one time.

Section 3. Termination of Agency. An [Such] agency shall remain in effect until written notification of revocation is received from the principal by the commission. If [In the event] a jockey agent is dismissed by his employer, or if a jockey agent discontinues making engagements for a rider, then the [such] jockey agent shall immediately notify the stewards and turn over to the clerk of scales a list of any unfulfilled engagements the [such] jockey agent may have made for the [such] rider.

Section 4. Acts by Authorized Agent. Unless precluded by specified limitations in the agency appointment, a licensed authorized agent may perform on behalf of the licensed owner-principal all acts as relate to racing in this state or transfer of horses on association grounds as could be performed by the principal had the [such] principal been present. In executing any document on behalf of the principal, an authorized agent shall clearly indicate he is acting as an authorized agent and shall specify the principal for whom he is acting. When an authorized agent enters a claim for the account of a principal for whom he is licensed as an authorized agent, the name of the licensed owner for whom the claim is being made and the name of the authorized agent shall appear on the claim slip.

Section 5. Riding Engagements. No person other than the licensed contract employer or a licensed jockey agent, may make riding engagements for a rider, except that a jockey not represented by an agent may make his own riding engagements. Any [Such] person[s] permitted to a [making] riding engagements for a rider shall maintain in their possession at all times an engagement book and shall record all [therein] riding engagements made, which shall be [the same being] subject to examination by the stewards at any time. No jockey agent may enter the jockey room, [or] paddock, or racing strip during the hours of racing.

Section 6. Conflicting Claims for Rider. Any dispute arising from a conflict of claims for the services of a rider shall be determined by the stewards on the basis of written records submitted by the parties involved.

LYLE G. ROBEY, Chairman
APPROVED BY AGENCY: November 12, 1991
FILED WITH LRC: November 13, 1991 at 3 p.m.
PUBLIC HEARING: A public hearing will be held on December 23, 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, Lexington, Kentucky 40511.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Michael W. 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: 810 KAR 1:010.
(a) Necessity of proposed regulation if in conflict: Per quadrennial review.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Yes

(6) Any additional information or comments:
TIERING: Was tiering applied? No. N/A.

PUBLIC PROTECTION AND REGULATION CABINET
Kentucky State Racing Commission
(Proposed Amendment)

810 KAR 1:011. Pari-mutuel wagering.

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 administrative regulation is to outline the requirements for the operation of pari-mutuel wagering.

Section 1. Pari-mutuel System of Wagering Required. Permitted wagering shall be under the pari-mutuel system, employing an electric totalizator approved by the commission. All systems of wagering other than pari-mutuel, including but not limited to [such as] bookmaking and auction-pool selling, shall be [are] prohibited. Any person participating or attempting to participate in prohibited wagering shall be excluded from association grounds.

Section 2. Totalizator Required. Each association shall install and operate during its race meeting an electric totalizator approved by the commission. The [Such] totalizator shall be tested daily under the supervision of the commission to insure its proper working order.

Section 3. Records to be Maintained. The pari-mutuel manager shall maintain complete records of all wagering so the commission may upon review ascertain for any race: the opening line and subsequent odds fluctuations; the amount, and at which window, wagers were placed on any betting interest, and such other information as the commission may from time to time require. A copy of the [such] wagering records shall be retained by each association and safeguarded for a period not less than two (2) years and may not be destroyed without permission of the commission.

Section 4. Calculation and Distribution of Pools. The only pari-mutuel wagering pools permitted in this state shall be for win, place, show, daily double, exacta, quinella, and other such wagering approved by the commission as allowed by statute; each with separate and independent calculation and distribution. From each pool there shall be deducted by each association the commission as provided by KRS 138.515, with the remainder being the net pool for distribution as payoffs to ticket holders. Each association shall present the specific procedures to be used for each type of wagering in their application for dates. Any further changes or additions shall be submitted in writing to the commission for approval.

(1) Refunds. For each type of wagering, the association shall provide the procedures for refunds in writing to the commission at the time the request for the pool is made and the commission shall approve the [such] procedures before implementation.

(2) Race cancelled. For each type of wagering involving more than one (1) race, the association shall submit for commission approval the procedures to be used if [in the event] a race is cancelled.

(3) Totalizator breakdown. In the event of an irreparable breakdown of the totalizator during the wagering on a race, the wagering on that race shall be declared closed and the payoff shall be computed on the sums wagered in each pool up to the time of the breakdown.

Section 5. Minimum Wager and Payoff. The minimum wager to be accepted by any licensed association shall be one (1) dollar [two (2) dollars]. The minimum payoff on a two (2) dollar wager shall be two (2) dollars and twenty (20) cents. However, in the event of a minus pool, the minimum payoff for a two (2) dollar wager shall be two (2) dollars and ten (10) cents.

Section 6. Minors Prohibited from Wagering. No minor shall be permitted by any licensed association to purchase or cash a pari-mutuel ticket.

Section 7. Odds or Payoffs Posted. Approximate odds, based on win pool betting for finishing first for each betting interest, shall be posted on one (1) or more boards or television screens within view of the wagering public, at intervals of not more than ninety (90) seconds. If daily double wagering is conducted, before off-time of the second daily double race, the possible payoff for each two (2) dollar daily double wager combining the winner of the first daily double race with every horse or betting interest in the second daily double race; excepting that, in the event of a dead heat for first in the first daily double race, or a scheduled starter in the second daily double race is excused so as to cause a consolation daily double pool, then posting of all possible payoffs shall not be mandatory, but the association shall make every effort to compute such daily double prices and advise the public [of same] by posting or public-address announcement as soon as possible and prior to the running of the second daily double race.

Section 8. Betting Explanation. Each association shall publish [cause to be published] in the daily race program a general explanation of pari-mutuel betting and an explanation of each type of betting pool offered. The explanation also shall be posted in conspicuous places about the association grounds so as to adequately inform the public and shall be submitted to the commission prior to publication for approval.

Section 9. Prior Approval Required for Betting Pools. Each association desiring to conduct more than nine (9) betting races on a single day, or desiring to offer exotic wagering, shall first apply [therefor] in writing to the commission and obtain specific approval of the number of betting races and type of wagering to be offered on a single day.

Section 10. Pools Dependent Upon Entries. (1) On each type of wagering not already described in subsections (2) and (3) of this section, the association shall request in writing the procedures for each pool as a function of entries and the commission shall make the final determination.

(2) If horses representing five (5) or fewer betting interests qualify to start in a race, the association may prohibit show wagering on that race. If horses representing four (4) or fewer betting interests qualify to start in a race, the association may prohibit both place and show wagering on that race.

(3) If a horse is excused by the stewards after wagering has commenced or a horse is prevented from racing because of failure of a starting-gate door to open properly, and the number of actual starters representing different betting interests is:

(a) Reduced to five (5), the association may cancel show wagering on that race and the entire show pool shall be refunded upon presentation and surrender of show tickets thereon;

(b) Reduced to four (4) or fewer, the association may cancel both place and show wagering on that race and the entire place [pool] and show pool shall be refunded upon presentation and surrender of [such] place and show tickets [thereon].

Section 11. Pari-mutuel Ticket Sales. (1) No pari-mutuel tickets shall be sold except by a licensed association. Pari-mutuel tickets [and the same] shall be sold only at regular windows properly designated by signs showing the type and denomination of tickets to be sold at the [such] windows. No pari-mutuel ticket shall be sold after the totalizator has been locked and no association shall be responsible for ticket sales entered into but not completed by issuance of a ticket before the totalizator has been locked.

(2) Any claim by a person that he has been issued a ticket other than that which he requested, shall be made before he leaves the window and before the totalizator is locked.

(3) After purchasing a ticket and after leaving the [a] ticket window, a person shall not be entitled to enter for issuance an incorrect ticket, or claim refund or payment for tickets discarded, or lost, or destroyed, or mutilated beyond identification.

(4) Payment on valid pari-mutuel tickets shall be made only upon presentation and surrender thereof to the association where the wager was made within two (2) years following the running of the race on which the wager was made. Failure to present any such ticket within two (2) years shall constitute a waiver of the right to receive payment thereon.

(5) Payment of valid pari-mutuel tickets shall be made on the basis of the order of finish as posted on the infield results board and declared "official" by the stewards. A subsequent change in the order of finish or award of purse money that may result from a subsequent ruling by the steward or commission, shall not affect the pari-mutuel payoff.

(6) The association shall be responsible for the correctness of all payoff prices posted as "official" on the infield results board. If an error is made in posting the payoff figures on the public board, and ascertained before any tickets are cashed thereon, the posting error shall be corrected, accompanied by a public address announcement, and only the correct amounts shall be used in the payoff, irrespective of the initial error on the public board.

(7) Prior to posting payoffs, the pari-mutuel manager shall require each of the computer printout sheets or [(]calculating sheets[)] of the [such] race to be proven by the computer or [(]calculator[)] and the winners verified. Such proof shall show the amounts for commission, breakage, and payoffs, which added together shall equal the total pool. All pay slips are to be checked with computer printout sheets or [(]calculating sheets[)] as to winners and prices before being issued to cashiers, and all board prices are to be rechecked with the computer printout sheet or [(]calculator[)] before released to the public.

(8) If [Whenever] the recapitulation of the sales registered by each ticket issuing machine subsequently proves that the actual amount in the pool, or pools, is less than the amount used in calculating the payoff, the deficiency shall be deposited in the pool or pools by the association. If the recapitulation of sales prove that the actual amount in the pool or pools, is greater than the amount used in calculating the payoff due to a mechanical error of the totalizator, the error resulting in underpayment to the public, then the aggregate of the underpayments shall be paid into the corresponding pool of the next race or races, in an amount [such amounts] as may be determined by the state steward and the pari-mutuel manager. If an [any such] error should occur in computing the daily double pool, the underpayment shall be added to the daily double pool of the following day. Overpayments and underpayments subsequently discovered upon recapitulation after the close of a meeting may be adjusted, and any underpayment resulting from the [such] final adjustment shall be paid to the Department of Revenue.

Section 12. Betting Interests Involving more than One (1) Horse. When two (2) or more horses entered for the same race are determined by the commission to have common ties through ownership and are joined by the commission as a "mutuel entry," the mutuel entry shall become a single betting interest and a wager on one (1) horse in a mutuel entry shall be a wager on all horses in the same mutuel entry. When the number of horses competing in a race exceeds the numbering capacity of the totalizator, the racing secretary shall assign the highest pari-mutuel numbers to horses so that the highest numbered horse within the numbering capacity of the totalizator, together with horses of higher numbers, shall be grouped in the "mutuel field" as a single betting interest, and a wager on one (1) horse in the mutuel field shall be a wager on all horses in the same mutuel field.

Section 13. Emergency Situation. If [In the event] any emergency arises in connection with the operation of the pari-mutuel department not provided for by these administrative regulations [rules], the pari-mutuel manager shall make an immediate decision and shall by the quickest means possible notify the state steward and render a full report to the commission.

LYLE G. ROBEY, Chairman

APPROVED BY AGENCY: November 12, 1991

FILED WITH LRC: November 13, 1991 at 3 p.m.

PUBLIC HEARING: A public hearing will be held on December 23, 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, Lexington, Kentucky 40511.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Michael W. 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: 810 KAR 1:011.
(a) Necessity of proposed regulation if in conflict: Per quadrennial review.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Yes
(6) Any additional information or comments:
TIERING: Was tiering applied? No. N/A.

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 administrative regulation is to outline the requirements for horses entered to be raced.

Section 1. Registration Required. No horse shall [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 the [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. The Jockey Club registration certificate of each horse shall [must] be filed with the horse identifier within forty-eight (48) hours after [the] horse's arrival on the association grounds.

Section 2. Ringers Prohibited. (1) No horse shall [may] be entered or raced in this state designated by a name other than the name under which the [such] horse is currently registered with the Jockey Club in New York. If [In the event] a horse's name is changed by the Jockey Club, the [such] horse's former name shall be shown parenthetically in the daily race program the first three (3) times the [such] horse races after the [such] name change.
(2) No person shall at any time cause or permit the correct identity of a horse to be concealed or altered. No person [, 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 shall [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 the [such] horse while designated by a name other than the name under which the [such] horse was registered with the Jockey Club; or the [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 the [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 the [such] denerved horse to insure that such fact is designated on the registration certificate or racing permit.
(2) No [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) A [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 the [such] horse has been approved for racing by the commission veterinarian prior to being entered for a race.
(4) If [In the event] a horse races in violation of this administrative regulation [rule] and participates in the purse distribution, then no protest thereon shall [will] be considered unless submitted in writing to the stewards within forty-eight (48) hours after the [such] race.
(5) If [In the event] a horse races in violation of this administrative regulation [rule] and is claimed, then no protest thereon shall [will] be considered unless the successful claimant submits a [such] protest in writing within forty-eight (48) hours requesting the claim be voided. If [Should] the claim is [be] voided, the horse shall be returned to the owner who started the [such] horse in the [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 if [when] in fact the [such] horse has not had a neurectomy.

Section 4. Bleeders. [Effective January 1, 1989,] Any horse that bleeds either during or after a race or workout and [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. The opinion of the third veterinarian [and his opinion] shall be delivered to the secretary of the commission or his designee who shall make a final decision on the issue [then decide the issue].

Section 5. Health Certificate Required. No horse shall [may] be stabled on association grounds unless within ten (10) days prior to arrival on association grounds, the [such] horse has been examined by an accredited practicing veterinarian who shall certify [certifies as to] the identity of the [such] horse, temperature at time of examination, and that to the best of his knowledge and belief the [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 shall [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 shall [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 shall [may] be entered in a claiming race, unless a written release from the stallion owner is attached to the [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 shall [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 shall [must] be used consistently on a horse. Permission to change use of any equipment used on a horse in its last previous start shall [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. Bits shall be of a metallic alloy base of stainless steel or aluminum and may be encased in rubber, plastic, or leather. War bridles shall be [are] prohibited. No horse shall [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 may [could] be used to alter the speed of the [such] horse, shall be [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, shall be [is] prohibited.

Section 11. Sex Alteration. Any alteration in the sex of a horse shall [must] be reported by the [such] horse's trainer to the racing secretary promptly. [, and] The racing secretary shall note any alteration in the sex of a horse on the [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: November 12, 1991

FILED WITH LRC: November 13, 1991 at 3 p.m.

PUBLIC HEARING: A public hearing will be held on December 23, 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, Lexington, Kentucky 40511.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Michael W. 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: 810 KAR 1:012.
(a) Necessity of proposed regulation if in conflict: To better insure jockeys safety.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Yes
(6) Any additional information or comments:
TIERING: Was tiering applied? No. N/A.

PUBLIC PROTECTION AND REGULATION CABINET
Kentucky State Racing Commission
(Proposed Amendment)

810 KAR 1:013. Entries, subscriptions and declarations.

RELATES TO: KRS 230.210 to 230.360
STATUTORY AUTHORITY: KRS 230.260
NECESSITY AND FUNCTION: To regulate conditions under which thoroughbred racing shall be conducted in Kentucky. The function of this administrative regulation is to outline requirements for entry, subscription and declaration of horses in order to race.

Section 1. Definitions. (1) "Declaration" means the withdrawal of a horse from a race, before closing, by the owner, trainer, or person deputized by either.
(2) "Scratch" means the withdrawal of a horse from a race, after closing, by the owner, trainer, or person deputized by either.

Section 2. Entering Required. No [A] horse shall [not] be qualified to start in any race unless it has been and continues to be duly entered therein. Entries or subscriptions for any horse, or the transfer of same, may be refused or cancelled by the association without notice or reason given [therefor].

Section 3. Procedure for Making Entries. (1) All entries, subscriptions, declarations, and scratches shall be filed with the racing secretary and shall not be considered as having been made until received by the racing secretary. The racing secretary shall maintain a record of the time of receipt of same for a period of one (1) year.
(2) An entry shall be in the name of a horse's licensed owner, as completely disclosed and registered with the racing secretary under these administrative regulations, and made by the owner, [or] trainer, or a licensed authorized agent of the owner or trainer.
(3) An entry shall be in writing, except that an entry may be made by telephone to the racing secretary. Telephone entries [, but] shall be confirmed promptly in writing if requested by the stewards, the racing secretary, or an assistant to the racing secretary.
(4) An entry shall clearly designate the horse entered. When entered for the first time during a meeting, every horse shall be designated by name, age, color, sex, sire, and dam, as reflected by its registration certificate.
(a) No [A] horse shall [not] race, unless correctly identified to the satisfaction of the stewards as being a horse duly entered.
(b) Establishing identity of a horse shall be the responsibility of its owner and of any other person seeking to identify it. All such persons shall be subject to appropriate disciplinary action for incorrect identification.
(c) An entry shall clearly state all medications, drugs, or substances which the horse shall receive as prerace treatment. Medications, drugs, or substances shall be categorized into two (2) sections and shall be designated as follows: [NSAID (]nonsteroidal anti-inflammatory drug [)] shall be designated by (B); and all bleeder medications shall be designated by (L). Horses racing for the first time with either of the above categories shall be clearly designated with (1).
(5) No alteration, except an error corrected with the permission of the stewards, shall be made in an entry after the closing of entries.
(6) No [A] horse shall [not] be entered in two (2) races to be run on the same day.
(7) A horse which has not started in the past ninety (90) days shall not be permitted to start unless it has at least one (1) published workout within twenty (20) days of entry at a distance satisfactory to the stewards of the meeting. If a horse has done the requisite workout, but through no fault of the trainer, the [such] workout does not appear in the past performances, it shall be permitted to start and the correct workout shall be publicly displayed on the bulletin boards where photo-finishes are shown at least fifteen (15) minutes prior to the first race and for the duration of the day's racing. The [Such] workouts shall be displayed on the television monitors and tote board for fifteen (15) minutes prior to the first race. A horse which has never started shall not be entered until the trainer has produced satisfactory evidence to indicate to the starter that it has been adequately schooled from the starting gate.

Section 4. Stabling Requirement. (1) No entry shall be accepted for any horse not stabled on association grounds where the [such] race is to be run, unless its stabling elsewhere has been approved by the commission in its approved off-track stable list.
(2) Each off-track stable shall adhere to the applicable security provisions of 810 KAR 1:006.

Section 5. Limitation as to Spouses. No [An] entry in a race shall [not] be accepted for a horse owned wholly or in part by, or trained by, a person whose spouse [husband or wife] is under license suspension at time of the [such] entry. If the license of a jockey has been suspended for a routine riding offense, the stewards may waive the application of this section [this rule] as to the duly licensed spouse [husband or wife] or the [such] suspended jockey.

Section 6. Mutuel Entries. (1) Horses entered in the same race and trained by the same trainer shall be joined as a mutuel entry and single betting interest; except as provided in subsection (5) of this section.

(2) Horses entered in the same race and owned wholly, or in part by the same owner or spouse thereof, shall be joined as a mutuel entry and single betting interest.

(3) No more than two (2) horses having common ties through ownership or training to be joined as a mutuel entry shall be entered in a purse race. When making a [such] double entry of horses owned wholly, or in part by the same owner or spouse thereof, a preference for one (1) of the horses shall be made.

(4) Two (2) horses having common ties through ownership shall not start in a purse race to the exclusion of a single interest. In purse races where the number of starters is limited to ten (10) or less, two (2) horses having common ties through training shall not start to the exclusion of a single entry.

(5) In stakes races with added money of $100,000 or more, permission may be granted by the commission to uncouple mutuel entries of horses sharing common ties through training, which are owned by different owners.

Section 7. Subscriptions. (1) [Nominations to or entry of a horse in a stakes race is a subscription.] Any subscriber to a stakes race may transfer or declare a subscription prior to closing.

(2) Joint subscriptions and entries may be made by any one (1) of the joint owners of a horse. Each owner shall be jointly and severally liable for all payments due [thereon].

(3) Death of a horse or a mistake in its entry when the horse is eligible, shall not release the subscriber or transferee from liability for all stakes fees due [thereon]. Fees paid in connection with a subscription to a stakes race that is run shall not be refunded, except as otherwise stated in the conditions of a stakes race.

(4) Death of a nominator or original subscriber to a stakes race shall not render void any subscription, entry, or right of entry thereunder. All rights, privileges, and obligations shall attach to the successor owner, including the legal representatives of the decedent.

(5) If [When] a horse is sold privately, or sold at public auction, or claimed, stakes engagements for it shall be transferred automatically with the horse to its new owner. If the horse is transferred to a person whose license is suspended or otherwise unqualified to race or enter it, the subscription shall be void as of the date of the [such] transfer.

(6) All stakes fees paid toward a stakes race shall be allocated to the winner thereof unless otherwise provided by the condition for the stakes race. If a stakes race is cancelled [not run] for any reason, all subscription fees paid shall be refunded.

Section 8. Closing. (1) Entries for purse races and subscriptions to stakes races shall close at the time designated by the association in previously published conditions for the [such] races. If a race is not split, an entry, subscription, or declaration shall not be accepted after closing time. If a purse race fails to fill, or in case of an emergency, the racing secretary may extend the closing time, provided the approval of a steward has been obtained.

(2) If [When] the hour of closing is not specified for stakes races, subscriptions and declarations [therefor] may be accepted until midnight of the day of closing provided, they are received in time for compliance with every other condition of the [such] race.

(3) Entries which have closed shall be complied without delay by the racing secretary and along with declarations, shall be posted.

Section 9. Number of Starters in a Race. (1) The maximum number of starters in any race shall be limited to the number of starting positions afforded by the association starting gate and extensions [thereof] approved by the commission as can be positioned across the width of the track at the starting point for the [such] race. The maximum number of starters further shall be limited by the number of horses which, in the opinion of the stewards, considering the safety of the horses and riders, and the distance from the start to the first turn, may [can] be afforded a fair and equal start.

(2) At tracks measuring less than a mile in circumference, no more than ten (10) horses shall start in any race without consent of the stewards, and no more than twelve (12) horses shall start without approval of the commission.

(3) A claiming race in the printed condition book for which eight (8) or more horses representing different betting interests are entered shall be run. All other purse races in the printed condition book for which six (6) or more horses representing different betting interests are entered shall be run.

(4) If a purse race in the printed condition book fails to fill with the minimum number of entries required by subsection (3) of this section to be run, the association may cancel or declare off the [such] race. The names of all horses entered in the race [therein] shall be publicly posted in the office of the racing secretary not later than 1 p.m. the same day.

Section 10. Split or Divided Races. (1) If a race is cancelled or declared off, the association may split any race programmed for the same day and which may previously have been closed. Races printed in the condition book shall have preference over substitute and extra races.

(2) When a purse race is split, forming two (2) or more separate races, the racing secretary shall give notice of the split [thereof] not less than fifteen (15) minutes before such races are closed in order to grant time for the making of additional entries to the [such] split races.

(3) Division of entries upon the splitting of any race shall be made in accordance with the conditions under which entries and subscriptions

[therefor] were made, and in the absence of specific prohibition of such conditions:

(a) Horses originally joined as a mutuel entry may be placed in different divisions of a split race unless the person making the [such] multiple entry, at the time of the [such] entry indicates such coupling of horses is not to be uncoupled if the [when such] race is split.

(b) Division of entries in any split stakes race may be made according to age, or sex, or both.

(c) Entries for any split race not divided by any method provided in this administrative regulation, shall be divided by lot so as to provide a number of betting interests as nearly equal as possible for each division of such split race.

Section 11. Post Positions. Post positions for all races shall be determined by lot, drawn in the presence of those making the entries for the race. Post positions in split races also shall be redetermined by lot in the presence of those making the entries for the split race. The racing secretary shall assign pari-mutuel numbers for each starter to conform with the post position drawn, except when a race included two (2) or more horses joined as a single betting interest.

Section 12. Also-eligible List. (1) If the number of entries for a race exceeds the number of horses permitted to start, as provided by Section 9 of this regulation, the names of no more than eight (8) horses entered but not drawn into the [such] race as starters shall be posted on the entry sheet as "also-eligible" to start.

(2) After a horse has been excused from a race at scratch time, a new drawing shall be taken as to horses on the also-eligible list. The starting and post position of horses drawn from the also-eligible list shall be determined by the sequence drawn, unless otherwise stipulated in the published conditions of the race.

(3) An owner or trainer of a horse on the also-eligible list [who does] not wishing [wish] to start the horse in a race shall notify the racing secretary prior to scratch time for the race. The horse shall forfeit any preference to which it may have been entitled.

(4) If [When] entries are closed two (2) racing days prior to the running of a race, a horse on an also-eligible list that has been drawn into a race as a starter for the succeeding day, shall not permitted to run in the race for which it had been listed as also-eligible.

Section 13. Preferred List; Stars. (1) The racing secretary shall maintain a list of horses which were entered but denied an opportunity to race because they were eliminated from a race programmed in the printed condition book either by overfilling or failure to fill. The racing secretary shall submit, for approval of the commission at least thirty (30) days prior to the opening date of a race meeting a detailed description of the manner in which preference will be allocated.

(2) No preference shall be given a horse otherwise eligible [entitled thereto] for a race if it also is entered for a race on the succeeding day.

Section 14. Arrears. Unless approved by the racing secretary, no [a] horse shall [not] be entered or raced unless its owner has paid all stakes fees owed.

Section 15. Declarations. Declarations shall be made in the same form, time, and procedure as required for the making of entries. Declarations shall be [are] irrevocable. No declaration fee shall be required by any licensed association.

Section 16. Scratches. Scratches shall be [are] irrevocable and shall be permitted under the following conditions:

(1)(a) Except as provided in paragraph (b) of this subsection, a horse may be scratched from a stakes race for any reason at any time up until fifteen (15) minutes prior to post time for the race preceding the [such] stakes race by [the] filing written notification of an intention to scratch [in writing of such intention] with the racing secretary. Upon receiving a scratch from a stakes race, the racing secretary shall promptly notify the stewards and pari-mutuel manager, and shall cause public announcement of same to be made.

(b) If a list of also-eligibles has been drawn, scratches shall be filed at the regular scratch time as posted by the racing secretary. Thereafter, a horse shall not be excused without a valid physical reason.

(2) A horse shall not be scratched from a purse race unless:

(a) The approval of the stewards has been obtained; and

(b) Intention to scratch has been filed in writing with the racing secretary, or his assistant, at or before the time conspicuously posted as "scratch time." A scratch of one (1) horse coupled in a mutuel entry in a purse race shall [must] be made at or before the posted scratch time, unless permission is granted by the stewards to allow both horses to remain in the race until a later appointed scratch time [therefor].

(3) In purse races, horses that are physically disabled or sick shall be permitted to be scratched first. If:

(a) Horses representing more than ten (10) betting interests in either of the two (2) daily double races; or

(b) Horses representing more than eight (8) betting interests in any other purse race, remain in after horses with physical excuses have been scratched, owners or trainers may be permitted at scratch time to scratch horses without physical excuses. Scratches down to [such] respective minimum numbers for the [such] races may be made. This privilege shall be determined by lot if an excessive number of owners or trainers wish to scratch their horses.

(4) Entry of a horse which has been scratched, or excused from starting by the stewards, because of a physical disability or sickness shall not be accepted until the expiration of three (3) calendar days after it was scratched or excused.

Section 17. Official Publication Statistics. In determining eligibility, allowances and penalties, the reports, records, and statistics as published in the Daily Racing Form, Racing Times or such publication as the commission may deem appropriate to advise the public and the monthly chart books, or corresponding official

publications of any foreign county, shall be considered official, but may be corrected until forty-five (45) minutes prior to post time of the race.

LYLE G. ROBEY, Chairman
APPROVED BY AGENCY: November 12, 1991
FILED WITH LRC: November 13, 1991 at 3 p.m.
PUBLIC HEARING: A public hearing will be held on December 23, 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, Lexington, Kentucky 40511.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Michael W. 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: 810 KAR 1:013.
(a) Necessity of proposed regulation if in conflict: Per quadrennial review.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Yes
(6) Any additional information or comments:
TIERING: Was tiering applied? No. N/A.

PUBLIC PROTECTION AND REGULATION CABINET
Kentucky State Racing Commission
(Proposed Amendment)

810 KAR 1:014. Weights.

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 administrative regulation is to outline the requirements for assigning weights for the horse to race.

Section 1. (1) Weight penalties shall be [are] obligatory. [;] Weight allowance shall [must] be claimed at time of entry and shall not be waived after the posting of entries, except by consent of the stewards.
(2) A horse shall start with only the allowance of weight to which it is entitled at time of starting, regardless of its allowance at time of entry.
(3) Horses incurring weight penalties for a race shall not be entitled to any weight allowance for that race. [;] Horses not entitled to the first weight allowance in a race shall not be entitled to any subsequent allowance specified in the conditions.
(4) Claim of weight allowance to which a horse is not entitled shall not disqualify, unless protest is made in writing and lodged with the stewards at least one (1) hour before post time.
(5) No horse shall incur a weight penalty or be barred from any race for having been placed second or lower in any race. No horse [; nor] shall [a horse] be given a weight allowance for failure to finish second or lower in any race.
(6) No horse shall receive allowance of weight nor be relieved of extra weight for having been beaten in one (1) or more races, however, [but] this subsection [rule] shall not prohibit maiden allowances or allowances to horse that have not won a race within a specified period or a race of a specified value.
(7) Penalties incurred and allowances due in steeplechase or hurdle races shall not apply to races on the flat, and vice versa.
(8) In determining eligibility, allowances and penalties, the reports, records, and statistics as published in the Daily Racing Form and the monthly chart books, or corresponding official publications of any foreign country, shall be considered official, but may be corrected until forty-five (45) minutes prior to post time of the race.
(9) Horses winning races at unrecognized meetings shall not be penalized for such winnings in races run thereafter under the jurisdiction of the commission. The maiden allowance, however, shall be lost by the winning of a race at any unrecognized meeting.
(10) Excepting in handicaps, fillies two (2) years old shall be allowed three (3) pounds, and fillies and mares three (3) years old and upward shall be allowed five (5) pounds before September 1, and three (3) pounds thereafter in races where competing against horses of the opposite sex.
(11) In all races of one (1) mile or over, other than maiden races, races for nonwinners at a mile or over, stakes races or handicaps, any horse which has never won at a distance of one (1) mile or over, shall be allowed three (3) pounds weight allowance in addition to any other allowances to which it may be entitled in the race; such allowance shall [must] be claimed at time of entry.
(12) The following is the scale of weights for age, and shall be carried when not otherwise specified in the condition of the race:

SCALE OF WEIGHTS

Distance	Age	January/ February	March/ April	May	June	July	August	September	October	November/ December
	2	---	---	---	---	---	105	108	111	114
One-half	3	117	119	121	123	125	126	127	128	129
Mile	4	130	130	130	130	130	130	130	130	130
	5 and up	130	130	130	130	130	130	130	130	130
	2	---	---	---	---	---	102	105	108	111
Six	3	114	117	119	121	123	125	126	127	128
Furlongs	4	129	130	130	130	130	130	130	130	130
	5 and up	130	130	130	130	130	130	130	130	130
	2	---	---	---	---	---	---	96	99	102
	3	107	111	113	115	117	119	121	122	123
One Mile	4	127	128	127	126	126	126	126	126	126
	5 and up	128	128	127	126	126	126	126	126	126
	2	---	---	---	---	---	---	---	---	---
One Mile	3	101	107	111	113	116	118	120	121	122
and a	4	125	127	127	126	126	126	126	126	126
Quarter	5 and up	127	127	127	126	126	126	126	126	126
	2	---	---	---	---	---	---	---	---	---
One mile	3	98	104	108	111	114	117	119	121	122
and a half	4	124	126	126	126	126	126	126	126	126
	5 and up	126	126	126	126	126	126	126	126	126
	3	96	102	106	109	112	114	117	119	120
Two Miles	4	124	126	126	126	126	125	125	124	124
	5 and up	126	126	126	126	126	125	125	124	124

In race if intermediate lengths, the weights for the shorter distance shall be carried

(13) Jockeys shall be weighed out for their respective mounts by the clerk of scales not less than fifteen (15) minutes before post time (see also 810 KAR 1:009, Section 11(1)).

(14) A jockey's weight shall include his clothing, boots, goggles, saddle and its attachments, or any other equipment except as specified. None of the following items shall be included in the jockey's weight: whip, bridle, bit or reins, safety helmet, blinkers, goggles, or number cloth (see also 810 KAR 1:009, Section 11(4)).

(15) Five (5) pounds shall be [is] the limit of overweight any horse is permitted to carry (see also 810 KAR 1:009, Section 11(2)).

(16) Only valets furnished by the association shall assist jockeys in weighing out.

(17) After a race has been run, the jockey shall ride promptly to the finish line, [and there] dismount, and present himself to the clerk of scales to be weighed in. He shall carry over to the scales all pieces of equipment with which he weighed out.

(18) Each jockey shall weigh in at the same weight as that at which he weighed out, and if short of it by more than two (2) pounds, his mount shall be disqualified.

(19) No jockey shall weigh in at more than two (2) pounds over the weight at which he weighed out, except insofar as said weight may have been affected by the elements.

(20) If a jockey is prevented from riding his mount to the finish line because of an accident or illness either to himself or his horse, he may walk or be carried to the scales, or he may be excused by the stewards from weighing in.

LYLE G. ROBEY, Chairman
APPROVED BY AGENCY: November 12, 1991
FILED WITH LRC: November 13, 1991 at 3 p.m.

PUBLIC HEARING: A public hearing will be held on December 23, 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, Lexington, Kentucky 40511.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Michael W. 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: 810 KAR 1:014.

(a) Necessity of proposed regulation if in conflict: Per quadrennial review.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Yes

(6) Any additional information or comments:

TIERING: Was tiering applied? No. N/A.

PUBLIC PROTECTION AND REGULATION CABINET
Kentucky State Racing Commission
(Proposed Amendment)

810 KAR 1:015. Claiming races.

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 administrative regulation relates to the claiming of horses.

Section 1. (1) In claiming races any horse shall be [is] subject to claim for its entered price by any licensed owner in good standing, or by the holder of a certificate of eligibility to claim. The procedure for obtaining a certificate of eligibility to claim shall be as follows:

(a) Applicant shall, fifteen (15) days prior to entering a claim, submit an application for owners original license, which shall [to] be accompanied by a financial statement; a finger print card; the name of a licensed trainer or person eligible to be licensed as trainer, who will assume care and responsibility for the horse claimed; and the requisite fee for owners license.

(b) The [This] certificate of eligibility shall [will] be valid for the remainder of the calendar year.

(2) A claim may be made by an authorized agent, but an agent may may claim only for the account of those for whom he is licensed as agent. [, and] The name of the authorized agent, as well as the name of the owner for whom the claim is being made, shall appear on the claim slip.

(3) No person shall claim his own horse or cause his own horse to be claimed, directly or indirectly, for his own account. No claimed horse shall remain in the same stable or under the care or management of the owner or trainer from whom claimed.

(4) No person shall claim more than one (1) horse from any one (1) race. No authorized agent, although representing several owners, shall submit more than one (1) claim for any race. When a stable consists of horses owned by more than one (1) person and [,] trained by the same trainer, not more than one (1) claim may be entered on behalf of the [such] stable in any one (1) race.

(5) A claimed horse shall not run for thirty (30) days after being claimed in a race in which the determining eligibility price is less than twenty-five (25) percent more than the price for which the horse was claimed. The day claimed shall not count but the following calendar day shall be the first day, and the horse shall be entitled to enter whenever necessary so that it may start on the 31st calendar day following the claim. This subsection [provision] shall not apply to starter handicaps, in which the weight to be carried is assigned by the handicapper.

(6) No horse claimed in a claiming race shall be sold or transferred, wholly or in part, to anyone within thirty (30) days after the day it was claimed, except in another claiming race. No horse shall race elsewhere until after the close of the meeting at which it was claimed, except that the stewards may grant permission for a claimed horse to enter and start at an overlapping or conflicting meeting within the boundaries of the Commonwealth of Kentucky.

(7) Each claim shall be made in writing and on a form and in an envelope supplied by the association. Both form and envelope shall [must] be filled out completely, and shall [must] be accurate in every detail.

(8) Claims shall [must] be deposited in the claim box at least fifteen (15) minutes before post time of the race from which the claim is being made. No money or its equivalent shall be put in the claim box. For a claim to be valid the claimant shall [must] have at the time of filing the claim a credit balance in his account with the horseman's bookkeeper of not less than the amount of the claim, plus the Kentucky sales tax.

(9) The stewards, or their designated representative, shall open the claim envelopes for each race as soon as the horses leave the paddock en route to the post. They shall thereafter check with the horseman's bookkeeper to ascertain whether the proper credit balance has been established with the association.

(10) If more than one (1) valid claim is filed for the same horse, title to the horse shall be determined by lot under the supervision of the stewards or their designated representative.

(11) Any horse that has been claimed shall, after the race has been run, be delivered to the claimant, who shall [must] present written authorization for the claim from the racing secretary. Horses which are sent to the detention area for post race testing shall be delivered at that point; others shall [are to] be delivered in the paddock. No person shall refuse to deliver to the person legally entitled thereto a horse claimed out of a claiming race, and furthermore the horse in question shall be disqualified from further racing until delivery is made.

(12) Claims are irrevocable. Title to a claimed horse shall be vested in the successful claimant from the time the [said] horse is a starter. The successful [, and said] claimant shall then become the owner of the horse whether it be alive or dead, sound or unsound, or injured during the race, or after it. A claimed horse shall run in the interest of and for the account of the owner from whom claimed.

(13) No person shall offer to enter [,] or enter into, an agreement to claim or not to claim or attempt to prevent another person from claiming any horse in a claiming race. No person shall attempt by intimidation to prevent anyone from running a horse in any claiming race. No owner or trainer shall make an agreement with another owner or trainer for the protection of each other's horses in a claiming race.

(14) Claims which are not made in keeping with this administrative regulation [the rules] shall be void. The stewards may at any time in their discretion require any person filing a claim to make affidavit in writing that he is claiming in accordance with this administrative regulation [the rules]. The stewards shall be the judges of the validity of the claim.

(15) Any person holding a lien of any kind against a horse entered in a claiming race shall

[must] record the lien [same] with the racing secretary [and/]or horseman's bookkeeper at least thirty (30) minutes before post time for that race. If none is so recorded, it shall be presumed [assumed] that none exists.

(16) The engagements of a claimed horse pass automatically with the horse to the claimant.

(17) Notwithstanding any designation of sex or age appearing on the racing program or in any racing publication, the claimant of a horse shall be solely responsible for determining the age or sex of the horse claimed.

LYLE G. ROBEY, Chairman
APPROVED BY AGENCY: November 12, 1991
FILED WITH LRC: November 13, 1991 at 3 p.m.
PUBLIC HEARING: A public hearing will be held on December 23, 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, Lexington, Kentucky 40511.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Michael W. 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: 810 KAR 1:015.
(a) Necessity of proposed regulation if in conflict: Per quadrennial review.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Yes
(6) Any additional information or comments:
TIERING: Was tiering applied? No. N/A.

PUBLIC PROTECTION AND REGULATION CABINET
Kentucky State Racing Commission
(Proposed Amendment)

810 KAR 1:016. Running of the race.

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 administrative regulation outlines the requirements relating to the running of a race.

Section 1. Post Time. Post time for the first race on each racing day shall be approved by the commission. Post time for subsequent races on the same program shall be fixed by the pari-mutuels manager. At tracks where night racing is conducted, no race shall be started after 11:55 p.m.

Section 2. Horses in Paddock not to be Touched. No person shall touch a horse while in the paddock except its licensed owner, its licensed trainer, authorized stable personnel, the paddock judge, the horse identifier, its assigned valet, a steward, a farrier, or an outrider.

Section 3. Trainer Responsibility. The trainer shall be responsible for arrival in the paddock, at the time prescribed by the paddock judge, of each horse entered by the trainer and shall supervise the saddling of the [such] horse. If a trainer is to be absent from a track where his horses are participating in races, he shall [must] provide his own assistant trainer or licensed trainer to substitute for him during his absence.

Section 4. Withdrawal of a Horse. Every horse whose starting is obligatory shall [is expected to] run the course; except, [however, that] the stewards may order the withdrawal of a horse at any time up to the actual start of a race.

Section 5. Walkover. If at the time for saddling, only one (1) horse or horses owned by only one (1) stable shall be weighed out, the [such] horse or horses of single ownership shall be ridden past the stewards' stand, go to the post and then move over the course before determination of the winner.

Section 6. Parade to the Post; Time. All horses shall parade and carry their declared weight from the paddock to the starting post, the [such] parade shall [to] pass the stewards' stand. After passing the stewards' stand once, horses may break formation and canter, warm up, or go as they please to the post. The parade to the post shall not exceed twelve (12) minutes from the time the field enters upon the track, except in cases of unavoidable delay. If a jockey is thrown on the way to the post, the [such] jockey shall [must] remount at the point at which thrown. If [In the event] the jockey is so injured as to require a substitute jockey to be named for the horse by the stewards, the horse shall be returned to the paddock where the horse shall be remounted [mounted] by a substitute jockey.

Section 7. Lead Pony. When, by permission of the paddock judge, a horse is led to the post by a pony, the [such] horse may be excused from parading with the other horses. The horse shall [, but must] en route to the post, pass the stewards' stand. Lead ponies may be excluded from the saddling enclosure or walking ring, at the discretion of the stewards and paddock judge.

Section 8. Control of Horses and Jockeys by Starter. The horses and jockeys shall be under the control of the starter from the moment they

enter the track until the race is started. If an injury occurs [accident happens] to any jockey or his equipment malfunctions, the starter [started] may grant a delay to permit the substitution of a jockey or repair of equipment. During the [such] delay, the starter may permit any jockey to dismount. If [Should] a horse breaks through the gate or unseats its jockey after any of the field is loaded in the starting gate, and the [such] horse is not immediately taken in hand by the outrider and brought back for reloading, the starter shall unload the horses in the gate. The starter shall [and] reload the [such] horses in their proper order when the runaway horse is brought back to position for reloading. All causes of delay shall be reported by the starter to the stewards. No person other than the jockey, [or] starter, or assistant starter shall be permitted to strike a horse or attempt, by shouting or other fashion, to assist the [such] horse in getting a start.

Section 9. Starting Gate to be Used. A starting gate approved by the commission shall be used in starting all races on the flat except in cases permitted by the stewards. If [When] a race is started without a starting gate, there shall be no start until, and no recall after, the assistant starter has dropped his flag in answer to the starter.

Section 10. Horses Left at Post. (1) If a door at the front of the starting gate fails [should fail] to open properly and timely when the starter dispatches the field or if a horse inadvertently has not been loaded in his scheduled position in the starting gate when the field is dispatched, thereby causing the [such] horse to be left at the post, the starter shall immediately [shall] report the [such] circumstance to the stewards who shall immediately post the "inquiry" sign on the infield results board and advise the public to hold all mutuel tickets. After consulting with the starter and viewing the patrol films or video tapes, the stewards then shall determine whether the [such] horse was precluded from obtaining a fair start.

(2) If the stewards find the [such] horse was precluded from obtaining a fair start, the stewards shall rule the [such a] horse a nonstarter and shall order money wagered on the [such] horse deducted from the pari-mutuel pool and refunded to holders of pari-mutuel tickets thereon; except [provided, however,] if the [such] horse ruled a nonstarter is part of a mutuel entry and another horse in the [such] entry is not left at the post, there shall be no pari-mutuel refund.

(3) Stakes fees for the [such] ruled nonstarter shall be refunded to the owner.

(4) The starter may, in his discretion, place an unruly or fractious horse on the outside of the starting gate and one length behind the starting line. If the [such] horse so stationed outside the starting gate by the starter dwells or refuses to break with the field and thereby [is] left at the post, there shall be no refund of pari-mutuel wagers thereon nor refund of stakes fees paid therefor.

Section 11. Horses Failing to Finish. Any horse which starts in a race, but does not cross the finish line, or is not ridden across the finish line by the jockey with whom it starts the race shall be declared unplaced. Any portion of the purse that may [would] normally accrue to the [such] horse shall revert to the association.

Section 12. Fouls. A leading horse when clear is entitled to any part of the track. If a leading horse or any other horse in a race, swerves or is ridden to either side so as to interfere with, [or] intimidate, or impede any other horse or jockey, or to cause same, such shall be deemed [it is] a foul. If a jockey strikes another horse or jockey, it is a foul. If in the opinion of the stewards, a foul alters the finish of a race, any offending horses may be disqualified by the stewards.

Section 13. Stewards to Determine Foul Riding. Every jockey shall be responsible for making his best effort to control and guide his mount in such a way as not to cause a foul. The stewards shall take cognizance of riding which results in a foul, irrespective of whether an objection is lodged. [, and] If in the opinion of the stewards, a foul is committed as a result of a jockey not making his best effort to control and guide his mount to avoid a foul, whether intentionally or through carelessness or incompetence, the [such] jockey may be penalized at the discretion of the stewards.

Section 14. Horses to be Ridden Out. Every horse in every race shall [must] be ridden so as to win or finish as near as possible to first and demonstrate the best and fastest performance of which it is capable at the time. No horse shall be eased up without adequate cause, even if it has no apparent chance to earn a portion of the purse money. A jockey who unnecessarily causes a horse to shorten stride may be penalized at the discretion of the stewards. Stewards shall take cognizance of marked reversal of form of all horses and shall conduct inquiries of the licensed owner, licensed trainer, and all other persons connected with the [such] horse suspected of unformful racing. [, and] If the stewards find that the [such] horse was deliberately restrained or impeded in any way by any means so as not to win or finish as near as possible to first, any person found to have contributed to such circumstance may be penalized at the discretion of the stewards.

Section 15. Use of Whips, Other Means of Altering Performance. Whips shall [are to] be used uniformly and the stewards shall take cognizance of unusual use or nonuse of a whip by a jockey. No appliance, electrical or mechanical, other than the ordinary whip, shall be used to affect the speed of a horse in a race or workout. No sponge or other object may be used to interfere with the respiratory system of a horse. Use or nonuse of ordinary racing equipment shall be consistent and any change thereof shall [must] be approved by the stewards.

Section 16. Official Order of Finish as to Pari-mutuel Payoff. If [In the event of] foul riding or other cause for disqualification of any horses in a race is brought to the attention of the stewards by the time the last jockey in a race has been weighted in, the stewards shall rule on the extent of disqualification, if any, and shall determine the placing of the horses in

the official order of finish for purposes of pari-mutuel payoff. After the stewards have caused the "official" sign to be flashed on the infield result board, the order of finish so declared official shall be final, and no right of appeal thereof shall exist, insofar as the pari-mutuel payoff is concerned. Any subsequent change in the order of finish or award of purse money after the result of a race has been so declared official by the stewards shall in no way affect the pari-mutuel payoff.

LYLE G. ROBEY, Chairman
APPROVED BY AGENCY: November 12, 1991
FILED WITH LRC: November 13, 1991 at 3 p.m.
PUBLIC HEARING: A public hearing will be held on December 23, 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, Lexington, Kentucky 40511.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Michael W. 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: 810 KAR 1:016.
(a) Necessity of proposed regulation if in conflict: Per quadrennial review.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Yes
(6) Any additional information or comments:
TIERING: Was tiering applied? No. N/A.

PUBLIC PROTECTION AND REGULATION CABINET
Kentucky State Racing Commission
(Proposed Amendment)

810 KAR 1:017. Objections and complaints.

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 administrative regulation relates to the requirements and procedures in lodging of objections and complaints.

Section 1. Persons Eligible to Lodge Objections or Complaints. Objections or complaints against a horse or jockey entered in a race shall be received only when duly lodged by the owner or authorized agent of the owner, [or] the trainer, or the jockey, of another horse engaged in the same race and whose horse suffered or may [could] suffer by the alleged [rule] violation of an administrative regulation. An inquiry may also [can] be made by a racing official.

Section 2. Form for Objections and Complaints. Objections as to interference or fouls occurring during the running of the race may be lodged orally with the clerk of scales or with the stewards. All other objections or complaints shall be made in writing and bear the signature of the complainant. Objections or complaints lodged during a race meeting shall be addressed to the stewards. Objections or complaints lodged after the termination of a race meeting shall be addressed to the commission secretary at the commission general office. An objection or complaint once lodged shall not [cannot be] withdrawn without permission of the stewards.

Section 3. Time for Lodging Objections or Complaints. Objections or complaints based on the following [rule] violations administrative regulation shall [must] be lodged by persons aggrieved thereby within the time prescribed [therefor]; except [that] the stewards may declare a horse ineligible or disqualified at any time:
(1) At least one (1) hour before post time, if objection is based on incorrect weight allowance claimed for a horse entered to race.
(2) Before the race has been posted as official on the infield result board, if objection is based on interference by a horse, improper course run by a horse, foul riding by a jockey, or any other matter occurring during and incident to the running of the race.
(3) Not later than one (1) year after the race was run, if the objection or complaint is based on fraudulent or willful misstatement in entry under which a horse has run.
(4) Not later than forty-eight (48) hours, exclusive of Sunday, after the race was run, if objections or complaints are based on any other [rule] violation of an administrative regulation.

Section 4. Final Determination of Objections to Acts in Race. The stewards shall make all findings of fact as to all matters occurring during and incident to the running of a race; shall determine all objections, and inquiries based on interference by a horse, improper course run by a horse, foul riding by a jockey, and all other matters occurring during and incident to the running of a race; and, shall determine the extent of disqualification [qualifications], if any, of horses in a race for a foul committed during the [such] race. [Such] Findings of fact and determination shall be final and no appeal may be taken thereon. In determining the extent of disqualification, the stewards in their discretion may:
(1) Disqualify and place the offending horse, and any horses coupled with it as an entry, behind any horse that [such horses] as may have

suffered by reason of the foul;
(2) Disqualify and declare the offending horse, and any horses coupled with it as an entry, unplaced;
(3) Disqualify the offending horse, and any horses coupled with it as an entry, from participation in all or any part of the purse;
(4) Declare [null and] void, a track record set or equaled by a disqualified horse, or any horses coupled with it as an entry;
(5) Affirm the place judges' order of finish and suspend a jockey, if in the stewards' opinion the foul riding had no [did not] affect on the order of finish;
(6) Disqualify the offending horse and not suspend the [a] jockey if in the stewards' opinion the interference to another horse in a race was not the result of an intentional foul or careless riding on the part of the [a] jockey.

Section 5. Dispute of a Race after Declared Official for Pari-mutuel Payoff. If [In the event] the result of a race is placed in dispute by the lodging of an objection or complaint or by discovery of an alleged [rule] violation of an administrative regulation, after the [such] race has been declared official for pari-mutuel payoff [(for example, discovery of a ringer or otherwise ineligible starter, or violation of the medication rule)], then pending final determination of the [such] disputed race:
(1) Purse money and trophy to which the horse objected to may have been entitled shall be withheld and placed in escrow by the association until final adjudication of the dispute; except [provided, however], any portion of the purse money whose distribution would not be affected by the determination of the [such] dispute, at the discretion of the stewards, may be distributed.
(2) If purse money or trophy has been awarded to an owner prior to the lodging of an objection or discovery of an alleged [rule] violation of an administrative regulation which places the outcome of a race in dispute, the [such] money or trophy shall be returned immediately to the association on order of the stewards. Upon final adjudication of the dispute, the person deemed to be entitled to the purse money or trophy shall be entitled to an order of recovery from any person or association holding same.
(3) The horse which crossed the finish line first and any other horse for which the race is claimed, shall be liable for all penalties attaching to the winner of that race until the matter if finally adjudicated.

Section 6. Determination of a Disputed Race. The stewards shall determine all objections, complaints, or alleged [rule] violations of administrative regulation lodged or discovered after a race has been declared official for pari-mutuel payoff and shall issue a ruling thereon. If the stewards find that an administrative regulation [rule] was violated, the stewards may penalize the persons responsible [therefor], disqualify any horses in the disputed race, and award the purse money and trophy in accordance with any resulting revised order of finish in the [such] disputed race.

Section 7. Revised Order of Finish after Race Declared Official for Pari-mutuel Payoff. If [In the event] a horse is disqualified after a race has been declared official for pari-mutuel payoff and thereby causes revision of the order of finish in the [such] race:
(1) The pari-mutuel payoff shall in no way be affected.
(2) The stewards shall be responsible for causing appropriate corrections to be made in official records for the race and in racing statistics as may pertain to the respective horses, jockeys, trainers, owners, breeders, sires, dams, and broodmare sires, by reporting such corrections to the racing secretary and to the Daily Racing Form.

Section 8. Complaints Against Officials. All complaints or protests by any licensee based on any decision or act of a racing official other than the stewards, or concerning any matter as may [should] occur on association grounds not provided for by Sections 4 and 5 of this regulation shall be made in writing, [shall be] signed by the complainant, and [shall be] submitted to the stewards. All complaints or protests by any persons based on any decision, [or] act, or conduct of the stewards shall be submitted to the commission, as provided by 810 KAR 1:020[, Section 1(8)].

LYLE G. ROBEY, Chairman
APPROVED BY AGENCY: November 12, 1991
FILED WITH LRC: November 13, 1991 at 3 p.m.
PUBLIC HEARING: A public hearing will be held on December 23, 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, Lexington, Kentucky 40511.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Michael W. 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: 810 KAR 1:017.
(a) Necessity of proposed regulation if in conflict: Per quadrennial review.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Yes
(6) Any additional information or comments:
TIERING: Was tiering applied? No. N/A.

PUBLIC PROTECTION AND REGULATION CABINET
Kentucky State Racing Commission
(Proposed Amendment)

810 KAR 1:018. Medication; testing procedures.

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 administrative regulation relates to the use of medication on the horses and requirements and controls thereof.

Section 1. Use of Medication. Full use of modern therapeutic measures and medication calculated to improve or protect the health of a horse may be administered to a horse in training, under the direction of a licensed veterinarian. In the interest of protecting the racing public, health of the horse, safety of the participants in a race, nurturing formful racing, and improvement of the breed of thoroughbreds:

(1) No horse while participating in a race shall carry in its body any medication, [or] drug, [or] substance, or metabolic derivative thereof, which is a narcotic, or which could serve as a local anesthetic or tranquilizer, or which could stimulate or depress the circulatory, respiratory, or central nervous system of a horse, thereby effecting its speed.

(2) [Also prohibited are] Any drugs which may [might] mask or screen the presence of [the aforementioned] prohibited drugs, or prevent or delay testing procedures shall be prohibited.

(3) Proof of detection by the commission chemist of a medication, [or] drug, [or] substance, or metabolic derivative thereof, prohibited by subsection (1) of this section, in a saliva, urine, [or] blood, or other specimen duly taken under the supervision of the commission veterinarian from a horse promptly after running in a race, shall be prima facie evidence that the [such] horse was administered and carried [such] prohibited medications, drugs, or substances [medication, drug, or substance], in its body while running in the [such] race in violation of this administrative regulation [rule].

(4) Medications, drugs, or substances shall [must] be used consistently on horses. Permission to change the use of any nonsteroidal anti-inflammatory drug [NSAID] or bleeder medication shall [must] be obtained from the commission veterinarian.

Section 2. When Administration Prohibited. No person other than a licensed veterinarian shall administer, or cause to be administered, or participate, or attempt to participate, in any way in the administration to a horse registered for racing of any medication, drug, or substance on the day of a race for which the [such] horse is entered and prior to the [such] race. No medication, drug, or substance shall be administered less than four (4) hours prior to post time. The commission veterinarian or his designated representative may accompany any or all veterinarian[(s)].

Section 3. Responsibility for Prohibited Administration. (1) Any person found to have administered a medication, drug, or substance which caused or could have caused a violation of Section 1 or 2 of this regulation, or caused, or participated, or attempted to participate in any way in the [such] administration, of such, shall be subject to disciplinary action.

(2) The licensed trainer of a horse found to have been administered a medication, drug, or substance in violation of Sections 1 or 2 of this administrative regulation shall bear the burden of proof showing freedom from negligence in the exercise of a high degree of care in safeguarding the [such] horse from tampering. Failure [; and failing] to prove [such] freedom from negligence [(]or reliance on the professional ability of a licensed veterinarian[)] shall be subject to disciplinary action.

(3) The assistant trainer, groom, stable watchman, or any other person having the immediate care and custody of a horse found to have been administered a medication, drug, or substance in violation of Sections 1 or 2 of this administrative regulation, if found negligent in guarding or protecting the [such] horse from tampering shall be subject to disciplinary action.

Section 4. Record of Administration. Daily reports of any treatment of any horse registered for racing with any medication, drug, or substance shall be submitted by the licensed veterinarian administering or prescribing the [such] treatment to the commission veterinarian. Detection of any unreported medication, drug, or substance by the commission chemist in a prerace or postrace test may be grounds for disciplinary action:

(1) [Such] Daily reports shall accurately reflect the identity of the horse treated, time of treatment, type and dosage of medication, drug, or substance, and method of administration.

(2) [Such] Daily reports shall be submitted on a timely basis to allow the commission veterinarian to verify designated medications, drugs, or substances which were prescribed, thereby insuring the accuracy of the published information. Designated medications, drugs, or substances prescribed in prerace treatment and submitted daily reports shall [must] be in complete accord; any deviation shall result in the scratching of the particular horse, and may be grounds for disciplinary action.

Section 5. Commission Veterinarian List. As a guide to owners, trainers, and veterinarians, the commission veterinarian may from time to time publish a list of medications, shown by brand and generic names, specifically prohibited for racing. This [Such] list when published shall not be considered exclusive and medications shown thereon shall be considered only as among those, along with others not so listed, prohibited by general classification under Section 1 of this administrative regulation.

Section 6. Detention Area. Each licensed association shall provide and maintain on association grounds a fenced enclosure sufficient in size and facilities to accommodate stabling of horses temporarily detained for the taking of sample specimens for chemical testing. The [, and such] detention area shall be under the supervision and control of the commission veterinarian.

Section 7. Horses to be Tested. The stewards may at any time order the taking of a blood, urine, saliva or other specimen from any horse entered to be tested. Any owner or trainer may at any time request that a specimen be taken from a horse he owns or trains by the commission veterinarian and tested by the commission chemist. [, provided] The costs of [such] testing shall be [are] borne by the owner or trainer requesting the [such] test. In the absence of any [such] order or request, the commission veterinarian shall take specimens from, and the commission chemist shall test, all horses which: finish first in any race; finish first or second in any quinella or exacta race; finish first or second or third in any stakes; and any horse whose performance in a race, in the opinion of the stewards, may have been altered by a prohibited substance.

Section 8. Procedure for Taking Specimens. (1) All horses from which specimens are to be drawn shall be [are to] be taken to the detention area at the prescribed time and remain there until released by the commission veterinarian. No person other than the owner, trainer, groom, or hotwalker of a horse to be tested[, and no lead pony,] shall be admitted to the detention area without permission of the commission veterinarian.

(2) Stable equipment other than necessary for washing and cooling out a horse shall be [are] prohibited in the detention area; buckets and water shall [will] be furnished by the commission veterinarian. If a body brace is to be used, it shall be supplied by the responsible trainer and administered only with the permission and in the presence of the commission veterinarian. A licensed veterinarian may attend a horse in the detention area only in the presence of the commission veterinarian.

(3) During the taking of specimens from a horse, the owner; [, or] responsible trainer [(]who, in the case of a claimed horse shall be the person in whose name the [such] horse raced; [),] or a stable representative designated by such owner or trainer, shall be present and witness the taking of the [such] specimen and so signify in writing.

(4) All containers previously used for specimens shall be thoroughly cleaned in the commission chemist laboratory and shall be sealed with the laboratory stamp which shall not be broken, except in the presence of the witness as provided by subsection (3) of this section.

(5) Samples taken from a horse, by the commission veterinarian or his assistant at the detention barn, shall be placed equally in double containers and designated as the "primary" and "secondary" sample. These samples shall be sealed with tamper-proof tape and bear a portion of the multiple part "identification tag" that has identical printed numbers only. The other portion of the tag bearing the same printed identification number shall be detached in the presence of the witness as provided by subsection (3) of this section. The commission veterinarian shall thereon identify the horse from which the [such] specimen was taken, as well as the race and day, verified by the [such] witness, and the [such] detached portions of the identification tags shall be placed in a sealed envelope for delivery only to the stewards. After both portions of samples have been identified in accordance with this section [these provisions], the "primary" sample shall be delivered to the Racing Commission chemist's laboratory. The "secondary" sample shall remain in the custody of the commission veterinarian at the detention area and, as near as possible, shall be preserved in the same condition and temperature[, as near as possible]. The commission veterinarian shall take every precaution to ensure that neither the commission chemist nor any member of the laboratory staff shall know the identity of the horse from which a specimen was taken prior to the completion of all testing [thereon]. When the commission chemist has reported that the "primary" sample delivered to him contains no prohibited drug, the "secondary" sample shall be disposed of.

(a) If after a horse remains a reasonable time in the detention area and a specimen may not be taken from such horse, the commission veterinarian may permit such horse to be returned to its barn and usual surroundings for the taking of a specimen under the supervision of the commission veterinarian.

(b) If fifty (50) ml. or less of urine is obtained it will not be split, but will be considered the "primary" sample and will be tested as other "primary" samples. When the total urine collected consists of less than 100 ml., the "secondary" sample shall consist of the balance of urine collected over fifty (50) ml. All blood samples shall be initially taken in sufficient quantity to ensure that ample amounts are obtained for both the "primary" and "secondary" samples. The "primary" and "secondary" blood samples shall be equal in quantity and consist of at least twenty (20) ml., for a total of forty (40) cc. In the event of an initial finding of a prohibited drug or of a negative in violation of these rules, the commission chemist shall notify the commission, both orally and in writing, and an oral and/or written notice shall be issued by the commission to the owner and trainer or other responsible person no more than twenty-four (24) hours after the receipt by the commission of such initial finding. The commission veterinarian shall immediately freeze the "secondary" urine sample. The "secondary" samples shall be tested after notification of the owner, trainer or other responsible person, if requested. Testing of the "secondary" samples shall be performed at a laboratory selected by representatives of the owner, trainer or other responsible persons from a list of not less than two (2) laboratories approved by the Kentucky State Racing Commission. The commission shall bear the responsibility and cost of preparing and shipping the sample, but the cost of testing at the referee laboratory shall be assumed by the person requesting the testing, whether it be the owner, trainer or other person charged. A commission representative and the owner, trainer or other responsible person or a representative of the persons notified under these rules may be present at the time of the opening, repacking, and testing of the "secondary" sample to ensure its identity and that the testing is satisfactorily performed. The referee laboratory shall be informed of the initial findings of the commission chemist prior to making the test. If the finding of the referee laboratory does not confirm the finding of the initial test performed by the commission chemist and in the absence of other independent proof of the administration of a prohibited drug of the horse

in question, it shall be concluded that there is insubstantial evidence upon which to charge anyone with a violation.

(c) The commission veterinarian shall be responsible for safeguarding all specimens while in his possession and shall cause such specimens to be delivered only to the commission chemist as soon as possible after sealing, but in such order or in such manner as not to reveal the identity of any horse from which each sample was taken.

Section 9. Procedure for Testing. (1) The commission chemist shall be responsible for safeguarding and testing each specimen delivered to his laboratory by the commission veterinarian. Each specimen shall be divided into portions so that one (1) portion shall be used for initial testing for unknown substances, and another portion used for confirmation tests.

(2) The commission chemist shall conduct individual tests on each specimen capable of screening same for prohibited substances, and such other tests as to detect and identify any suspected prohibited substance or metabolic derivative thereof with specificity. Pooling of specimens shall be permitted only with the knowledge and approval of the commission veterinarian.

(3) Upon the finding of a test negative for prohibited substances, the remaining portions of such specimen may be discarded. Upon the finding of tests suspicious or positive for prohibited substances, such tests shall be reconfirmed, and the remaining portions, if available, of such specimen preserved and protected until such time as the stewards rule it may be discarded.

(4) The commission chemist shall submit to the state steward a written report as to each specimen tested, indicating thereon by specimen tag identification number, whether such a specimen was tested negative or positive for prohibited substances. The commission chemist shall report test findings to no person other than the state steward or his designated representative.

(a) In the event the commission chemist should find a specimen suspicious for a prohibited medication, he may request additional time for test analysis and confirmation.

(b) The racing association shall not make distribution of any purses until given clearance of chemical tests by the stewards.

(5) The commission chemist will make a further report to the state steward on any substance his tests showed, which are not normal in a horse. These reports shall be confidential and are not evidence for disciplinary action. They can be used as a warning to the trainer or veterinarian, by the stewards, by the commission veterinarian to improve his surveillance and by the Equine Research Program at the University of Kentucky. The residue of specimen material from such test will be preserved by the commission chemist until released by the racing commission.

(6) In reporting to the stewards a finding of a test positive for a prohibited substance, the commission chemist shall present documentary or demonstrative evidence acceptable in the scientific community and admissible in court in support of such professional opinion as to such positive finding.

LYLE G. ROBEY, Chairman
APPROVED BY AGENCY: November 12, 1991
FILED WITH LRC: November 13, 1991 at 3 p.m.

PUBLIC HEARING: A public hearing will be held on December 23, 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, Lexington, Kentucky 40511.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Michael W. 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: 810 KAR 1:018.

(a) Necessity of proposed regulation if in conflict: Per quadrennial review.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Yes

(6) Any additional information or comments:

TIERING: Was tiering applied? No. N/A.

PUBLIC PROTECTION AND REGULATION CABINET
Kentucky State Racing Commission
(Proposed Amendment)

810 KAR 1:019. Disciplinary measures.

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 administrative regulation is to outline the disciplinary powers of the stewards and commission.

Section 1. Disciplinary Measures by Stewards. Upon the finding of a violation of these administrative regulations, or an attempted violation, on association grounds during the conduct of a meeting at which the stewards have been appointed to serve, the stewards may:

(1) Declare ineligible for racing or disqualify in a race any thoroughbred or licensed person;

(2) Suspend the license of any person involved in a violation of an administrative [a] regulation promulgated by the commission for any

length of time deemed appropriate by the stewards as in keeping with the seriousness of the [regulation] violation;

(3) Cause any person, licensed or unlicensed, found to have interfered with, or contributed toward the interference of, the orderly conduct of a race or race meeting, or person whose presence is found by the stewards to be inconsistent with maintaining the honesty and integrity of the sport of thoroughbred racing, to be excluded or ejected from association grounds or any portion of association grounds; and

(4) Upon [In the case of a] license suspension, the stewards may fix in the alternative a forfeiture not to exceed $1,000, which [sum] the licensee may, if he so chooses, pay to the commission in lieu of the imposed license suspension.

Section 2. Disciplinary Measures by Commission. Upon the finding of a violation of these administrative regulations or an attempted violation on any association grounds during the conduct of a race meeting in the Commonwealth, the commission may:

(1) Declare ineligible for racing or disqualify in a race any thoroughbred or licensed person;

(2) Deny, suspend, revoke, or declare void any license applied for or issued by the commission. For violations of administrative regulations as a result of drug or alcohol abuse, the commission may in lieu of the [aforementioned] disciplinary actions listed in this subsection, allow the licensee to keep his license on a probationary basis. The commission may require the licensee to enroll in a commission approved treatment program and may require proof that the licensee has avoided drugs and alcohol before returning him to a position of good standing. Each case shall be decided on a case-by-case basis at the discretion of the commission. During any probationary period, the licensee may have the privileges of his license restricted pursuant to the order of the commission. Failure of the licensee to comply with the order of the commission may result in further disciplinary action;

(3) Cause any person, licensed or unlicensed, found to have interfered with, or contributed toward the interference of the orderly conduct of a race or race meeting or any person whose presence is found by the commission to be inconsistent with maintaining the honesty and integrity of the sport of thoroughbred racing, to be excluded or ejected from [all association grounds or any portion of any] association grounds for any length of time the commission may deem the presence of this person remains inconsistent with maintaining the honesty and integrity of the sport of thoroughbred racing in the Commonwealth;

(4) Upon appeal and hearing de novo of a matter determined by the stewards, the commission may reverse or revise the stewards' ruling in all respects, except as to findings of fact by the stewards as occurred during an incident to the running of a race and as to the extent of disqualification fixed by the stewards for a foul in a race; and

(5) Upon [In lieu of a] license suspension or revocation, the commission may fix in the alternative a forfeiture in any amount, which [sum] the licensee may, if he so chooses, pay to the commission in lieu of the [an] imposed license suspension or revocation. The forfeitures paid to the commission shall in no event in any way accrue to the personal benefit of any commissioner or stewards.

LYLE G. ROBEY, Chairman

APPROVED BY AGENCY: November 12, 1991

FILED WITH LRC: November 13, 1991 at 3 p.m.

PUBLIC HEARING: A public hearing will be held on December 23, 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, Lexington, Kentucky 40511.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Michael W. 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:

(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: 810 KAR 1:019.

(a) Necessity of proposed regulation if in conflict: Per quadrennial review.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Yes

(6) Any additional information or comments:

TIERING: Was tiering applied? No. N/A.

PUBLIC PROTECTION AND REGULATION CABINET
Kentucky State Racing Commission
(Proposed Amendment)

810 KAR 1:020. Hearings, reviews and appeals.

RELATES TO: KRS 230.210 to 230.360

STATUTORY AUTHORITY: KRS 230.240

NECESSITY AND FUNCTION: To regulate conditions under which thoroughbred racing shall be conducted in Kentucky. The function of this administrative regulation outlines the procedures and requirements relating to hearings, reviews, and appeals.

Section 1. Stewards' Hearing. (1) Before holding any stewards' hearing provided for under these administrative regulations [rules], notice in writing shall be given to any party charged

with a violation other than a routine riding offense occurring in a race unless waived in writing by the person charged.

(2) The notice required by Section 2(1) of this administrative regulation shall:

(a) Notify the party of the specific statute or administrative regulation [rule or rules], the infraction for which he is charged, and a brief statement of the facts supporting the [said] charge.

(b) State the time and place of hearing.

(c) State that the party charged may be represented by legal counsel, or by a representative of any racing trade organization of which he is a member.

(3) All stewards' hearings shall be closed and the stewards shall cause no public announcement to be made concerning a matter under investigation until conclusion of the hearing, and the party charged has been notified of the decision.

(4) The state steward shall conduct the hearing in such a manner as to ascertain and determine the substantial rights of the parties involved and shall not be bound by technical rules of procedure and evidence.

(5) All testimony [of such hearings] shall be given under oath and a record shall be made of the hearing, either by use of a tape recorder or by court reporter's transcript. The party charged with the violation may, however, waive the recording and the transcription of the testimony. The stewards shall not be required to receive testimony under oath in cases where their ruling is based solely upon a review of the video tapes of a race.

(6) If, at the conclusion of the [said] hearing the stewards shall find that a statute or an administrative regulation [rule] has been violated, they shall promptly issue a written ruling which sets forth the full name of every person charged with the [rule] violation; identification of the [such] persons, if licensed, by license classification and address; the statute or administrative regulation [rule] number and pertinent parts of the statute or administrative regulation [rule] violated, the finding by the stewards as to the violation of the statute or administrative regulation [such rule], and the penalty affixed by the stewards. Copies of the [such] rulings shall be delivered to each party in interest, delivered to the commission, posted in the racing secretary's office, and forwarded to the office of the [National] Association of [State] Racing Commissioners International.

(7) At least the state steward and one (1) association steward shall be present at all times at the hearing.

(8) Review and appeal. Any party who is the subject of any order or ruling of the stewards may apply to the commission for a review of the [such] stewards' order or ruling, except [other than] as to extent of disqualification for a foul in a race or as to a finding of fact as occurred during an incident to the running of a race.

(9) Application for review. An application to the commission for review of a steward's order or ruling shall be made within ten (10) days after the [such] order or ruling is issued in writing, and shall:

(a) Be in writing and addressed to the commission secretary at the commission general office;

(b) Contain the signature of the applicant, and the address to which notices may be mailed to applicant;

(c) Set forth the order or ruling requested to be reviewed and the date thereof;

(d) Set forth the reasons for making the [such] applications; and

(e) Request a hearing.

Section 2. Commission Hearings. Before holding any commission hearing provided for under these administrative regulations [rules], the commission shall:

(1) Give written notice [forthwith] to all parties either personally or by mail. If indispensable and necessary parties propose a large class, notice shall be served upon a reasonable number thereof as representatives of the [such] class. [Such] Notice as provided in this section shall include a statement of:

(a) Time and place of such hearing as designated by the commission and chairman. No hearing [, but such time] shall [not] be less than five (5) days nor [and no] more than thirty (30) days after service of notice, unless at the request of a party and in order to provide a fair hearing;

(b) The legal authority and jurisdiction under which the hearing is to be held;

(c) Specific designation of the particular statute or administrative regulation [rules or statutes] alleged to have been violated; and

(d) A clear and concise factual statement sufficient to inform each party with reasonable definiteness of the type of acts or practices alleged to be in violation of the statute [act] or administrative regulations [rules] promulgated thereunder. In fixing the times and places for hearings, due regard shall be had for the convenience of the parties and their representatives.

(2) The right of any party to subpoena witnesses and documentary evidence through the commission, employing the [such] rights of discovery and use of subpoenas as would be available under the Kentucky Rules of Civil Procedure[s], pretrial and trial procedures also shall be governed by Kentucky Rules of Civil Procedure[s].

Section 3. Special Prosecutor. (1) The commission may request the Attorney General to appoint a special prosecutor to carry the burden of proof showing a statute or an administrative regulation [rule] violation. If the matter involved a [rule] violation and requires a proceeding of an adversary nature; the [such] prosecutor shall be [being] one who has had no prior participation in the matter of any kind. The commission also may request that the Attorney General, or a member of his staff other than the special prosecutor, serve as law officer for the commission to assist the presiding officer in rendering decisions of a judicial nature. The special prosecutor shall have the services of the Kentucky State Police for investigatory purposes.

(2) The commission shall: permit all parties [that so desire] to be represented by counsel; [shall] permit all parties to respond and present evidence and argument on all issues involved; [and shall] permit all parties to examine commission memoranda and data and all other information which is or has been considered by the commission in investigating

and hearing the matter or which may be offered as evidence.

(3) The commission shall administer oaths and issue subpoenas upon its own motion or when requested by an appearing party. Each party shall pay the cost of its subpoenas and the expenses of its witnesses. If [When] a subpoena is disobeyed, any party may apply to the Franklin Circuit Court for an order requiring obeyance; failure to comply with an [such] order from the Franklin Circuit Court shall be cause for punishment as a contempt of the court under KRS 421.110.

(4) Unless varied by the commission, the order of proof in the de novo hearing may be:

(a) Evidence presented by the prosecution as to alleged violations [of a rule];

(b) Cross examination of prosecution witnesses and [;] redirect examination;

(c) Evidence presented by a party charged, in defense or explanation;

(d) Cross examination of party charged and his witnesses, redirect examination;

(e) Rebuttal or other evidence, on behalf of the prosecution or any other party in interest as deemed pertinent by the presiding officer;

(f) Closing argument by party charged; and

(g) Closing argument by prosecution.

(5) The commission shall keep a record of each hearing which shall include:

(a) All pretrial and trial pleadings, motions, and interlocutory rulings;

(b) All evidence received or considered;

(c) A statement of matters officially noticed;

(d) Questions and offers of proof and rulings thereon;

(e) Proposed findings and exceptions;

(f) All commission memoranda or data submitted to the commission in connection with the commission's consideration of the case;

(g) All stenographic recordings taken and transcriptions made. [;] Oral proceedings[, or any part thereof,] shall be reported stenographically upon request of any party and shall be paid for by the [such] parties desiring copies; and

(h) Final adjudication including findings of fact, based exclusively on evidence presented at the hearing and matters officially noticed, and any decision, opinion, and ruling by the commission on the matter.

(6) The commission may exclude evidence that is irrelevant, immaterial, or unduly repetitious and may admit evidence that would be inadmissible under the Kentucky Rules of Civil Procedure but is evidence of the type commonly relied upon by reasonably prudent men in the conduct of their affairs.

(a) Objections to evidentiary offers may be made and shall be noted in the record; and

(b) All or part of the evidence may be received in written form if the interest of the appearing parties will not be substantially prejudiced thereby.

(7) The commission may take official notice of technical facts or customs or procedures common to racing, but all [appearing] parties to the hearing shall be duly notified. Each party [Appearing parties] shall have an opportunity to contest facts so noticed, including commission memoranda and [or] commission data.

(8) Members of the commission participating in the adjudication of a matter before it shall not, directly or indirectly:

(a) In connection with any issue of fact in the matter before the commission, consult with any person or party who was engaged in the investigation or prosecution of the matter before the commission, or conduct any personal investigation outside the record, without giving an opportunity for all [appearing] parties to participate.

(b) In connection with any issue at law, no party or representative shall be consulted without giving all parties an opportunity to participate.

(9) The commission may make an informal disposition of the matter by stipulation, agreed settlement, consent order, or by default.

(10) Upon conclusion of the hearing, the commission shall: take the matter under advisement, [shall] render a decision as promptly as possible, and [shall] issue a ruling in final adjudication of the matter. The final [Such] ruling shall set forth the full name of every person charged with a [rule] violation; the identification of the [such] person, if licensed, by license classification and address; the statute or administrative regulation [rule] number and pertinent parts of the statute or administrative regulation [rule] alleged to have been violated; a separate statement of findings of fact; a separate statement of conclusions of law; a separate statement of reasons for the decisions; and penalties fixed by the commission, if any. Copies of the [such] ruling shall be delivered to each party in interest, posted in the racing secretary's office of the association where the matter arose, and forwarded to the office of the [National] Association of [State] Racing Commissioners International.

Section 4. Appeal from Commission Order or Ruling. Any person or licensee aggrieved by any order or decision of the commission may appeal [same] to the Franklin Circuit Court. The [Such] appeal shall be made within ten (10) days after the entry of the [such] order or [of] decision of the commission by posting and filing in the office of the Franklin Circuit Court Clerk:

(1) A bond to secure the costs of the action in a sum approved by the circuit clerk. The [, said] bond shall [to] be secured by corporate surety approved by the Department of Insurance.

(2) An attested copy of the order or decision appealed from.

(3) An attested copy of the transcript of evidence heard by the commission and [,] the cost of the [such] transcript of evidence heard by the commission. The cost of the [such] transcript shall be [being] borne by the appellant. Appeals from a commission order or decision shall be taken as provided in KRS 243.560 to 243.590.

Section 5. Suspensions Pending Appeal. Any person alleged to have committed a violation under [subsection (1) of this] Section 1 of this administrative regulation may request a stay of imposition of the steward's sanction. Pending appeal, a hearing on the [such] request for stay shall be held within forty-eight (48) hours of the request for a stay by the commission. If [In the event] the commission is not able to hold a hearing within forty-eight (48) hours, the stay shall be automatically granted. It shall be the policy of the commission to grant stays, except [unless]:

(1) In any case where a licensee is alleged to

have committed a flagrant violation of the status or prescribed administrative [rules and] regulations of racing which presents a clear and present danger to the immediate integrity of racing; and

(2) Wherein it is impossible for the commission to secure necessary scientific evidence or indispensable witnesses within forty-eight (48) hours, then the commission or its designated hearing officer may refuse a request for the stay of any penalty imposed, as long as a hearing is held no later than thirty (30) days from the initial steward's determination of a violation.

Section 6. Continuances. (1) All applications for continuance made prior to a hearing shall be in writing, shall set forth the reasons therefor, and shall be filed with the commission after giving notice of the [such] application by mail or otherwise to all parties or their representative [attorney]. At the time of the hearing, applications for continuance may be made orally. If requested, and in the manner prescribed by the commission, the party applying for the continuance shall substantiate the reasons contained in the [such] application.

(2) If an [When] application is made for continuance due to [of a cause because of the] illness of an applicant, licensee, witness, or counsel, such application shall be accompanied by a medical certificate attesting to such illness and inability.

(3) An application for continuance of any commission hearing shall be received by the commission at least ninety-six (96) hours prior to the time fixed for a hearing. An application received by the commission within the ninety-six (96) hour period shall not be granted unless a satisfactory arrangement in writing is made with the commission for the payment of all expenses resulting from such continuance. However, the commission may waive payment of the [such expenses for extenuating circumstances.

(4) If the commission approves the application for continuance, the commission [forthwith] shall set a date for the continued hearing.

Section 7. Commission Hearing Officer. (1) Any hearing authorized or required by KRS 230.210 to 230.360 may be conducted by the commission, or may be conducted by a hearing officer appointed by the commission to serve in its place. Hearings [Such a hearing] shall be conducted in the name of the commission at any time or place designated by the chairman. The hearing officer may, in receiving evidence on behalf of the commission, make [such] rulings affecting the competency, relevancy, and materiality of [such] evidence to be presented and upon motions presented during the taking of evidence [as will] expedite the preparation of the case. The commission may require the entire record to be certified to it for initial decision, and the hearing officer shall submit written findings of fact, conclusions of law and recommendations which shall be incorporated in and become a part of the record. In the absence of a requirement by the commission that a record be certified to it for initial decision, the hearing officer shall render a decision, and the absence of either an appeal to the commission, or a review upon motion of the commission, the hearing officer's decision shall become the decision of the commission.

(2) A hearing officer may be a full-time employee, serve by contract, or be paid upon a per diem basis in the discretion of the commission.

Section 8. Disqualification of Commission Members and Hearing Officer. A commission member or hearing officer may at any time withdraw from the proceeding if he deems himself disqualified, and upon the filing in good faith before the termination of the hearing of an affidavit of personal bias or disqualification of any [such] member or hearing officer, the commission shall determine the matter as a part of the record and decision in the case. If a commission member or hearing officer withdraws or disqualifies himself [such withdrawal or disqualification], any other member of the commission[, if there be such] participating in the hearing shall have the authority to complete the hearing and to participate in the decision. In cases where the hearing is conducted by the commission, members participating in the decision shall hear all the evidence, or shall read the evidence prior to making a decision thereon. At least a majority of the members of the commission shall hear all the evidence or read the record before making a final decision.

LYLE G. ROBEY, Chairman
APPROVED BY AGENCY: November 12, 1991
FILED WITH LRC: November 13, 1991 at 3 p.m.
PUBLIC HEARING: A public hearing will be held on December 23, 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, Lexington, Kentucky 40511.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Michael W. 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: 810 KAR 1:020.
(a) Necessity of proposed regulation if in conflict: Per quadrennial review.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Yes

(6) Any additional information or comments:
TIERING: Was tiering applied? No. N/A.

PUBLIC PROTECTION AND REGULATION CABINET
Kentucky State Racing Commission
(Proposed Amendment)

810 KAR 1:021. Backside Improvement Commission.

RELATES TO: KRS 230.218
STATUTORY AUTHORITY: KRS 230.218, 230.260
NECESSITY AND FUNCTION: The Backside Improvement Commission shall have the purpose and mission of providing and administering funds for improvement of backside facilities at thoroughbred horse racing facilities located in the Commonwealth of Kentucky. This administrative regulation sets forth requirements and procedures for disbursement of commission funds.

Section 1. (1) Definition of backside facilities. "Backside facilities" means [:] those facilities located at thoroughbred horse racing tracks which serve the primary function of stabling and quartering of horses and where stable employees work and live.
(2) All monies disbursed by the Backside Improvement Commission shall be used solely for improvements to backside facilities as defined in subsection (1) of this section.

Section 2. (1) All applications for monies under the auspices of the Backside Improvement Commission shall be submitted on a yearly basis and shall be filed with the Backside Improvement Commission on a date set by the commission.
(2) All applications shall include the following:
(a) A prioritized list of all proposed projects;
(b) A full written and graphic description of each proposed project complete with justification therefor;
(c) An itemized cost estimate of each proposed project; and
(d) Any contract in existence dealing with improvements.
(3) Each year, on a date set by the commission, the Backside Improvement Commission shall meet to consider all applications and shall approve for funding those projects it deems most justified.

Section 3. All disbursements of monies and other transactions between the Backside Improvement Commission and the horse racing facility involved shall be according to the terms and conditions of the Backside Improvement Commission's individual project contract.

LYLE G. ROBEY, Chairman
APPROVED BY AGENCY: November 12, 1991
FILED WITH LRC: November 13, 1991 at 3 p.m.
PUBLIC HEARING: A public hearing will be held on December 23, 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, Lexington, Kentucky 40511.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Michael W. 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: 810 KAR 1:021.
(a) Necessity of proposed regulation if in conflict: Per quadrennial review.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Yes
(6) Any additional information or comments:
TIERING: Was tiering applied? No. N/A.

PUBLIC PROTECTION AND REGULATION CABINET
Kentucky State Racing Commission
(Proposed Amendments)

810 KAR 1:050. Steeplechase racing.

RELATES TO: KRS 230.361
STATUTORY AUTHORITY: KRS 230.215
NECESSITY AND FUNCTION: To regulate conditions on which steeplechase races shall be conducted when there is pari-mutuel wagering.

Section 1. Definitions. (1) "Steeplechase race" means a running contest between thoroughbred horses, ridden by jockeys, over a prescribed course which may include obstacles or jumps and which is conducted at a racing association licensed by the Kentucky State Racing Commission.
(2) For steeplechase races, "recognized meeting" means any meeting with regularly scheduled races for thoroughbreds, licensed by and conducted under administrative regulations promulgated by a governmental regulatory body, to include foreign countries which are regulated by a racing authority which has reciprocal relations with the Jockey Club of New York and whose race records may [can] be provided an association by the Jockey Club.
(3) [A] "Foreign substance" is defined as all substances except those which exist naturally in the untreated horse at normal physiological concentration, and substances or metabolites thereof, which are contained in equine feeds or feed supplements, which do not contain pharmacodynamic or chemotherapeutic agents, and

do not interfere with the detection of prohibited foreign substances.

Section 2. All steeplechase races on which pari-mutuel wagering is conducted shall be in accord with this administrative regulation and all other provisions of KAR Title 810 except as noted in the sections of this administrative regulation.

Section 3. For steeplechase races, "maiden" means a horse which, at the time of starting, has never won a race at a recognized meeting, except as follows:
(1) In the races on the flat, a horse is still a maiden although the winner of a steeplechase.
(2) In a steeplechase, a horse is still a maiden although the winner of a flat race.

Section 4. For steeplechase races, a horse shall be considered a "starter" immediately upon the assistant starter dropping the flag.

Section 5. For steeplechase races, the "weight for ages" schedule in 810 KAR 1:014, Section 1(12) shall not apply. Each association desiring to conduct steeplechase races shall submit to the commission for its approval a "weight for ages schedule for steeplechase races" as a part of its application for race dates.

Section 6. For steeplechase races, 810 KAR 1:006, Section 33 shall not apply.

Section 7. For steeplechase races, 810 KAR 1:012, Section 7 shall not apply.

Section 8. For steeplechase racing 810 KAR 1:012, Section 9(3) shall not apply.

Section 9. Notwithstanding other provisions of KAR Title 810, spurs shall be allowed for steeplechase races.

Section 10. For licensed steeplechase associations, the provisions of 810 KAR 1:013, Section 4 shall not apply. For steeplechase races, the provisions of 810 KAR 1:013, Section 3(7) shall not apply.

Section 11. Notwithstanding the provisions of 810 KAR 1:018 for steeplechase races, no horse participating in any race shall carry in its body any foreign substance.

Section 12. For steeplechase races, stewards shall serve from one (1) minute after midnight on the day before entries are made until one (1) minute before midnight on the day after the last racing day of the race meeting for which they are appointed; however, if [provided, in the event] a dispute occurs or controversy arises during a race meeting which is not settled at the conclusion of the race meeting, then the power of the stewards shall be extended over the period necessary to resolve the matter, or until the matter is referred or appealed to the commission.

Section 13. For steeplechase races, 810 KAR 1:009, Section 4(1) and (2) shall not apply. For [such] steeplechase races, the apprentice allowance shall be ten (10) pounds until he has ridden a winner, seven (7) pounds until he has ridden an additional four (4) winners; five (5) pounds until he has ridden ten (10) winners.

Section 14. For steeplechase races, the Jockey Club of New York registration certificate of each horse shall [must] be filed with the horse identifier within one (1) hour after the horse's arrival on the grounds.

Section 15. For steeplechase races, 810 KAR 1:014, Section 1(11) shall not apply and ten (10) pounds shall be [is] the limit of overweight any horse is permitted to carry with the exception of when the rider is an amateur; [,] in this [which] case there shall be [is] no limit.

LYLE G. ROBEY, Chairman
APPROVED BY AGENCY: November 12, 1991
FILED WITH LRC: November 13, 1991 at 3 p.m.
PUBLIC HEARING: A public hearing will be held on December 23, 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, Lexington, Kentucky 40511.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Michael W. 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: 810 KAR 1:050.
(a) Necessity of proposed regulation if in conflict: Per quadrennial review.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Yes
(6) Any additional information or comments:
TIERING: Was tiering applied? No. N/A.

COMMISSION FOR HANDICAPPED CHILDREN
(Proposed Amendment)

902 KAR 4:070. Handicapped [Crippled] children's services.

RELATES TO: KRS 200.460 to 200.490
STATUTORY AUTHORITY: KRS 194.030(13)

[194.050(1), 211.090]

NECESSITY AND FUNCTION: Title V of the Social Security Act, as amended by PL 97-35, authorizes grants to states to provide services to children who are handicapped [crippled] or who are suffering from conditions leading to a handicap [crippling]. KRS 200.460 to 200.490 authorize the Commission for Handicapped Children [Cabinet for Human Resources] to provide services for handicapped children. The terms "crippled" and "handicapped" as used in applicable federal and state laws are deemed to be synonymous as used in this regulation. The Commission for Handicapped Children [Cabinet for Human Resources] is authorized by KRS 194.030(13) [194.050] to adopt such regulations as are necessary to implement programs authorized by federal law so as to qualify for the receipt of federal funds and as are necessary to cooperate with federal agencies for the proper administration of the commission [cabinet] and its programs. The function of this regulation is to implement the Kentucky Commission for Handicapped [Crippled] Children's Program in accordance with applicable federal and state laws and regulations.

Section 1. Crippled Children's Services Program Standards. The Commission for Handicapped Children [Cabinet for Human Resources] hereby adopts the "Crippled Children's Services Program Standards" dated May, 1984 by reference as covering all phases of program operation including but not limited to program eligibility for services, fee collections, consent requirements, medical standards, and other relevant components of the program. A copy of the "Crippled Children's Services Program Standards" shall be on file and available for public inspection in the Office of the Commission for Handicapped Children, 982 Eastern Parkway, Louisville, Kentucky 40217 [Commissioner of Health Services, 275 East Main Street, Frankfort, Kentucky 40621].

JAMES F. YONTS, Chairman

APPROVED BY AGENCY: November 12, 1991

FILED WITH LRC: November 13, 1991 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 23, 1991, at 10 a.m. at the Executive Office of the Commission for Handicapped Children, 982 Eastern Parkway, Louisville, Kentucky 40217. Individuals interested in being heard at this hearing shall notify this agency in writing by December 18, 1991, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Mr. Harry Dickerson, Commission for Handicapped Children 982 Eastern Parkway, Louisville, Kentucky 40217.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Kenneth P. Crawford, M.D.

(1) Type and number of entities affected: Cabinet for Human Resources and Commission for Handicapped Children.

(a) Direct and indirect costs or savings to those affected: No change as amendments are updating current regulation to reflect changes resulting from enactment of KRS 194.030(13) transferring administration of the handicapped children's program from the Cabinet for Human Resources to the Commission for Handicapped Children.

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 amended to comply with quadrennial review process.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None known.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: Amendments reflect current KRS 194.030(13) and current function of program.

TIERING: Was tiering applied? No. Would not comply with state and federal regulation.

COMMISSION FOR HANDICAPPED CHILDREN
(Proposed Amendment)

902 KAR 4:080. Disabled Children's Program.

RELATES TO: KRS 200.460 [211.180]

STATUTORY AUTHORITY: KRS 194.030(13) [194.050(1), 211.090]

NECESSITY AND FUNCTION: Title V of the Social Security Act, as amended by PL 97-35, authorizes grants to states to provide rehabilitation services for certain blind and disabled children receiving benefits under Title XVI of the Social Security Act. The Commission for Handicapped Children [Cabinet for Human Resources] is authorized by KRS 194.030(13) [194.050] to adopt such regulations as are necessary to implement programs authorized by federal law so as to qualify for the receipt of federal funds and as are necessary to cooperate with federal agencies for the proper administration of the cabinet and its programs. The function of this regulation is

to implement the Kentucky Disabled Children's Program in accordance with applicable federal laws and regulations.

Section 1. Definitions. As used in this regulation:
(1) "Supplemental security income" means the federal income supplement program authorized by Title VI of the Social Security Act that includes a provision for financial payments to families with disabled children.
(2) "Individual service plan" means a written plan designed to organize and coordinate the goal-oriented care of each eligible child.

Section 2. Eligibility for Services. Only children receiving supplemental security income who are under seven (7) years of age, or who are under sixteen (16) years of age and have never attended school, shall be eligible for services under this program.

Section 3. Disabled Children's Program Services. Services under the Disabled Children's Program shall include location, identification, development of individual service plans, case management and early intervention. If not available through other sources, the Commission for Handicapped Children's [Department for Health Services'] Disabled Children's Program may within budgetary limitations provide for physical therapy, occupational therapy, speech therapy, infant stimulation, purchase of medications, medical supplies and devices, respite care, developmental day care, adaptive equipment, educational toys and other such services specified in the approved individual service plan.

Section 4. Referral to Service Providers. The Commission for Handicapped Children [Cabinet for Human Resources] shall contract with qualified service providers to deliver services under the Disabled Children's Program. Referrals to such service providers may be made by the commission's [cabinet's program] staff to community mental health/mental retardation boards for locating and identifying clients and for developing the individual service plan. Additional services may be secured by referring clients to other organizations which have qualified personnel that may meet the special needs of clients.

JAMES F. YONTS, Chairman
APPROVED BY AGENCY: November 12, 1991
FILED WITH LRC: November 13, 1991 at 2 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 23, 1991, at 10 a.m. at the Executive Office of the Commission for Handicapped Children, 982 Eastern Parkway, Louisville, Kentucky 40217. Individuals interested in being heard at this hearing shall notify this agency in writing by December 18, 1991, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Mr. Harry Dickerson, Commission for Handicapped Children 982 Eastern Parkway, Louisville, Kentucky 40217.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Kenneth P. Crawford, M.D.
(1) Type and number of entities affected: Cabinet for Human Resources and Commission for Handicapped Children.
(a) Direct and indirect costs or savings to those affected: No change as amendments are updating current regulation to reflect changes resulting from Executive Order 84-1079, December 20, 1984 and enacted in KRS 200.460 transferring administration of the disabled children's program from the Cabinet for Human Resources to the Commission for Handicapped Children.
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 amended to comply with quadrennial review process.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None known.
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: Amendments reflect current KRS 200.460 and current function of program.
TIERING: Was tiering applied? No. Would not comply with state and federal regulation.

CABINET FOR HUMAN RESOURCES
Office of the Inspector General
(Proposed Amendment)

902 KAR 20:016. Hospitals; operations and services.

RELATES TO: KRS 216B.010 to 216B.130, 216B.107, 216B.990(1), (2)
STATUTORY AUTHORITY: KRS 216B.042, 216B.105
NECESSITY AND FUNCTION: KRS 216B.042 mandate that the Kentucky Cabinet for Human Resources regulate health facilities and health services. This regulation provides for the minimum

licensure requirements for the operation of hospitals and the basic services to be provided by hospitals.

[Section 1. Scope of Operations and Services. Hospitals are establishments with organized medical staffs and permanent facilities with inpatient beds which provide medical services, including physician services and continuous nursing services for the diagnosis and treatment of patients who have a variety of medical conditions, both surgical and nonsurgical.]

Section 1. [2.] Definitions. (1) "Governing authority" means the individual, agency, partnership, or corporation, in which the ultimate responsibility and authority for the conduct of the institution is vested.

(2) "Medical staff" means an organized body of physicians, and dentists when applicable, appointed to the hospital staff by the governing authority. All members of the medical staff shall be licensed to practice medicine or dentistry in Kentucky, with the exception of graduate physicians who are in the first year of hospital training.

(3) "Registered records administrator" means a person who is certified as a Registered Records Administrator by the American Medical Record Association.

(4) "Accredited record technician" means a person who has graduated from a program for medical record technicians accredited by the Council on Medical Education of the American Medical Association and the American Medical Record Association; and who is certified as an Accredited Record Technician by the American Medical Record Association.

(5) "Qualified dietician" or "nutritionist" means:

(a) A person who has a bachelor of science degree in foods and nutrition, food service management, institutional management or related services and has successfully completed a dietetic internship or coordinated undergraduate program accredited by the American Dietetic Association (ADA) and is a member of the ADA or is registered as a dietician by ADA; or

(b) A person who has a master's degree in nutrition and is a member of ADA or is eligible for registration by ADA; or

(c) A person who has bachelor of science degree in home economics and three (3) years of work experience with a registered dietician.

(6) "Certified radiation operator" means a person who has been certified pursuant to KRS 211.870 and 902 KAR 105:010 to 105:070 as an operator of sources of radiation.

(7) "Protective devices" means devices that are designed to protect a person from falling, to include side rails, safety vest or safety belt.

(8) "Restraint" means any pharmaceutical agent or physical or mechanical device used to restrict the movement of a patient or the movement of a portion of a patient's body.

(9) "Psychiatric unit" means a department of a general acute care hospital consisting of eight (8) or more psychiatric beds organized for the purpose of providing psychiatric services.

(10) "Induration" means a firm area in the skin which develops as a reaction to injected tuberculosis proteins when a person has tuberculosis infection. The diameter of the firm area is measured to the nearest millimeter to gauge the degree of reaction. A reaction of ten (10) millimeters or more of induration is considered highly indicative of tuberculosis infection.

(11) "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.

(12) "Two (2) step skin testing" means a series of two (2) tuberculin skin tests administered seven (7) to fourteen (14) days apart.

(13) "Organ procurement agency" means a federally designated organization which coordinates and performs activities which encourage the donation of organs/tissues for transplantation.

Section 2. Scope of Operation and Services. Hospitals are establishments with organized medical staffs and permanent facilities with inpatient beds which provide medical services, including physician services and continuous nursing services for the diagnosis and treatment of patients who have a variety of medical conditions, both surgical and nonsurgical.

Section 3. Administration and Operation. (1) Governing authority licensee.

(a) The hospital shall have a recognized governing authority that has overall responsibility for the management and operation of the hospital and for compliance with federal, state, and local laws and regulations pertaining to its operation.

(b) The governing authority shall appoint an administrator whose qualifications, responsibilities, authority, and accountability shall be defined in writing and approved by the governing authority, and shall designate a mechanism for the periodic performance review of the administrator.

(2) Administrator.

(a) The administrator shall act as the chief executive officer and shall be responsible for the management of the hospital, and shall provide liaison between the governing authority and the medical staff.

(b) The administrator shall keep the governing authority fully informed of the conduct of the hospital through periodic reports and by attendance at meetings of the governing authority.

(c) The administrator shall develop an organizational structure including lines of authority, responsibility, and communication, and shall organize the day-to-day functions of the hospital through appropriate departmentalization and delegation of duties.

(d) The administrator shall establish formal means of accountability on the part of subordinates to whom he has assigned duties.

(e) The administrator shall hold interdepartmental and departmental meetings (where appropriate), shall attend or be represented at such meetings on a regular basis, and shall report to such departments as well as to the governing authority the pertinent activities of the hospital.

(3) Administrative records and reports.

(a) Administrative reports shall be established, maintained and utilized as

necessary to guide the operation, measure productivity, and reflect the programs of the facility. Such reports shall include: minutes of the governing authority and staff meetings, financial records and reports, personnel records, inspection reports, incident investigation reports, and other pertinent reports made in the regular course of business.

(b) The hospital shall maintain a patient admission and discharge register. Where applicable, a birth register and a surgical register shall also be maintained.

(c) Licensure inspection reports and plans of correction shall be made available to the general public upon request.

(4) Policies. The hospital shall have written policies and procedures governing all aspects of the operation of the facility and the services provided, including:

(a) A written description of the organizational structure of the facility including lines of authority, responsibility and communication, and departmental organization;

(b) Admission policies which assure that patients are admitted to the hospital in accordance with policies of the medical staff;

(c) Constraints imposed on admissions by limitations of services, physical facilities, staff coverage or other factors;

(d) Financial requirements for patients on admission;

(e) Emergency admissions;

(f) Requirements for informed consent by patient, parent, guardian or legal representative for diagnostic and treatment procedures;

(g) There shall be an effective procedure for recording accidents involving a patient, visitor, or staff, and incidents of transfusion reactions, drug reactions, medication errors, etc.; and a statistical analysis shall be reported in writing through the appropriate committee;

(h) Reporting of communicable diseases to the health department in whose jurisdiction the disease occurs pursuant to KRS Chapter 214 and 902 KAR 2:020;

(i) Use of restraints and a mechanism for monitoring and controlling their use;

(j) Internal transfer of patients from one (1) level or type of care to another (if applicable);

(k) Discharge and termination of services; and

(l) Organ procurement for transplant protocol developed by the medical staff in consultation with the organ procurement agency.

(5) Patient identification. The hospital shall have a system for identifying each patient from time of admission to discharge (e.g., an identification bracelet imprinted with name of patient, hospital identification number, date of admission, and name of attending medical staff member).

(6) Discharge planning.

(a) The hospital shall have a discharge planning program to assure the continuity of care for patients being transferred to another health care facility or being discharged to the home.

(b) The professional staff of the facility involved in the patient's care during hospitalization shall participate in discharge planning of the patient whose illness requires a level of care outside the scope of the general hospital.

(c) The hospital shall coordinate the discharge of the patient with the patient and the person(s) or agency responsible for the postdischarge care of the patient. All pertinent information concerning postdischarge needs shall be provided to the responsible person(s) or agency.

(7) Transfer procedures and agreements.

(a) The hospital shall have written patient transfer procedures and agreements with at least one (1) of each type of other health care facilities which can provide a level of inpatient care not provided by the hospital. Any facility which does not have a transfer agreement in effect but has documented a good faith effort to enter into such an agreement shall be considered to be in compliance with this requirement. The transfer procedures and agreements shall specify the responsibilities each institution assumes in the transfer of patients and shall establish responsibility for notifying the other institution promptly of the impending transfer of a patient and arranging for appropriate and safe transportation.

(b) If the patient is transferred to another health care facility or to the care of a home health agency, a transfer form shall accompany the patient or be sent immediately to the home health agency. The transfer form shall include at least: attending medical staff member's instructions for continuing care, a current summary of the patient's medical record, information as to special supplies or equipment needed for patient care, and pertinent social information on the patient and family. When such transfer occurs, a copy of the patient's signed discharge summary shall be forwarded to another health care facility or home health agency within <u>thirty (30)</u> [fifteen (15)] days of the patient's discharge.

(c) When a transfer is to another level of care within the same facility, the complete medical record or a current summary thereof shall be transferred with the patient.

(8) Medical staff.

(a) The hospital shall have a medical staff organized under bylaws approved by the governing authority, which is responsible to the governing authority of the hospital for the quality of medical care provided to the patients and for the ethical and professional practice of its members.

(b) The medical staff shall develop and adopt policies or bylaws, subject to the approval of the governing authority, which shall:

1. State the necessary qualifications for medical staff membership. For purposes of this document, medical staff shall mean physicians, and dentists when applicable.

2. Define and describe the responsibilities and duties of each category of medical staff (e.g., active, associate, courtesy, consulting, or honorary), delineate the clinical privileges of staff members, and establish a procedure for granting and withdrawing staff privileges to include credentials review.

3. Provide a mechanism for appeal of decisions regarding staff membership and privileges.

4. Provide a method for the selection of officers of the medical staff.

5. Establish requirements regarding the frequency of, and attendance at, general staff and department/service meeting of the medical staff.

6. Provide for the appointment of standing and special committees, and include requirements for

composition and organization, frequency of and attendance at meetings, and the minutes and reports which shall be part of the permanent records of the hospital. These committees may include: executive committee, credentials committee, medical audit committee, medical records committee, infections control committee, tissue committee, pharmacy and therapeutics committee, utilization review committee, and quality assurance committee.

(9) Personnel.

(a) The hospital shall employ a sufficient number of qualified personnel to provide effective patient care and all other related services and shall have written personnel policies and procedures which shall be available to all hospital personnel.

(b) There shall be a written job description for each position. Job descriptions shall be reviewed and revised as necessary.

(c) There shall be an employee health program for mutual protection of employees and patients including provisions for preemployment and periodic health examination. The hospital shall comply with the following tuberculosis testing requirements:

1. The skin test status of all staff members shall be documented in the employee's personnel record. A skin test shall be initiated on all new staff members before or during the first week of employment and the results shall be documented in the employee's personnel record within the first month of employment. No skin testing is required at the time of initial employment if the employee documents a prior skin test of ten (10) or more millimeters of induration or if the employee is currently receiving or has completed six (6) months of prophylactic therapy or a course of multiple-drug chemotherapy for tuberculosis. Two (2) step skin testing is required for new employees over age forty-five (45) whose initial test shows less than ten (10) millimeters of induration, unless they can document that they have had a tuberculosis skin test within one (1) year prior to their current employment. All staff who have never had a skin test of ten (10) or more millimeters induration must be skin tested annually on or before the anniversary of their last skin test.

2. All staff who are found to have a skin test of ten (10) or more millimeters induration, on initial employment testing or annual testing, must receive a chest x-ray unless a chest x-ray within the previous two (2) months showed no evidence of tuberculosis, or the individual can document the previous completion of a course of prophylactic treatment with isoniazid. Such employees shall be advised of the symptoms of the disease and instructed to report to their employer and seek medical attention promptly if symptoms persist.

3. The hospital administrator shall be responsible for ensuring that all skin tests and chest x-rays are done in accordance with subparagraphs 1 and 2 of this paragraph. All skin testing dates and results and all chest x-ray reports shall be recorded as a permanent part of the personnel record.

4. The following shall be reported by the hospital administrator to the local health department having jurisdiction immediately upon becoming known: names of staff who convert from a skin test of less than ten (10) to a skin test of ten (10) millimeters or more induration at the time of employment; and all chest x-rays suspicious for tuberculosis.

5. Any staff whose skin test status changes on annual testing from less than ten (10) to ten (10) or more millimeters of induration shall be considered to be recently infected with Mycobacterium tuberculosis. Such recently infected persons who have no signs or symptoms of tuberculosis disease on chest x-ray or medical history should be given preventive therapy with isoniazid for six (6) months unless medically contraindicated, as determined by a licensed physician. Medications shall be administered only upon the written order of a physician. If such individual is unable to take isoniazid therapy, the individual shall be advised of the clinical symptoms of the disease, and have an interval medical history and a chest x-ray taken and evaluated for tuberculosis disease every six (6) months during the two (2) years following conversion, for a total of five (5) chest x-rays.

6. Any staff who can document completion of preventive treatment with isoniazid shall be exempt from further screening requirements.

(d) Current personnel records shall be maintained for each employee which include the following:

1. Name, address, Social Security number;
2. Health records;
3. Evidence of current registration, certification, or licensure of personnel;
4. Records of training and experience;
5. Records of performance evaluation.

(10) Physical and sanitary environment.

(a) The condition of the physical plant and the overall hospital environment shall be maintained in such a manner that the safety and well-being of patients, personnel and visitors are assured.

(b) A person shall be designated responsible for services and for the establishment of practices and procedures in each of the following areas: plant maintenance, laundry operations (if applicable), and housekeeping.

(c) There shall be an infection control committee charged with the responsibility of investigating, controlling and preventing infections in the hospital. Infection incident reports shall be filed.

(d) There shall be written infection control policies, which are consistent with the Centers for Disease Control guidelines including:

1. Policies which address the prevention of disease transmission to and from patients; visitors and employees, including but not limited to:

a. Universal blood and body fluid precautions;
b. Precautions for infections which can be transmitted by the airborne route; and
c. Work restrictions for employees with infectious diseases.

2. Policies which address the use of environmental cultures. Results of all testing shall be recorded and reported to the Infection Control Committee; and

3. Policies which address the cleaning, disinfection, and sterilization methods used for equipment and the environment.

(e) The hospital shall provide in-service education programs on the cause, effect, transmission, prevention and elimination of infections.

(f) The hospital buildings, equipment, and surroundings shall be kept in a condition of

good repair, neat, clean, free from all accumulations of dirt and rubbish, and free from foul, stale or musty odors.

1. An adequate number of housekeeping and maintenance personnel shall be provided.

2. Written housekeeping procedures shall be established for the cleaning of all areas and copies shall be made available to personnel.

3. Equipment and supplies shall be provided for cleaning of all surfaces. Such equipment shall be maintained in a safe, sanitary condition.

4. Hazardous cleaning solutions, compounds, and substances shall be labeled, stored in closed metal containers and kept separate from other cleaning materials.

5. The facility shall be kept free from insects and rodents with harborages and entrances for these eliminated.

6. Garbage and trash shall be stored in areas separate from those used for preparation and storage of food and shall be removed from the premises regularly. Containers shall be cleaned regularly.

(g)1. Sharp wastes, including needles, scalpels, razors, or other sharp instruments used for patient care procedures, shall be segregated from other wastes and placed in puncture resistant containers immediately after use.

2. Needles shall not be recapped, purposely bent or broken, or otherwise manipulated by hand, self-sheathing needles, resheathing instruments or forceps may be utilized.

3. The containers of sharp wastes shall either be incinerated on or off site, or be rendered nonhazardous by a technology of equal or superior efficacy, which is approved by both the Cabinet for Human Resources and the Natural Resources and Environmental Protection Cabinet.

4. Nondisposable sharps such as large-bore needles or scissors shall be placed in a puncture resistant container for transport to the Central Medical and Surgical Supply Department in accordance with 902 KAR 20:009, Section 22.

(h)1. All disposable waste shall be placed in suitable bags or closed containers so as to prevent leakage or spillage, and shall be handled, stored, and disposed of in such a way as to minimize direct exposure of personnel to waste materials.

2. The hospital shall establish specific written policies regarding handling and disposal of all wastes.

3. The following wastes shall receive special handling:

a. Microbiology laboratory waste which includes, but is not limited to viral or bacterial cultures, contaminated swabs, and specimen containers and test tubes used for microbiologic purposes shall either be incinerated, autoclaved or be rendered nonhazardous by technology of equal or superior efficacy, which is approved by both the Cabinet for Human Resources and the Natural Resources and Environmental Protection Cabinet; and

b. Pathological waste which includes all tissue specimens from surgical or necropsy procedures shall be incinerated.

4. The following wastes shall be disposed of by incineration, or be autoclaved before disposal, or be carefully poured down a drain connected to a sanitary sewer: blood, blood specimens, used blood tubes, or blood products.

5. Any wastes conveyed to a sanitary sewer shall comply with applicable federal, state, and local pretreatment regulations pursuant to 40 CFR 403 and 401 KAR 5:055, Section 9.

6. Any incinerator used for the disposal of waste shall be in compliance with 401 KAR 59:020 and 401 KAR 61:010.

(i) The hospital shall have available at all times a quantity of linen essential to the proper care and comfort of patients.

1. Linens shall be handled, stored, and processed so as to control the spread of infection.

2. Clean linen and clothing shall be stored in clean, dry, dust-free areas designated exclusively for this purpose. Uncovered mobile carts may be used to distribute a daily supply of linen in patient care areas.

3. Soiled linen and clothing shall be placed in suitable bags or closed containers so as to prevent leakage or spillage, and will be handled in such a way as to minimize direct exposure of personnel to soiled linen. Soiled linen shall be stored in areas separate from clean linen.

(11) Medical records.

(a) The hospital shall have a medical records service with administrative responsibility for medical records. A medical record shall be maintained, in accordance with accepted professional principles, for every patient admitted to the hospital or receiving outpatient services.

1. The medical records service shall be directed by a registered records administrator, either on a full-time, part-time, or consultative basis, or by an accredited record technician on a full-time or part-time basis, and shall have available a sufficient number of regularly assigned employees so that medical record services may be provided as needed.

2. All medical records shall be retained for a minimum of five (5) years from date of discharge, or in the case of a minor three (3) years after the patient reaches the age of majority under state law, whichever is the longer.

3. Provision shall be made for written designation of specific location(s) for storage of medical records in the event the hospital ceases to operate because of disaster, or for any other reason. It shall be the responsibility of the hospital to safeguard both the record and its informational content against loss, defacement, and tampering. Particular attention shall be given to protection from damage by fire or water.

(b) A system of identification and filing to insure the prompt location of a patient's medical record shall be maintained:

1. Index cards shall bear at least the full name of the patient, the birth date, and the medical record number.

2. There shall be a system for coordinating the inpatient and outpatient medical records of any patient whose admission is a result of or related to outpatient services.

3. All clinical information pertaining to inpatient or outpatient services shall be centralized in the patient's medical record.

4. In hospitals using automated data processing, indexes may be kept on punch cards or reproduced on sheets kept in books.

(c) Records of patients are the property of the hospital and shall not be taken from the facility except by court order. This does not

preclude the routing of the patient's records, or portion thereof, including x-ray film, to physicians or dentists for consultation.

1. Only authorized personnel shall be permitted access to the patient's records.

2. Patient information shall be released only on authorization of the patient, the patient's guardian or the executor of his estate.

(d) Medical record contents shall be pertinent and current and shall include the following:

1. Identification data and signed consent forms, including name and address of next of kin, and of person or agency responsible for patient;

2. Date of admission and name of attending medical staff member;

3. Chief complaint;

4. Medical history including present illness, past history, family history and physical examination;

5. Report of special examinations or procedures, such as consultations, clinical laboratory tests, x-ray interpretations, EKG interpretations, etc.;

6. Provisional diagnosis or reason for admission;

7. Orders for diet, diagnostic tests, therapeutic procedures, and medications, including patient limitations, signed and dated by the medical staff member; and, if given verbally, undersigned by the medical staff member upon his next visit to hospital;

8. Medical, surgical and dental treatment notes and reports, signed and dated by a physician, or dentist when applicable, including records of all medication administered to the patient;

9. Complete surgical record signed by attending surgeon, or oral surgeon, to include anesthesia record signed by anesthesiologist or anesthetist, preoperative physical examination and diagnosis, description of operative procedures and findings, postoperative diagnosis, and tissue diagnosis by qualified pathologist on tissue surgically removed;

10. Patient care plan which addresses the comprehensive care needs of the patient, to include the coordination of the facility's service departments that have impact on patient care;

11. [10.] Physician's, or dentist's when applicable, progress notes and nurses' observations;

12. [11.] Record of temperature, blood pressure, pulse and respiration;

13. [12.] Final diagnosis using terminology in the current version of the International Classification of Diseases or the American Psychiatric Association's Diagnostic and Statistical Manual, as is applicable;

14. [13.] Discharge summary, including condition of patient on discharge, and date of discharge;

15. [14.] In case of death, autopsy findings, if performed; and

16. [15.] In the case of death, an indication that the patient has been evaluated for organ donation in accordance with hospital protocol.

(e) Records shall be indexed according to disease, operation, and attending medical staff member. For indexing, any recognized system may be used.

1. The disease and operative indices shall be developed using a recognized nomenclature, and shall include each specific disease created and each operative procedure performed, and shall include all essential data on each patient having that particular condition;

2. The attending medical staff index shall include all patients attended or seen in consultation by each medical staff member;

3. Indexing shall be current, within six (6) months following discharge of the patient.

(12) Organ donation.

(a) The hospital shall establish and maintain a written organ procurement for transplant protocol, in consultation with an organ procurement agency, which encourages organ donation and identifies potential organ donors.

(b) In cases where an individual has died or death is imminent, the patient's attending physician shall determine, in accordance with the hospital's protocol, whether the patient is a potential organ/tissue donor.

(c) The hospital protocol shall include:

1. Criteria, developed in consultation with the organ procurement agency for identifying potential donors;

2. Procedures for obtaining consent for organ donation;

3. Procedures for the hospital administrator or his designee to notify the organ procurement agency of potential organ donors;

4. Procedures by which the patient's attending physician or designee in accordance with hospital protocol shall document in the patient's medical record that the organ procurement agency has been notified in the case of potential donors or contraindications to donation.

(d) No patient with impending or declared brain death and/or cardiopulmonary death as determined pursuant to KRS 446.400 should be considered as a potential donor if contraindications are identified and documented in the patient's medical record.

Section 4. Provision of Services. (1) Medical staff services.

(a) Medical care provided in the hospital shall be under the direction of a medical staff member in accordance with staff privileges granted by the governing authority.

(b) The attending medical staff member shall assume full responsibility for diagnosis and care of his/her patient. A physician, or other member of the medical staff if so designated in the hospital bylaws, shall conduct and record a complete history and physical examination for the patient within twenty-four (24) hours after admission to the hospital.

(c) The attending medical staff member shall state his final diagnosis, complete the discharge summary and sign the records within thirty (30) [fifteen (15)] days following the patient's discharge.

(d) Physician services shall be available twenty-four (24) hours a day on at least an on-call basis.

(e) There shall be sufficient medical staff coverage for all clinical services of the hospital in keeping with their size and scope of activity.

(2) Nursing service.

(a) The hospital shall have a nursing department organized to meet the nursing care needs of the patients and maintain established standards of nursing practice. A registered nurse, preferably one who has a bachelor of science degree in nursing, shall serve as

director of the nursing department.

(b) There shall be a registered nurse on duty at all times.

1. There shall be registered nurse supervision and staff nursing personnel for each service or nursing unit to insure the immediate availability of a registered nurse for all patients on a twenty-four (24) hour basis.

2. There shall be other nursing personnel in sufficient numbers to provide nursing care not requiring the service of a registered nurse.

3. There shall be additional registered nurses for surgical, obstetrical, emergency, and other services of the hospital in keeping with their size and scope of activity.

4. All persons not employed by the hospital who render special duty nursing services in the hospital shall be under the supervision of the nursing supervisor of the department or service concerned.

(c) The hospital shall have written nursing care procedures and written nursing care plans for patients. Patient care shall be carried out in accordance with attending medical staff member's orders, nursing process [care plans], and nursing care procedures.

1. The nurse shall evaluate the patient by utilizing the nursing process in accordance with KRS 314.011. [Nursing care plans shall be developed for each patient and shall be kept current daily. Plans shall indicate long and short-term goals, nursing care needed, and methods, approaches and modifications necessary to insure best results for the patient.]

2. A registered nurse shall assign staff and evaluate the nursing care of each patient in accordance with the patient's need and the nursing staff available.

3. Nursing notes shall be written and signed on each shift by persons rendering care to patients. The notes shall be descriptive of the nursing care given and shall include information and observations of significance which contribute to the continuity of patient care.

4. Medications shall be administered by a registered nurse, a physician, or dentist except in the case of a licensed practical nurse under the supervision of a registered nurse.

5. No medication or treatment shall be given without a written order signed by a physician or dentist, when applicable. Telephone orders for medications shall be given only to licensed or registered nurses or a pharmacist and signed by the medical staff member within twenty-four (24) hours from the time the order is given. Telephone orders may be given to licensed physical, occupational, speech or respiratory therapists in accordance with the therapist's scope of practice and the hospital's protocols.

6. No form of patient restraint or protective device other than bed rails shall be used, except in an emergency until the attending medical staff member can be contacted, or upon written or telephone orders of the attending medical staff member. When such restraint is necessary, the least restrictive form of protective device shall be used which affords the patient the greatest possible degree of mobility and protection. In no case shall a locking restraint be used.

7. Meetings of the nursing staff and other nursing personnel shall be held at least monthly to discuss patient care, nursing service problems, and administrative policies. Written minutes of all meetings shall be kept.

(3) Dietary services.

(a) The hospital shall have a dietary department, organized, directed and staffed to provide quality food service and optimal nutritional care.

1. The dietary department shall be directed on a full-time basis by an individual who by education or specialized training and experience is knowledgeable in food service management.

2. The dietary service shall have at least one (1) qualified dietician or nutritionist, either full-time, part-time, or on a consultative basis, to supervise the nutritional aspects of patient care.

3. Sufficient additional personnel shall be employed to perform assigned duties to meet the dietary needs of all patients.

4. The dietary department shall have available for all dietary personnel current written policies and procedures for food storage, handling, and preparation.

5. An in-service training program, which shall include the proper handling of food, safety and personal grooming, shall be given at least quarterly for new dietary employees.

(b) Menus shall be planned, written and rotated to avoid repetition. Nutritional needs shall be met in accordance with recommended dietary allowances of the Food and Nutrition Board of the National Research Council of the National Academy of Sciences and in accordance with the medical staff member's orders.

(c) Meals shall correspond with the posted menu. When changes in menu are necessary, substitution shall provide equal nutritive value and the changes shall be recorded on the menu. Menus shall be kept on file for thirty (30) days.

(d) All diets, regular and therapeutic, shall be prescribed in writing, dated, and signed by the attending medical staff member. Information on the diet order shall be specific and complete and shall include the title of the diet, modifications in specific nutrients stating the amount to be allowed in the diet, and specific problems that may affect the diet or eating habits.

(e) Food shall be prepared by methods that conserve nutritive value, flavor, and appearance, and shall be served at the proper temperatures and in a form to meet individual needs (e.g., it shall be cut, chopped, or ground to meet individual patient needs).

(f) If a patient refuses foods served, nutritious substitutions shall be offered.

(g) At least three (3) meals or their equivalent shall be served daily with not more than a fifteen (15) hour span between a substantial evening meal and a breakfast unless otherwise directed by the attending medical staff member. Meals shall be served at regular times with between-meal or bedtime snacks of nourishing quality offered.

(h) There shall be at least a three (3) day supply of food available in the facility at all times to prepare well-balanced palatable meals for all patients.

(i) There shall be an identification system for patient trays, and methods used to assure that each patient receives the appropriate diet as ordered.

(j) The hospital shall comply with all applicable provisions of KRS 219.011 to KRS 219.081 and 902 KAR 45:005, (Kentucky's Food Service Establishment Act and Food Service Code).

(4) Laboratory services. The hospital shall

have a well-organized, adequately supervised laboratory with the necessary space, facilities and equipment to perform those services commensurate with the hospital's needs for its patients. Anatomical pathology services and blood bank services shall be available either in the hospital or by arrangement with other facilities.

(a) Clinical laboratory. Basic clinical laboratory services necessary for routine examinations shall be available regardless of the size, scope and nature of the hospital.

1. Equipment necessary to perform the basic tests shall be provided by the hospital.

2. All equipment shall be in good working order, routinely checked, and precise in terms of calibration.

3. Provision shall be made to carry out adequate clinical laboratory examinations including chemistry, microbiology, hematology, serology, and clinical microscopy.

a. Some of these services may be provided through arrangements with another licensed hospital which has the appropriate laboratory facilities, or with an independent laboratory licensed pursuant to KRS 333.030 and any regulations promulgated thereunder.

b. When work is performed by an outside laboratory, the original report from this laboratory shall be contained in the patient's medical record.

4. Laboratory facilities and services shall be available at all times.

a. Adequate provision shall be made to assure the availability of emergency laboratory services twenty-four (24) hours a day, seven (7) days a week, including holidays, either in the hospital or under arrangements as specified in paragraph (a)3a of this subsection.

b. Where services are provided by an outside laboratory, the conditions, procedures, and availability of such services shall be in writing and available in the hospital.

5. There shall be a clinical laboratory director and a sufficient number of supervisors, technologists and technicians to perform promptly and proficiently the tests requested of the laboratory. Laboratory services shall be under the direction of a pathologist on a full-time, regular part-time, or a consultative basis. The laboratory shall not perform procedures and tests which are outside the scope of training of the laboratory personnel.

6. Signed reports of all laboratory services provided shall be filed with the patient's medical record and duplicate copies kept in the department.

a. The laboratory report shall be signed by the technologist who performed the test.

b. There shall be a procedure for assuring that all requests for laboratory tests are ordered and signed by a medical staff member.

(b) Anatomical pathology. Anatomical pathology services shall be provided as indicated by the needs of the hospital either in the hospital or under arrangements as specified in paragraph (a)3a of this subsection.

1. Anatomical pathology services shall be under the direct supervision of a pathologist on a full-time, regular part-time or regular consultative basis. If the latter pertains, the hospital shall provide for at least monthly consultative visits by a pathologist.

2. The pathologist shall participate in staff, departmental and clinicopathologic conference.

3. The pathologist shall be responsible for establishing the qualifications of staff and for their in-service training.

4. With exceptions of those exclusions listed in written policies of the medical staff, all tissues removed at surgery shall be macroscopically, and if necessary, microscopically examined by the pathologist.

a. A list of tissues which do not routinely require microscopic examination shall be developed in writing by the pathologist or designated physician with the approval of the medical staff.

b. A tissue file shall be maintained in the hospital.

c. In the absence of a pathologist, there shall be an established plan for sending to a pathologist outside the hospital all tissues requiring examination.

5. Signed reports of tissue examinations shall be promptly filed with the patient's medical record and duplicate copies kept in the department.

a. All reports of macro and microscopic examinations performed shall be signed by the pathologist.

b. Provision shall be made for the prompt filing of examination results in the patient's medical record and notification of the medical staff member requesting the examination.

c. Duplicate copies of the examination reports shall be filed in the laboratory in a manner which permits ready identification and accessibility.

(c) The laboratory shall meet the minimum proficiency testing and quality control provisions in accordance with Medicare certification requirements.

(d) Blood bank. Facilities for procurement, safekeeping and transfusion of blood and blood products shall be provided or be readily available.

1. The hospital shall maintain, as a minimum, proper blood storage facilities under adequate control and supervision of the pathologist or other authorized physician.

2. For emergency situations the hospital shall maintain at least a minimum blood supply in the hospital at all times, shall be able to obtain blood quickly from community blood banks or institutions, or shall have an up-to-date list of donors and equipment necessary to bleed them.

3. If the hospital utilizes outside blood banks, there shall be a written agreement governing the procurement, transfer and availability of blood.

4. There shall be a provision for prompt blood typing and cross-matching and for laboratory investigation of transfusion reactions, either through the hospital or by arrangements with others on a continuous basis, under the supervision of a physician.

5. Blood storage facilities in the hospital shall have an adequate alarm system, which shall be regularly inspected and tested and is otherwise safe and adequate.

6. Records shall be kept on file indicating the receipt and disposition of all blood provided to patients in the hospital.

7. A committee of the medical staff or its equivalent shall review all transfusions of blood or blood derivatives and shall make recommendations concerning policies governing such practices.

8. Samples of each unit of blood used at the

hospital shall be retained, according to the instructions of the committee indicated in subparagraph 7 of this paragraph, for further testing in the event of reactions. Blood not so retained which has exceeded its expiration date shall be disposed of promptly.

9. The review committee shall investigate all transfusion reactions occurring in the hospital and shall make recommendations to the medical staff regarding improvements in transfusion procedures.

(5) Pharmaceutical services.

(a) The hospital shall have adequate provisions for the handling, storing, recording, and distributing of pharmaceuticals in accordance with state and federal laws and regulations.

1. A hospital which maintains a pharmacy for the compounding and dispensing of drugs shall provide pharmaceutical services under the supervision of a registered pharmacist on a full-time or part-time basis, according to the size and demands of the hospital.

a. The pharmacist shall be responsible for supervising and coordinating all the activities of the pharmacy department.

b. Additional personnel competent in their respective duties shall be provided in keeping with the size and activity of the department.

2. Hospitals not maintaining a pharmacy shall have a drug room utilized only for the storage and distribution of drugs, drug supplies and equipment. Prescription medications shall be dispensed by a registered pharmacist elsewhere. The drug room shall be operated under the supervision of a pharmacist employed at least on a consultative basis.

a. The consulting pharmacist shall assist in drawing up correct procedures, rules for the distribution of drugs, and shall visit the hospital on a regularly scheduled basis in the course of his duties.

b. The drug room shall be kept locked and the key shall be in the possession of a responsible person on the premises designated by the administrator.

(b) Records shall be kept of the transactions of the pharmacy or drug room and correlated with other hospital records where indicated.

1. In accordance with accounting procedures of the hospital, the pharmacy shall establish and maintain a system of records and bookkeeping in accordance with policies of the hospital for maintaining adequate control over the requisitioning and dispensing of all drugs and drug supplies and charging patients for drugs and pharmaceutical supplies.

2. A record of the stock on hand and of the dispensing of all controlled substances shall be maintained in such a manner that the disposition of any particular item may be readily traced.

(c) The medical staff in cooperation with the pharmacist and other disciplines, as necessary, shall develop policies and procedures that govern the safe administration of drugs, including:

1. The administration of medications only upon the order of an individual who has been assigned clinical privileges or who is an authorized member of the house staff;

2. Review of the physician's, or dentist's when applicable, original order, or a direct copy by the pharmacist dispensing the drugs;

3. The establishment and enforcement of automatic stop orders;

4. Proper accounting for and disposition of unused medications or special prescriptions returned to the pharmacy as a result of patient being discharged, or when such medications/prescriptions do not meet sterile and label requirements;

5. Provision for emergency pharmaceutical services; and

6. Provision for reporting adverse medication reactions to the appropriate committee of the medical staff.

(d) Therapeutic ingredients of medications dispensed shall be included in the United States Pharmacopoeia, National Formulary, United States Homeopath-Pharmacopoeia, New Drugs, or Accepted Dental Remedies (except for any drugs unfavorably evaluated therein), or shall be approved for use by the appropriate committee of the medical staff.

1. A pharmacist shall be responsible for determining specifications and choosing acceptable sources for all drugs, with approval of the appropriate committee of the medical staff.

2. There shall be available a formulary or list of drugs accepted for use in the hospital which shall be developed and amended at regular intervals by the appropriate committee of the medical staff.

(6) Radiology services.

(a) The hospital shall have diagnostic radiology facilities. The radiology service shall have a current license or registration pursuant to KRS 211.842 to 211.852 and any regulations promulgated thereunder.

1. The hospital shall provide at least one (1) fixed diagnostic x-ray unit which is capable of general x-ray procedures.

2. The hospital shall have a radiologist on at least a consulting basis to function as medical director of the department and to interpret films that require specialized knowledge for accurate reading.

3. Personnel adequate to supervise and conduct the services shall be provided, and at least one (1) certified radiation operator shall be on duty or on call at all times.

(b) There shall be written policies and procedures governing radiologic services and administrative routines that support sound radiologic practices.

1. Signed reports shall be filed in the patient's record and duplicate copies kept in the department.

2. Radiologic services shall be performed only upon written order of a physician or dentist, and the order shall contain a concise statement of the reason for the service/examination.

3. Reports of interpretations shall be written or dictated and signed by the radiologist.

4. The use of all x-ray apparatus shall be limited to certified radiation operators, under the direction of medical staff members as necessary. The same limitation shall apply to personnel applying and removing radium element, its disintegration products, and radioactive isotopes.

(c) The radiology department shall be free of hazards for patients and personnel. Proper safety precautions shall be maintained against fire and explosion hazards, electrical hazards and radiation hazards.

(7) Physical restoration/rehabilitation service. If the hospital provides rehabilitation, physical therapy, (including

work hardening), occupational therapy, audiology, or speech pathology services, the services shall be organized and staffed to insure the health and safety of patients.

(a) Hospitals in which physical restoration/rehabilitation services are available shall provide individualized techniques required to achieve maximum physical function normal to the patient while preventing unnecessary debilitation and immobilization.

(b) Written policies and procedures shall be developed for each rehabilitation service provided.

(c) A member of the medical staff shall be designated to have responsibility for coordinating the restorative services provided to the patients in accordance with their needs.

(d) Equipment for physical therapy shall be adequate to meet the needs of the service and shall be in good condition.

(e) Physical therapy services shall be provided only upon written orders of a medical staff member.

(f) Physical therapy services shall be provided by or under the supervision of a licensed physical therapist, on a full-time, part-time or consultative basis.

(g) Complete therapy reports shall be maintained for each patient provided such services. The reports shall be signed by the therapist who prepared it and shall be a part of the patient's medical record.

(8) Emergency services.

(a) Every hospital shall have procedures for taking care of the emergency patient with at least a registered nurse on duty to evaluate the patient and a physician on call.

(b) If the facility has an organized emergency department/service, policies and an emergency care procedures manual governing medical and nursing care provided in the emergency room shall be established by and be a continuing responsibility of the medical staff.

1. The emergency service shall be under the direction of a licensed physician. Medical staff members shall be available at all times for the emergency service, either on duty or on call. Current schedules and telephone numbers shall be posted in the emergency room.

2. Nursing personnel shall be assigned to, or designated to cover, the emergency service at all times.

3. Facilities shall be provided to assure prompt diagnosis and emergency treatment. A specific area of the hospital shall be utilized for patients requiring emergency care on arrival. The emergency area shall be located in close proximity to an exterior entrance of the facility and shall be independent of the operating room suite.

4. Diagnostic and treatment equipment, drugs, and supplies shall be readily available for the provision of emergency services and shall be adequate in terms of the scope of services provided.

5. Adequate medical records shall be kept on every patient seen in the emergency room. These records shall be under the supervision of the Medical Record Service and, where appropriate, shall be integrated with inpatient and outpatient records. Emergency room records shall include at least:

a. A log book listing chronologically the patient visits to the emergency room including patient identification, means of arrival and person(s) transporting patient, and time of arrival;

b. History of present complaint and physical findings;

c. Laboratory and x-ray reports, where applicable;

d. Diagnosis;

e. Treatment ordered and details of treatment provided;

f. Patient disposition;

g. Record of all referrals;

h. Instructions to the patient and/or family for those not admitted to the hospital; and

i. Signatures of attending medical staff member, and nurse when applicable.

(9) Outpatient services.

(a) A hospital which has an organized outpatient department shall have written policies and procedures relating to the staff, functions of service, and outpatient medical records.

(b) The outpatient department shall be organized in sections (clinics), the number of which shall depend on the size and degree of departmentalization of the medical staff, the available facilities, and the needs of the patient it serves.

(c) The outpatient department shall have appropriate cooperative arrangements and communications with community agencies such as home health agencies, the local health department, social and welfare agencies, and other outpatient departments.

(d) Services offered by the outpatient department shall be under the direction of a physician who is a member of the medical staff.

1. A registered nurse shall be responsible for the nursing services of the department.

2. The number and type of other personnel employed shall be determined by the volume and type of services provided and type of patient served in the outpatient department.

(e) Necessary laboratory and other diagnostic tests shall be available either through the hospital or a laboratory in another licensed hospital or a laboratory licensed pursuant to KRS 333.030 and any regulations promulgated thereunder.

(f) Medical records shall be maintained and, where appropriate, coordinated with other hospital medical records.

1. The outpatient medical record shall be filed in a location which insures ready accessibility to the medical staff members, nurses, and other personnel of the outpatient department.

2. Information in the medical record shall be complete and sufficiently detailed relative to the patient's history, physical examination, laboratory and other diagnostic tests, diagnosis, and treatment to facilitate continuity of care.

(10) Surgery services.

(a) Hospitals in which surgery is performed shall have an operating room(s) and a recovery room supervised by a registered nurse qualified by training, experience and ability to direct surgical nursing care.

1. Sufficient surgical equipment including suction facilities and instruments in good repair shall be provided to assure safe and aseptic treatment of all surgical cases.

2. When flammable anesthetics are used, precautions shall be taken to eliminate hazards of explosions, including use of shoes with

conductive soles and prohibition of garments or other items of silk, wool, or synthetic fibers which accumulate static electricity.

(b) There shall be effective policies and procedures regarding surgical staff privileges, functions of the service, and evaluation of the surgical patient.

1. Surgical privileges shall be delineated for all members of the medical staff doing surgery in accordance with the competencies of each, and a roster shall be maintained.

2. Except in emergencies, a surgical operation or other hazardous procedures shall be performed only on written consent of the patient or his legal representative.

3. The operating room register shall be complete and up to date. It shall include the patient's name; hospital room number; preoperative and postoperative diagnosis; complications, if any; names of surgeon, first assistant, anesthesiologist or anesthetist, scrub and circulating nurse; operation performed; and type of anesthesia.

4. There shall be a complete history and physical workup in the chart of every patient prior to surgery. If such has been transcribed but not yet recorded in the patient's chart, there shall be a statement to that effect and an admission note by the attending medical staff member in the chart. The chart of the patient shall accompany him to the operating suite and shall be returned to the patient's floor or room after the operation.

5. An operative report describing the techniques and findings shall be written or dictated immediately following surgery and signed by the surgeon.

6. All tissues removed by surgery shall be placed in suitable solutions, properly labeled, and submitted to the pathologist for macroscopic and, if necessary, microscopic examinations.

7. All infections of clean surgical cases shall be recorded and reported to the appropriate committee of the medical staff. A procedure shall exist for the investigation of such cases.

(c) Rules and policies related to the operating rooms shall be available and posted.

(11) Anesthesia services.

(a) The hospital which provides surgical or obstetrical services shall have anesthesia services available, and these services shall be organized under written policies and procedures regarding staff privileges, the administration of anesthetics, and the maintenance of safety controls.

(b) A physician member of the medical staff shall be the medical director of anesthesia services. Whenever possible, the director shall be a physician specializing in anesthesiology.

(c) If anesthetics are not administered by an anesthesiologist, the medical staff shall designate a medical staff anesthetist or a registered nurse anesthetist qualified to administer anesthetics under the supervision of the operating surgeon.

(d) Every patient requiring anesthesia services shall have a preanesthetic physical examination by a medical staff member with findings recorded within forty-eight (48) hours of surgery, an anesthetic record on a special form, a postanesthetic follow-up, with findings recorded by the anesthesiologist, medical staff anesthetist, or nurse anesthetist.

(e) The postanesthetic follow-up note shall be written upon discharge from the postanesthesia recovery area or within three (3) to twenty-four (24) hours after the procedures which required anesthesia. This note shall include a record of blood pressure, pulse, presence or absence of the swallowing reflex and cyanosis, any postoperative abnormalities or complications, and the general condition of the patient.

(12) Obstetrics service.

(a) Hospitals providing obstetrical care of patients shall have adequate space, necessary equipment and supplies, and a sufficient number of nursing personnel to assure safe and aseptic treatment of mothers and newborns and provide protection from infection and cross-infection.

1. The obstetrics service shall be under the medical direction of a physician and under the supervision of a registered nurse qualified by training, experience, and ability to direct effective obstetrical and newborn nursing care. In hospitals where the obstetrical caseload does not justify a separate nursing staff, obstetrical nurses shall be designated and shall be oriented to the specific needs of obstetrical patients.

2. A registered nurse shall be on duty in the labor and delivery unit whenever any patient is in the unit. Each obstetrics patient shall be kept under close observation by professional personnel during the period of recovery after delivery, whether in the delivery room or in a recovery area, until she is transferred to the maternity unit.

3. An on-call schedule or other suitable arrangement shall be provided to ensure that a physician who is experienced in obstetrics is readily available for consultation and obstetrical emergencies.

4. Provisions shall be made for the care of patients in labor with adequately equipped labor rooms.

(b) An adequate supply of prophylaxis for the prevention of infant blindness shall be kept on hand and administered within thirty (30) minutes after delivery.

(c) The hospital shall comply with the provisions of KRS 214.155 and 902 KAR 4:030 in administering tests for inborn errors of metabolism to infants.

(d) There shall be an acceptable method and procedure for the positive associative identification of the mother and infant. This shall be done in the delivery room at the time of birth and shall remain in place during the entire period of hospitalization.

(e) An up-to-date register book of all deliveries shall be maintained containing the following information:

1. Infant's full name, sex, date, time of birth and weight;

2. Mother's full name, including maiden name, address, birthplace and age at time of this birth;

3. Father's full name, birthplace, age at time of this birth; and

4. Full name of attending physician or nurse midwife.

(f) Each hospital providing maternity service shall provide a nursery which shall not be used for any other purpose. Specific routines for daily care of infants and their environment shall be prepared in writing and posted in the nursery workroom.

(g) A policy shall be established for deliveries occurring outside the delivery room

and for patients who are infectious.

(h) Written policies and procedures shall be developed to cover alternative use of obstetrical beds.

(13) Pediatric services.

(a) Hospitals providing pediatric care shall have proper facilities for the care of children apart from the newborn and maternity nursing services. If there is not a separate area permanently designated as the pediatric unit, there shall be an area within an adult care unit for pediatric patient care. There shall be available beds and other equipment which are appropriate in size for pediatric patients.

(b) There shall be proper facilities and procedures for the isolation of children with infectious, contagious or communicable conditions. At least one (1) patient room shall be available for isolation use.

(c) A physician with pediatric experience shall be on call at all times for the care of pediatric patients.

(d) Pediatric nursing care shall be under the supervision of a registered nurse qualified by training, experience and ability to direct effective pediatric nursing. All nursing personnel assigned to pediatric service shall be oriented to the special care of children.

(e) Policies shall be established to cover conditions under which parents may stay with small children or "room-in" with their hospitalized child for moral support and assistance with care.

(14) Psychiatric services. Hospitals which have a psychiatric unit shall designate the location and number of beds to be licensed as psychiatric beds and meet the requirements of psychiatric hospitals operations and services, licensure regulation.

(15) Chemical dependency treatment services. Hospitals providing chemical dependency treatment services shall meet the requirements of 902 KAR 20:160, Chemical dependency treatment services and facility specifications, Section 3, Administrative and Operation and Section 4, Provision of Services, and designate location and the number of beds to be used for this purpose.

(16) Medical library.

(a) The hospital shall maintain appropriate medical library services according to the professional and technical needs of hospital personnel.

(b) The medical library shall be in a location accessible to the professional staff, and its contents shall be organized and available at all times to the medical and nursing staffs.

CLAY CESSNA, Inspector General
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: November 12, 1991
FILED WITH LRC: November 15, 1991 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation will be held on December 23, 1991, at 9 a.m. in the Department for Employment Services 2nd Floor Conference Room, CHR Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by December 18, 1991 of their desire to appear and testify at the hearing: 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: Eric Friedlander, Ralph Von Derau, David Crane

(1) Type and number of entities affected: 125

(a) Direct and indirect costs or savings to those affected: It is extremely difficult to determine the exact cost impact of the amendments to this regulation. These amendments address the issues of conformance with the drafting requirements of KRS Chapter 13A, extending the time frame allowed for facilities to obtain certain required signatures, amending the recordkeeping requirements to allow facilities some flexibility in documentation of nursing care, amending the standards as they relate to the handling of sharps, and allowing qualified personnel other than R.N.s to accept physician phone orders.

1. First year: Impossible to determine, but should cause a slight decrease in costs.

2. Continuing costs or savings: Impossible to determine.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: Section 3(11)(d) is amended to include a specific care plan, and Section 4(2)(c) is amended to delete the specific requirement for a nursing care plan.

(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, and to reflect the most current standards of the Joint Commission for the Accreditation of Health Care Facilities.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No conflict.

(a) Necessity of proposed regulation if in conflict: No conflict exists.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict exists.

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. This is a licensure regulation and as such must apply to all regulated entities equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 CFR Part 482.2 - 482.60.

2. State compliance standards. 902 KAR 20:016 - Hospitals Operation and Services.

3. Minimum or uniform standards contained in the federal mandate. Federal standards are general in nature as they relate to the issues addressed by these amendments. The state

standards do not impose any stricter standards than those imposed by the federal regulations.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. These standards do not impose any stricter standards than those imposed by the federal regulations.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional standards are imposed.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management and Development
(Proposed Amendment)

904 KAR 2:116. Low income home energy assistance program.

RELATES TO: KRS 194.050, 42 USC 8621 et seq., CHR, et al, v. Northern Kentucky Welfare Rights Association, et al (U.S. District Court, Eastern District, Ky., Civil Action No. 9-71, January 28, 1991)

STATUTORY AUTHORITY: KRS 194.050, 42 USC 8621 et seq.

NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility as prescribed by 42 USC 8621 et seq.[.] [(]Title XXVI of the Omnibus Budget Reconciliation Act of 1981 as amended[)] and Augustus F. Hawkins Human Services Reauthorization Act of 1990 to administer a program to provide assistance for eligible low income households within the Commonwealth of Kentucky to help meet the costs of home energy. This regulation states the eligibility and benefits criteria for energy assistance.

Section 1. Definitions. (1) An "authorized representative" means the person who presents to the cabinet or its representative a written statement signed by the appropriate household member authorizing that person to apply on the household's behalf.

(2) "Crisis component" means the component that provides assistance to households which are experiencing a home heating crisis.

(3) "Economic unit" means one (1) or more persons sharing common living arrangements.

(4) "Emergency" means the household is without heat at the time of application or will be disconnected from a utility service within forty-eight (48) hours.

(5) "Energy" means electricity, gas, and any other fuel that is used to sustain reasonable living conditions.

(6) "Gross income" means all earned and unearned income, including lump sum payments received by the households during the calendar month preceding the month of the application.

(7) "Heating season" means the period from October through April.

(8) "Household" means any individual or group of individuals who are living together in the principal residence as one (1) economic unit and who share complete kitchen facilities for the exclusive use of the individual or individuals. [for whom residential energy is customarily purchased in common or who make undesignated payments for energy in the form of rent.]

(9) "Life threatening situation" means without heat or will be without heat within forty-eight (48) hours and temperatures are at a dangerous level for household members.

(10) "Principal residence" means the place:

(a) Where a person is living voluntarily and not on a temporary basis;

(b) He considers home;

(c) To which, when absent, he intends to return; and

(d) Is identifiable from other residences, commercial establishments, or institutions.

(11) "Subsidy component" means the component that provides eligible households with a one (1) time payment to the household's energy provider [energy assistance for heating].

Section 2. Application. (1) Each household or authorized representative shall complete an application and provide information necessary to determine eligibility and benefit amount.

(2) An application shall not be considered completed until all information needed is received.

Section 3. Eligibility Criteria. (1) Income.

(a) Gross income shall be at or below 110% of the federal poverty income guidelines as published annually by the U.S. Department of Health and Human Services. The Department for Social Insurance shall announce the income guidelines after being published by the Department of Health and Human Services. [the applicable amount shown on the income scale for the appropriate size household.]

[Income Scale

Family Size	Monthly	Yearly
1	$ 575	$ 6,908
2	771	9,262
3	968	11,616
4	1,164	13,970
5	1,360	16,324
6	1,556	18,678]

[(b) For each household member more than six (6), the above income eligibility limitation shall be increased by $196 monthly or $2,354 yearly.]

(b) [(c)] Excluded from income are:

1. Payments received by a household from a federal, state, or local agency designated for a special purpose and which the applicant must spend for that purpose;

2. Payments made to others on the household's behalf;

3. Loans;

4. Reimbursements for expenses;

5. Incentive payments (JET and JTPA) normally disregarded in AFDC;

6. Federal payments or benefits which shall be excluded according to federal law; and

7. Supplemental medical insurance premiums.

(2) Liquid assets.

(a) The household shall have total liquid assets at the time of application of not more than $5,000.

(b) Excluded assets are:

1. Cars;

2. Household or personal belongings;

3. Principal residence;

4. Cash surrender value of insurance policies;

5. Prepaid burial policies;

6. Real property; and

7. Cash on hand or in a bank account if the cash is income considered under subsection

(1)(a) of this section.

(3) Crisis component.

(a) Applicants shall meet the income and liquid assets criteria; and

(b) Be without heat; or

(c) Be without fuel within five (5) days; or

(d) Have received a notice of disconnection of service and will be disconnected within forty-eight (48) hours; or

(e) Require a heat system repair to obtain adequate heat; or

(f) For those households whose home heating costs are included as an undesignated portion of the rent, the household must have received a notice of eviction for nonpayment of rent.

Section 4. Benefit Levels. (1)(a) Payments to the households' heating fuel providers shall be made for the full benefit amount.

(b) Benefits shall be determined from fuel usage data and from the average heating season energy cost for [of] the six (6) primary heating fuels prior to the implementation of the subsidy component.

[(c) The average heating season energy cost for the six (6) primary heating fuels used in determining the benefits in the subsidy component shall be:]

[1. Coal $796;]

[2. Electricity $656;]

[3. Fuel oil $973;]

[4. Natural gas $656;]

[5. Propane $1083; and]

[6. Wood $812.]

(c) [(d)] Households shall receive benefits based on the household's poverty level and the type of heating fuel. Those households with the lowest incomes and highest heating season fuel costs shall receive the highest benefits.

[(e) For residents of subsidized and unsubsidized housing,] Benefits shall be a percentage of the average annual heating season energy costs of the primary heating fuel.

[(f) Pursuant to the judgment of the United States District Court in Civil Action No. 90-71, the cabinet shall calculate benefits that subsidized households should have received. The cabinet shall pay subsidized households the difference between the amount received and the amount to which such households were entitled.]

(d) [(g)] Benefit matrix subsidy component.

Households Income as a Percent of 100% Federal Poverty Level	Benefit Amount as a Percent of Heating Season Energy Costs (October through April)
0- 22%	18.5%
23- 44%	16.5%
45- 66%	14.5%
67- 88%	12.5%
89-110%	10.5%
[0- 14%	19.6%
15- 29%	17.1%
39- 44%	14.6%
45- 59%	12.1%
60- 74%	9.6%
75- 89%	7.1%
90-110%	4.6%]

(2) Crisis component. Benefits to households shall be the minimum amount necessary to alleviate the crisis. Benefits may be fuel or other energy for heating, heaters, blankets, or [sleeping bags,] emergency shelter[, or repair to a heating system to obtain adequate heat]. Space heaters shall be a temporary service and shall be loaned to a household until fuel is delivered, the heating system is repaired or other resources are located which will alleviate the crisis. The contracting agency shall determine the type and value of assistance necessary to alleviate the crisis.

(a) In determining the minimum amount of assistance, the contracting agency shall take into consideration direct subsidies for payment of utility cost received by the household from other programs.

(b) A household shall receive assistance more than once, but shall not receive more than the maximum allowable for the primary heating fuel [which shall be the cost of an average sixty (60) day supply based on energy usage data and the cost of fuel] as determined prior to component implementation.

(c) The benefits for a household threatened with eviction whose heat is an undesignated portion of the rent shall not receive more than the maximum allowable for the primary heating fuel as determined prior to component implementation. [exceed the energy portion, (in gas and electric) of the monthly Standard Utility Allowance (SUA) in the Food Stamp Program. Those benefits are as follows:]

[Household Size	SUA
1 and 2	$105
3	$109
4 or more	$120]

[These benefit amounts are available per each month that the household is in arrears on the rent with the maximum benefits not to exceed the average sixty (60) day supply for the primary heating fuel.]

(d) A household needing a heat system repair shall be referred to the local weatherization program. The weatherization program staff shall evaluate the heating system and have all repairs, necessary to make the system operable, performed as soon as possible. Such repairs shall be considered an emergency and shall supercede all other dwellings being considered for weatherization services at the time.

Section 5. Benefit Delivery Methods. (1) Payment under the subsidy component is authorized by a one (1) party check made payable to the vendor or landlord if the heating is included as an undesignated portion of rent. At the recipient's discretion, the total benefit may be made in separate authorizations to more than one (1) provider (for example, when the recipient heats with both a wood stove and electric space heaters). However, the total amount of the payments shall not exceed the maximum for the primary source of heating.

(2) For the crisis component, no direct cash payments shall be made to the recipient. Payments shall be authorized to the energy provider by one (1) party checks upon delivery of fuel, heaters, blankets, [sleeping bags,] emergency lodging, or restoration or continuation of service[, or upon repair of the heating system].

Section 6. Right to a Fair Hearing. Any individual has a right to request and receive a fair hearing in accordance with 904 KAR 2:055.

Section 7. Time Standards. (1) Under the subsidy component, an eligibility determination shall be made promptly after receipt of a completed and signed application but not to exceed thirty (30) days.

(2) Under the crisis component, completed applications shall be processed so that the crisis is resolved within forty-eight (48) hours and in life threatening situations within eighteen (18) hours.

(3) Applicants shall have five (5) working days from the date of application to provide information necessary to complete the application.

Section 8. Effective Dates. (1) Implementation and termination dates for HEAP, depending upon the availability of funds, are:

(a) Applications for the subsidy component shall be accepted beginning November 4, 1991 [October 15, 1990] and ending by November 27, 1991 [October 31, 1990]. Applications shall be accepted after November 27, 1991 until the opening of the crisis component for any household unable to apply during the regular application period.

(b) Applications for the crisis component shall be accepted beginning January 6, 1991 [December 3, 1990] and ending by March 31, 1992 [29, 1991], or until all available funds have been expended. Applications shall be processed in the order taken until funds are expended.

(2) HEAP may be reactivated after termination under the same terms and conditions as shown in this regulation if additional federal funds are made available.

Section 9. Allocation of Funds. (1) Up to fifteen (15) percent of the federal [total] HEAP allocation shall be reserved for weatherization assistance. These funds shall be used for regular weatherization services and for all heating system repairs identified during the subsidy and crisis components of HEAP.

(2) An amount of funds sufficient to provide benefits to all eligible households that apply during the subsidy application period shall be reserved for the subsidy component.

(3) The balance of benefit funds for HEAP shall be reserved for the crisis component. All benefit [The] funds reserved for the crisis component shall be allocated based upon each local administering agency's share of nonduplicated households assisted in the preceding year's crisis component. [the 1980 census poverty levels of the counties served by the local administering agency.]

(4) Each agency shall reserve ten (10) percent of the allocation [An amount shall be reserved from the crisis component] under subsection (3) of this section to assure component availability until March 31, 1992 [29, 1991] for emergency crisis assistance for households who are without heat or will be disconnected from utility services within forty-eight (48) hours.

(5) Up to $25,000 shall be reserved for the Preventive Assistance Program administered by the Department for Social Services to assist families with an energy payment not to exceed $300 for each family if the payment shall prevent the removal of a child from a family or if it shall assist in reuniting a child with the family.

Section 10. Energy Provider Responsibilities. Any provider accepting payment from HEAP for energy or services provided to eligible recipients shall comply with the following:

(1) Reconnection of utilities and delivery of fuel shall be accomplished upon certification for payment;

(2) The household shall be charged in the normal billing process the difference between the actual cost of the home energy and the amount of payment made through this program. [For balances remaining after acceptance of the HEAP payment, the customer shall be offered the opportunity for a deferred payment arrangement or a level payment plan];

(3) HEAP recipients shall not be treated worse than households not receiving benefits;

(4) The household on whose behalf benefits are paid shall not be discriminated against, either in the costs of goods supplied or the services provided; and

(5) A landlord shall not increase the rent of recipient households due to receipt of this payment.

MIKE ROBINSON, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: November 11, 1991
FILED WITH LRC: November 15, 1991 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation will be held on December 23, 1991, at 9 a.m. at the Department for Social Insurance Conference Room, 3rd Floor West, Cabinet for Human Resources Building, Frankfort, Kentucky. 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 notifications of intent to attend the public hearing or written comments on the proposed administrative regulations to: 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 Randall

(1) Type and number of entities affected: Amendment to this regulation is necessary to be in compliance with the federal fiscal year 1992 Low Income Home Energy Assistance Program (LIHEAP) Block Grant. HEAP will have two components: Subsidy and Crisis. Subsidy will provide heating assistance benefits up to 100,000 households, and crisis will provide heating assistance up to 70,000 households experiencing a heating crisis. The 23 local community action agencies will operate the program.

(a) Direct and indirect costs or savings to those affected: In the subsidy component, all eligible households that apply will receive benefits to average $121 per household. To the extent that funds remain available, assistance

will be provided to eligible households experiencing a crisis, and will be the minimum necessary to alleviate the crisis. Assistance may be fuel or other energy for heating, heaters, blankets, emergency shelters, or repair to a heating system to obtain adequate heat. The average crisis benefits per household is estimated at $85. Administrative benefits not to exceed 10 percent of the reimbursable benefit costs will be made available to reimburse the community action agencies for allowable administrative costs.

1. First year: A total of up to $18.06 million shall be available for benefits under HEAP. Up to $12,100,000 shall be allocated for subsidy and the balance, including all unexpended funds from subsidy will be allocated to the crisis component. Up to $1.806 million shall be available to reimburse administrative costs.

2. Continuing costs or savings: The LIHEAP Block Grant Application and Plan Narrative is submitted annually and is based upon the estimated federal appropriation level. There will not be any continuing costs or savings under the amendments being made to the regulation in accordance with the requirements of the current state plan.

3. Additional factors increasing or decreasing costs (note any effects upon competition): The Cabinet for Human Resources is not aware of any additional factors increasing or decreasing costs. This regulation has no effect on competition.

(b) Reporting and paperwork requirements: All HEAP applicants shall complete an application and provide materials to verify eligibility. The local administering agencies shall report services provided, submit invoices necessary for reimbursement and shall be subject to reporting and paperwork requirements necessary for appropriate administration of energy assistance programs including audits.

(2) Effects on the promulgating administrative body: The Department for Social Insurance shall be responsible for the overall administration of HEAP.

(a) Direct and indirect costs or savings: Up to ten percent of the LIHEAP Block Grant allocation (including energy assistance trust funds appropriated to LIHEAP by the General Assembly and not transferred to another block grant) may be used for administration.

1. First year: Normal costs associated with administration of this program and contract management shall be incurred.

2. Continuing costs or savings: There will not be any continuing costs or savings under the current state plan.

3. Additional factors increasing or decreasing costs: The Department for Social Insurance is not aware of additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: Administrative requirements for grants under appropriate state and federal law and regulations shall be met. This includes maintenance of the state plan and regulations, revisions as necessary to outreach material, annual reports, audits, and all such other usual and normal administrative requirements for grants management.

(3) Assessment of anticipated effect on state and local revenues: The Home Energy Assistance Program shall have little impact upon state or local revenues. Increased tax revenues will be generated from recipient expenditures for or receipt of energy assistance benefits. The expenditures for the state fiscal year 1992 Energy Assistance Trust Fund appropriation ($6.195 million) will reduce the amount of funds invested to the trust fund and then reduce the amount of interest revenues earned by the trust fund.

(4) Assessment of alternative methods; reasons why alternatives were rejected: This regulation is being amended in accordance with the requirements of the federal fiscal year 1992 LIHEAP State Plan which was subject to substantial public review and comment, a legislative review and public hearing, and a Kentucky intergovernmental review through the Kentucky State Clearinghouse Program. Criteria has been set at a level to maximize the number of households assisted with the minimum amount necessary for a reasonable benefit.

Various levels of funds for the 2 components were examined. Balancing a federal intent that funds be used for heating assistance with the need for adequate crisis assistance funding, the cabinet proposed the funding levels reflected in the state plan. The public review and comment supported the funding levels.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, administrative regulation or governmental policy is in conflict, overlapping, or a duplication.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: No additional comments or information.

TIERING: Was tiering applied? Yes

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 97-35 as amended, Omnibus Budget Reconciliation Act of 1981, as amended and Augustus F. Hawkins Human Services Reauthorization Act of 1990.

2. State compliance standards. This regulation specifies income eligibility at 110 percent of poverty. It also provides for local administration by community action agencies.

3. Minimum or uniform standards contained in the federal mandate. The federal statute permits income eligibility to range between 110% and 150% of poverty. The statute requires that local administering agencies administering similar energy assistance programs be given priority for selection. The statute requires crisis assistance that is weather or supply related or other energy crisis.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The block grant concept permits state flexibility within broad guidelines contained in the statute. In order to target assistance to the most needy, the state has adopted the minimum income eligibility criteria permitted under the statute. Other criteria designed to target benefits to the most in need are a resources test of $5,000. The statute does not address benefit type or amount. This regulation sets the

type and value of assistance at a level to provide a reasonable benefit to serve the maximum number of households with the available funds.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Due to the limited amount of funds and a need in excess of our ability to serve at the level of available funds, it is necessary to target assistance to those households most in need.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes X No___ (If yes, complete questions 2-4)

2. State what unit, part or division of local government this administrative regulation will affect. This regulation will affect cities which own and operate utilities for heating.

3. State the aspect or service of local government to which this administrative regulation relates. Municipal utilities.

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 provision of energy assistance benefits helps low income households pay for and maintain heat. Municipal utilities, and thus the cities, will benefit through reductions in the amount of payments in arrears and through helping households to maintain service.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management and Development
(Proposed Amendment)

904 KAR 3:010. Definitions.

RELATES TO: KRS 194.050, 7 CFR 217.2, 273.1, 273.4, 273.5, 273.6, 273.7, 273.11, 273.16

STATUTORY AUTHORITY: KRS 194.050, 7 CFR 271.4

NECESSITY AND FUNCTION: The Cabinet for Human Resources is required to administer a Food Stamp Program. KRS 194.050 provides that the secretary shall, by regulation, develop policies and operate programs concerned with the welfare of the citizens of the Commonwealth. This regulation sets forth definitions of terms used by the cabinet in regulations pertaining to the Food Stamp Program. This administrative regulation has been amended to comply with the: (1) amendments to KRS Chapter 13A, enacted during the 1990 Regular Session of the General Assembly, as directed by the Administrative Regulation Review Subcommittee; and (2) quadrennial review required by KRS 13A.347.

Section 1. Definition of terms utilized in regulations relating to the Food Stamp Program are as follows:

(1) "Application for participation" means the form designed or approved by Food and Nutrition Service (FNS) that is completed by:

(a) A household member; or

(b) An authorized representative.

(2) "Authorization to participate card" (ATP) means the document that is issued by the state agency to a certified household to show the allotment the household is authorized to receive on presentation of such document.

(3) "Authorized representative":

(a) Means an individual designated by a household member to act on behalf of the household in one (1) or all of the following capacities:

1. Making application for the program;

2. Obtaining the coupons; and

3. Using the coupons.

(b) An adult who is a nonhousehold member may be designated as the authorized representative for certification purposes if the authorized representative:

1. Has been designated in writing by:

a. The head of the household;

b. The spouse; or

c. Another responsible member of the household; and

2. Is an adult who is aware of relevant household circumstances.

(c) The following individuals shall not act as an authorized representative unless:

1. The specific written approval of the designated state agency officials is obtained; and

2. That official determines that no one else is able to serve as the authorized representative:

a. A state agency employee who is involved in the certification or issuance processes;

b. A retailer that is authorized to accept food coupons; and

c. An individual disqualified for an intentional program violation.

(d) The cabinet shall disqualify an individual from participating as an authorized representative up to one (1) year if the cabinet obtains evidence that the individual has:

1. Misrepresented a household's circumstances;

2. Knowingly provided false information pertaining to the household; or

3. Made improper use of coupons.

(4) "Boarder":

(a) Means an individual to whom a household furnishes lodging and meals for reasonable compensation;

(b) "Reasonable compensation" is determined:

1. By considering only the amount paid for meals; and

2. Provided that the amount paid for meals is distinguishable from the amount paid for lodging.

(c) A reasonable monthly payment for meals shall be:

1. An amount which equals or exceeds the thrifty food plan for the appropriate size of the boarder household for a boarder whose board arrangement is for more than two (2) meals a day; or

2. An amount which equals or exceeds two-thirds (2/3) of the thrifty food plan for the appropriate size of the boarder household for a boarder whose board arrangement is for two (2) meals or less per day.

(d) A boarder is ineligible to participate in the program independent of the household providing the board.

(5) "Certification" means the action necessary to determine eligibility of a household including:

(a) Interview;
(b) Verification; and
(c) Decision.
(6) "Communal dining facility" means:
(a) A public or nonprofit private establishment, approved by FNS, that prepares and serves meals for elderly persons;
(b) A public or private nonprofit establishment (eating or otherwise) that feeds:
1. Elderly persons; and
2. SSI recipients and their spouses;
(c) Federally subsidized housing for the elderly that prepares and serves meals to the residents; and
(d) A private establishment that contracts with an appropriate state or local agency to offer meals at concessional prices to:
1. Elderly persons; and
2. SSI recipients and their spouses.
(7) "Coupon" means:
(a) Any stamp;
(b) Coupon; or
(c) Type of certificate; that is
(d) Issued in accordance with the Food and Nutrition Service regulations for the purchase of eligible food.
(8) "Date of entry" or "date of admission" means the date established by the Immigration and Naturalization Service as the date the sponsored alien was admitted for permanent residence.
(9) "Disabled" means:
(a) An individual who receives:
1. Supplemental Security Income (SSI) or presumptive SSI under 42 USC 1381 to 1385;
2. Disability or blindness payments under:
a. 42 USC 301 to 306;
b. 42 USC 402 to 433;
c. 42 USC 1201 to 1206;
d. 42 USC 1351 to 1355; or
e. 42 USC 1381 to 1385;
3. Optional or mandatory state supplementation;
4. Disability retirement benefits from a:
a. Federal;
b. State; or
c. Local governmental agency; and
d. Resulting from a disability considered payment under 42 USC 221(i);
5. Annuity payments under:
A. 45 USC 231(a); and
b. Is determined to qualify for Medicare by the Railroad Retirement Board; or
c. Is disabled based upon the criteria used under 42 USC 1381 to 1385; or
(b) A veteran with a service connected or nonservice connected disability rated by the Veteran's Administration (VA) or paid as total (100 percent) by the VA under Title 38 of the United States Code;
(c) A veteran considered by the VA to be in need of regular aid and attendance or permanently housebound under Title 38 of the United States Code;
(d) A surviving spouse of a veteran and considered by the VA to be in need of regular aid and attendance or permanently housebound;
(e) A surviving child of a veteran and considered by the VA to be permanently incapable of self-support under Title 38;
(f) A surviving spouse or surviving child of a veteran and considered by the VA to be entitled to:
1. Compensation for a service-connected death;
2. Pension benefits for a nonservice-connected death under Title 38; and
3. Has a disability considered permanent under 42 USC 221(i);
(g) An individual in receipt of disability related medical assistance under 42 USC 1396;
(h) An individual who is certified to receive, but not yet receiving SSI or Social Security disability payments; or
(i) An individual who is currently having their entire SSI or Social Security disability benefit check recouped to recover a prior overpayment.
(10) "Drug addiction or alcoholic treatment and rehabilitation program" means any:
(a) Drug addiction; or
(b) Alcoholic treatment and rehabilitation program;
(c) Conducted by:
1. A private nonprofit organization; or
2. Institution that is certified as responsible for the administration of the state's program for:
a. Alcoholics; or
b. Drug addicts; by
(i) The cabinet; or
(ii) Agencies designated by the Governor.
(11) "Elderly" means an individual who is:
(a) Age sixty (60) or older; or
(b) Fifty-nine (59) years of age at the time of application but shall turn age sixty (60) before the end of month of application.
(12) "Eligible foods" means any of the following:
(a) Any food or food product intended for human consumption except:
1. Alcoholic beverages;
2. Tobacco;
3. Hot foods; and
4. Hot food products prepared for immediate consumption;
(b) Seeds and plants to grow foods for the personal consumption by eligible households;
(c) Meals prepared and delivered by an authorized meal delivery service to households eligible to use coupons to purchase delivered meals;
(d) Meals served by a communal dining facility for:
1. The elderly;
2. SSI households; or
3. To both; and
4. To households eligible to use coupons for communal dining;
(e) Meals prepared and served by an authorized drug addict or alcoholic treatment and rehabilitation center to eligible households;
(f) Meals prepared and served by an authorized group living arrangement facility to residents who are blind or disabled recipients of benefits under:
1. 42 USC 401 to 433; or
2. 42 USC 1381 to 1385;
(g) Meals prepared and served by an authorized shelter for battered women and children to its eligible residents;
(h) Meals prepared for and served by an approved authorized public or private nonprofit establishment (e.g., soup kitchen, temporary shelter) that feeds homeless persons, provided that the facility shall:
1. Be a nonprofit establishment;
2. Be a licensed food service establishment; and
3. Provide meals to the homeless.
(13) "Excluded household member" means an individual residing with a household but

excluded when determining the household's size in accordance with the provisions of 904 KAR 3:035, Section 5(3) and (4).

(a) The income and resources of the excluded household member shall be treated the same as that of an ineligible household member in accordance with 904 KAR 3:035, Section 5(3) and (4).

(b) The following are excluded household members and shall not participate as a separate household:

1. An ineligible alien;

2. An individual disqualified for failure to provide a social security number;

3. An individual disqualified for intentional program violation; or

4. An individual disqualified for failure to comply with work or workforce requirements. [; or]

[5. An individual determined ineligible due to failure to attest to citizenship or alien status.]

(14) "Employment and training program" means a program consisting of one (1) or more of the following components:

(a) Work;

(b) Training;

(c) Education; or

(d) Job search.

(15) "Federal fiscal year" means a period of twelve (12) calendar months beginning with each October 1 and ending with September 30 of the following calendar year.

(16) "FNS" means the Food and Nutrition Service of the United States Department of Agriculture.

(17) "Group living arrangement":

(a) Means a public or private nonprofit residential setting that:

1. Serves no more than sixteen (16) residents; and

2. Is appropriately certified.

(b) To be eligible, a resident shall be:

1. Blind or disabled; and

2. Receiving benefits under:

a. 42 USC 401 to 433; or

b. 42 USC 1381 to 1385.

(18) "Head of household" means the person with primary financial responsibility and in whose name the application for participation is made.

(19) "Household" means an individual living alone or with others, or a group of individuals living together where living quarters are shared.

(a) A household may be composed of any of the following individuals or groups of individuals specified in subsection (19)(b) of this section, provided that such individuals or groups of individuals are not:

1. Residents of an institution;

2. Residents of a commercial boarding house; or

3. Living with others and paying compensation to others for meals and lodging except as otherwise specified in subsection (4) of this section.

(b) A household may be composed of:

1. An individual living alone;

2. An individual living with others, but customarily purchasing food and preparing meals for home consumption separate and apart from the others;

3. A group of individuals living together for whom food is customarily purchased in common and for whom meals are prepared together for home consumption;

4. An individual who is:

a. Sixty (60) years of age or older (and the spouse of such individual);

b. Living with others; and

c. Unable to purchase and prepare meals because he:

(i) Suffers from a disability considered permanent under 42 USC; or

(ii) Suffers from a nondisease-related, severe, permanent disability; and

d. Provided that the income of the others, excluding the income of the individual's spouse, with whom the individual resides does not exceed 165 percent of the federal income poverty guidelines.

(c) In no event shall separate household status or nonhousehold member status be granted to:

1. Parents and natural, adopted or stepchildren, unless:

a. At least one (1) parent is elderly or disabled as defined in subsection (10) of this section; or

b. Unless three (3) generations live together and one (1) of the children has minor children and meals are prepared separately;

2. A child under eighteen (18) years of age, under the parental control of an adult member of the household;

3. A spouse of a member of the household;

4. Siblings (natural, adopted, half or stepbrothers and sisters), unless:

a. At least one (1) sibling is elderly or disabled as defined in subsection (10) of this section; or

b. One (1) sibling has a minor child and meals are prepared separately.

(20) "Identification (ID) card" means a card which identifies the bearer as eligible to receive and use food coupons.

(21) "Immigration and Naturalization Service (INS)" means the Immigration and Naturalization Service, United States Department of Justice.

(22) "Institution of higher education" means any institution providing post high school education, which normally requires a high school diploma or equivalency certificate for a student to enroll, including but not limited to:

(a) College;

(b) University; and

(c) Vocational or technical school.

(23) "Meal delivery service" means an entity with which the cabinet has contracted for the preparation of meals at concessional prices to an individual who is unable to adequately prepare his meals.

(a) A "meal delivery service participant" shall include:

1. An elderly person and his spouse;

2. The physically or mentally handicapped; and

3. A person otherwise disabled and his spouse.

(b) The cabinet shall contract with any of the following "meal delivery service" providers:

1. A political subdivision;

2. A private nonprofit organization; or

3. A private establishment.

(24) "Medicaid" means medical assistance under 42 USC 1396.

(25) "Nonassistance household" (NA) means a household containing at least one (1) member who is not included in a public assistance (PA) household grant.

(26) "Nonprofit cooperative food purchasing venture" means any private nonprofit association of consumers whose members pool their resources to buy food.

(27) "Nonhousehold member" means an individual residing with a household but not considered a household member in determining the household's eligibility or allotment.

(a) The following shall be considered a nonhousehold member and if otherwise eligible, may participate in the program as a separate household:

1. Roomer. An individual to whom a household furnishes lodging, but not meals, for compensation.

2. Live-in-attendant. An individual who resides with a household to provide medical, housekeeping, child care or other similar personal services.

3. Other. Another individual who shares living quarters with the household but who does not customarily purchase food and prepare meals with the household.

(b) The following shall be considered as a nonhousehold member, ineligible to participate in the program as a separate household, and treated as described in 904 KAR 3:035:

1. An ineligible student;

2. A person disqualified for noncompliance with the work requirements;

3. A border;

4. A resident of an institution, except as provided in subsection (17) of this section;

5. A striker, unless:

a. The household was eligible the day prior to the strike; and

b. The household is eligible at the time of application;

6. A household disqualified due to voluntary quit provisions.

(28) "Overissuance" means the amount by which coupons issued to a household exceeds the amount the household was eligible to receive.

(29) "Public assistance" (PA) means any of the programs authorized under 42 USC 601 to 686 including:

a. Old age assistance;

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

c. Aid to the blind;

d. Aid to the permanently and totally disabled; and

e. Aid to aged, blind or disabled.

(30) "Retrospective budgeting" means the computation of a household's food stamp allotment for an issuance month based on actual income and circumstances which existed in a previous month.

(31) "Shelter for battered women and children" means a public or private nonprofit residential facility that serves battered women and children. If a facility serves other individuals, a portion of the facility must be set aside on a long-term basis to serve only battered women and children.

(32) "Sponsor" means a person who executed an affidavit of support or similar agreement on behalf of an alien as a condition of the alien's entry or admission into the United States as a permanent resident.

(33) "Sponsored alien" means an alien lawfully admitted for permanent residence as an immigrant as defined under 8 USC 1101.

(34) "Spouse" means either of two (2) individuals who:

(a) Would be defined as married to each other under applicable state law; or

(b) Are living together and are holding themselves out to the community as husband and wife by representing themselves as such to relatives, friends, neighbors, or tradespeople.

(35) "Striker" means anyone involved in a strike or other concerted stoppage of work by employees. This shall include:

(a) A stoppage by reason of expiration of a collective-bargaining agreement; and

(b) Any concerted slowdown or other concerted interruption of operations by employees, unless:

1. The individual is exempt from work registration for reasons other than employment; and

2. The exemption existed on the day prior to the strike.

(36) "Supplemental security income (SSI)" means monthly cash payments made under the authority of:

(a) 42 USC 1381 to 1385 to the aged, blind and disabled;

(b) 42 USC 1382e; or

(c) 42 USC 1382.

(37) "Thrifty food plan" means:

(a) The diet required to feed a family of four (4) persons, determined in accordance with the Secretary of the United States Department of Agriculture calculations, consisting of:

1. A man and a woman twenty (20) through fifty (50);

2. A child six (6) through eight (8); and

3. A child nine (9) through eleven (11) years of age; and

(b) The cost of such diet shall be the basis for uniform allotments for all households regardless of their actual composition, except that the Secretary of the United States Department of Agriculture shall make household-size adjustment in the thrifty food plan taking into account economies of scale.

(38) "Underissuance" means the amount that the allotment to that the household was entitled exceeds the allotment which the household received.

MIKE ROBINSON, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 30, 1991
FILED WITH LRC: November 4, 1991 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 23, 1991 at 9 a.m. at the Department for Employment Services Conference Room, Second Floor West, CHR Building. Individuals interested in attending this hearing shall notify this agency in writing by December 18, 1991, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street – 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: James E. Randall, Director
(1) Type and number of entities affected: There is no method available to determine the type or number of entities affected by this change of policy. However, due to the small number of alien recipients in Kentucky, the effect should be negligible.
(a) Direct and indirect costs or savings to those affected: None
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict: None
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None
(6) Any additional information or comments: None
TIERING: Was tiering applied? No. Federal and state statutes mandate that eligibility requirements for the Food Stamp Program be implemented in a like manner on a statewide basis, thereby prohibiting tiering.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 7 CFR 273.1(b)(2)(viii); 7 CFR 273.11(c).
2. State compliance standards. This regulation pertains to the definitions specific to the administration of the Food Stamp Program as prescribed by the Food and Nutrition Service. There are no separate state compliance standards.
3. Minimum or uniform standards contained in the federal mandate. The definitions contained in this administrative regulation are applied in a like manner on a statewide basis and are consistent with definitions which are applied in the National Food Stamp Program.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. The provisions of this administrative regulation are consistent with those mandated by the Food and Nutrition Service.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation will not impose any stricter requirements or any additional or different responsibilities than those required by the federal mandate.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management and Development
(Proposed Amendment)

904 KAR 3:035. Certification process.

RELATES TO: KRS 194.050, 7 CFR 273.1, 273.2, 273.5, 273.10, 273.11, 273.12, 273.14, 273.21, 274.6
STATUTORY AUTHORITY: KRS 194.050, 7 CFR 271.4
NECESSITY AND FUNCTION: The Cabinet for Human Resources is required to administer a Food Stamp Program. KRS 194.050 provides that the secretary shall, by regulation, develop policies and operate programs concerned with the welfare of the citizens of the Commonwealth. This regulation sets forth the certification process used by the cabinet in the administration of the Food Stamp Program. This administrative regulation has been amended to comply with the: (1) amendments to KRS Chapter 13A, enacted during the 1990 Regular Session of the General Assembly, as directed by the Administrative Regulation Review Subcommittee; and (2) quadrennial review required by KRS 13A.347.

Section 1. Eligibility and Benefit Levels. (1) Eligibility and benefit levels shall be determined by the cabinet by considering the household's circumstances for the entire period for which each household is certified.
(2) The criteria shall be applicable to all households.
(3) Certain households require special or additional certification procedures as specified in Section 4 of this administrative regulation.

Section 2. Certification Periods. (1) The cabinet shall establish a definite period of time within which a household shall be eligible to receive benefits.
(2) Except as provided below, households shall be certified for at least three (3) months.
(a) If the certification process is completed after the 15th day of the month of application, a household eligible for a certification period of three (3) months or less shall, at the time of certification, have their certification period increased by one (1) month;
(b) A household shall be certified for one (1) or two (2) months, as appropriate if:
1. The household cannot reasonably predict what its circumstances will be in the near future; or
2. There is substantial likelihood of frequent and significant changes in income or household status.
(3) A household composed entirely of recipients of Aid to Families with Dependent Children (AFDC), or a combination of AFDC and Supplemental Security Income (SSI), shall be assigned a certification period to coincide with their AFDC reinvestigation date.
(4) The following households shall be certified for up to twelve (12) months:
(a) A household which is required to submit monthly reports.
(b) If other household circumstances are expected to remain stable, a household composed entirely of unemployable or elderly persons with very stable income; or
(c) A household whose primary source of income is from:
1. Self-employment; or

2. Regular farm employment with the same employer if:
a. The income can be readily predicted; and
b. Household circumstances are not likely to change.
(5) The following households shall be assigned a certification period not to exceed six (6) months, including those household types specified in subsection (4) of this section.
(a) A household which is granted separate household status because:
1. The household consists of an individual and the individual's minor child;
2. The individual and child are living with the individual's parent or sibling; and
3. The individual purchases and prepares meals separately from the parent or sibling; or
(b) A household that consists of recipients of AFDC or a combination of AFDC and SSI, receiving up to fifty (50) dollars child support payments forwarded from the Division of Child Support Enforcement. These households shall be exempt from the monthly reporting requirements.

Section 3. Certification Notices to Households. The cabinet shall provide an applicant with one (1) of the following written notices as soon as a determination is made, but no later than thirty (30) days after the date of the initial application:
(1) Notice of eligibility;
(2) Notice of denial; or
(3) Notice of pending status.

Section 4. Application for Recertification. The cabinet shall process applications for recertification as specified in 904 KAR 3:030, Section 1, as follows:
(1) If the household files the application by the 15th day of the last month of the certification, the cabinet shall provide uninterrupted benefits if the household is otherwise eligible; or
(2) If the household files the application after the 15th day but prior to the last day of the last month of the certification, the cabinet shall provide benefits within thirty (30) days of date of the application if the household is otherwise eligible.

Section 5. Certification Process for Specific Households. Certain households have circumstances that are substantially different from other households and therefore require special or additional certification procedures.
(1) A household with self-employed members shall have its case processed as follows:
(a) Income is annualized over a twelve (12) month period if:
1. Self-employment income represents a household's annual income; or
2. Self-employment income is received on a monthly basis which represents a household's annual support;
(b) Self-employment income which is intended to meet the household's needs for only part of the year shall be averaged over the period of time the income is intended to cover;
(c) The income from a household's self-employment enterprise that has been in existence for less than one (1) year shall be averaged over the period of time the business has been in operation and a monthly amount projected over the coming year; or
(d) The cabinet shall calculate the self-employment income on anticipated earnings if the averaged annualized amount does not accurately reflect the household's actual circumstances because the household has experienced a substantial increase or decrease in business.
(2) A household with boarders shall have its case processed as follows:
(a) Income from the boarder shall:
1. Be treated as self-employment income; and
2. Include all direct payments to the household for:
a. Room;
b. Meals; and
c. Shelter expenses;
(b) Deductible expenses include:
1. Cost of doing business;
2. Twenty (20) percent of the earned income; and
3. Shelter costs.
(3) A household with ineligible members shall be processed, as follows:
(a) Ineligible due to:
1. Intentional program violation;
2. Failure to comply with the work requirements; or
3. Failure to comply with workforce requirements:
a. Income and resources in their entirety shall be counted as income available to the remaining household members;
b. Remaining household members shall receive standard earned income, medical, dependent care, and excess shelter deductions; and
c. The ineligible member shall not be included when:
(i) Assigning benefit level;
(ii) Comparing monthly income with income eligibility standard; and
(iii) Comparing household resources with resource eligibility standard;
(b) Ineligible due to:
1. Failure to provide a Social Security number; or
2. Ineligible alien status; [; or]
[3. Failure to attest to citizenship or alien status;]
a. All resources of ineligible members shall be considered available to the remaining household members;
b. A pro rata share of the ineligible member's income shall be attributed to remaining household members;
c. Earned income deduction shall be applied to pro rata share of earnings; and
d. The ineligible member's share of dependent care and shelter expenses shall not be counted;
4. The ineligible member shall not be included when:
a. Assigning benefit level;
b. Comparing monthly income with income eligibility standard; and
c. Comparing household resources with resource eligibility standard.
(4) A household with nonhousehold members shall be processed as follows:
(a) The income and resources of nonhousehold member (other than those described in subsection (3) of this section) shall not be considered available to the household with whom they reside;
(b) If earned income of household members and nonmembers are combined into one (1) wage, the agency shall:
1. Count that portion due to the household as earned income, if identifiable; or

2. Count pro rata share of earned income if nonmember's share cannot be identified;
(c) The nonmember shall not be included when:
1. Assigning a benefit level to the household;
2. Comparing monthly income with income eligibility standards; and
3. Comparing household resources with resource eligibility standard.
(5) A resident of a drug or alcoholic treatment and rehabilitation program in a private, nonprofit organization or a publicly operated community mental health center shall have his case processed as follows:
(a) Eligibility shall be determined as a one (1) person household;
(b) Certification shall be accomplished through an authorized representative;
(c) Food stamp processing standards and notice provisions shall apply to a resident recipient;
(d) Treatment center shall notify the agency of any changes in a resident's circumstances;
(e) Upon departure of the center, the resident shall be eligible to receive any remaining benefits, if otherwise eligible; and
(f) The organization or institution shall be responsible for knowingly misrepresenting household circumstances.
(6) A resident of a group living arrangement who is blind or disabled and receives retirees, survivors, and disabled individuals or SSI benefits shall have his case processed as follows:
(a) A resident shall apply on his own behalf or through use of the facility's authorized representative;
(b) Certification provisions applicable to all other households shall be applied;
(c) Responsibility for reporting changes depends upon who files the application:
1. If resident applies on his own behalf, the household shall report changes to the agency; or
2. If the center acts as authorized representative, the group living arrangement shall report changes;
(d) Eligibility of the resident shall continue after departure from the group living arrangement, if otherwise eligible; and
(e) The group living arrangement shall be responsible for knowingly misrepresenting household circumstances unless the household applied on its own behalf.
(7) A resident of a shelter for battered women and children shall have her case processed as follows:
(a) The shelter shall:
1. Have food and nutrition service authorization to redeem at wholesalers; or
2. Meet the federal definition of such a shelter;
(b) A shelter resident shall be certified for benefits, if otherwise eligible, if she is currently included in a former household which contains the person who abused her; and
(c) The cabinet shall promptly remove the resident from the former household's case, upon notification.
(8) An SSI recipient shall have his case processed as follows:
(a) Application may be filed at:
1. The Social Security Administration (SSA) Office; or
2. The local food stamp office;
(b) The cabinet shall not require an additional interview for applications filed at the SSA;
(c) The cabinet shall obtain all necessary verification prior to approving benefits;
(d) Certification periods shall conform to Section 2 of this administrative regulation; and
(e) Household changes in circumstances shall conform to Section 6 of this administrative regulation.
(9) A household with a member who is on strike shall have its eligibility determined by:
(a) Comparing the striking member's income the day prior to the strike to the striker's current income;
(b) Adding the higher of the prestrike income or current income to other current household income; and
(c) Allowing the appropriate earnings deduction.
(10) Student households.
(a) Any person who meets all of the following criteria shall be ineligible to participate in the Food Stamp Program:
1. Between age eighteen (18) and sixty (60);
2. Physically and mentally fit; and
3. Enrolled at least half-time in an institution of higher education.
(b) The criteria in subsection (11)(a) of this subsection shall not deem a household member ineligible if the member:
1. Is employed or self-employed at least twenty (20) hours per week and is paid for such employment;
2. Participates in a federally financed work study program;
3. Is responsible for the care of a dependent household member under age six (6);
4. Is receiving benefits from the Aid to Families with Dependent Children Program (AFDC); or
5. Is assigned to or placed in an institution of higher learning through a program under 29 USC 1501.
(11) Sponsored aliens.
(a) Income of the sponsored alien shall:
1. Include that portion of the sponsor's and his spouse's income deemed to be that of the alien;
2. Be subject to appropriate income exclusions; and
3. Be reduced by:
a. Twenty (20) percent earned income disregard, if appropriate; and
b. An amount equal to the Food Stamp Program monthly gross income limit for a household size equal to the household size of the sponsor.
(b) Resources of the sponsored alien shall include the total resources of the sponsor and the sponsor's spouse, reduced by $1500.
(c) The appropriate portions of income and resources of the sponsor and of the sponsor's spouse shall be deemed unearned income for a period of three (3) years following the alien's admission for permanent residence into the United States.
(12) A household which is required, as specified in 904 KAR 3:020, Section 6(6), to comply with mandatory monthly reporting criteria shall have its case processed as follows:
(a) The cabinet shall adopt a two (2) month system in which the issuance month is the second month following its corresponding budget month;
(b) There shall be up to three (3) beginning months of participation in this system, the first month and the two (2) months following:
(c) Eligibility and benefit calculation shall be determined prospectively for beginning months;

(d) Ongoing eligibility shall be determined by considering all factors of eligibility prospectively and determining benefits retrospectively;

(e) Eligibility factors causing a period of ineligibility which exceeds one (1) month shall be acted upon immediately;

(f) A monthly reporting household which is ineligible for a period not to exceed one (1) month shall be treated as follows:

1. The ineligible household's issuance shall be suspended for one (1) month.

2. If the suspended household remains ineligible after one (1) month, the cabinet shall terminate the household's participation; and

(g) The recertification form shall serve as the report required for that month in which a household must be recertified.

Section 6. Reporting Changes. (1) A certified household is required to report changes in household circumstances within ten (10) days of the date the change becomes known to the household.

(2) An applying household shall report all changes related to its food stamp eligibility and benefits:

(a) At the certification interview; or

(b) If changes occur after the interview but prior to receipt of the notice of eligibility, within ten (10) days of the date of the notice.

(3) A household which is required to report monthly, shall not be required to submit any reports of changes other than the reports required under Section 5(12) of this regulation.

Section 7. Replacement Issuance. (1) The cabinet shall provide a replacement issuance to an eligible household if:

(a) Its authorization document was:

1. Not received in the mail;

2. Stolen from the mail;

3. Destroyed in a household misfortune;

4. Improperly manufactured;

5. Stolen after receipt; or

6. Mutilated;

(b) Its coupons were:

1. Not received in the mail;

2. Destroyed in a household misfortune;

3. Improperly manufactured; or

4. Mutilated;

(c) Food purchased with food stamps was destroyed in a household misfortune; or

(d) It received a partial coupon allotment.

(2) The cabinet shall not provide a replacement issuance to a household if after receipt:

(a) Coupons are:

1. Lost;

2. Stolen; or

3. Misplaced;

(b) Authorization documents are:

1. Lost; or

2. Misplaced;

(c) Coupons or authorization documents are totally destroyed in other than a disaster or misfortune; or

(d) Coupons sent by registered or certified mail are signed for by anyone residing with or visiting with the household.

(3) The cabinet shall not provide a replacement issuance if the household or authorized representative has not provided the written household statement of nonreceipt.

(4) The cabinet shall not provide a replacement allotment for a misfortune for the same month that the household is eligible for disaster food stamp benefits pursuant to a disaster declaration by the FNS.

(5) A replacement issuance shall be provided to a household if:

(a) The household reports a loss timely:

1. Orally; or

2. In writing;

(b) The household provides a statement of nonreceipt; and

(c) The original authorization document or allotment has not been returned to the cabinet at the time of the request for replacement.

(6) The report specified in subsection (5)(a) of this section shall be considered timely if it is made to the cabinet within ten (10) days of the date that:

(a) An authorization document is stolen from the household; or

(b) The following items are destroyed in a household misfortune:

1. Authorization document;

2. Coupons; or

3. Food purchased with food stamps.

(7) In a mail issuance county, the report must be made:

(a) Within the period of intended use; unless

(b) The original issuance was made after the 20th of the month. The period of intended use shall be extended to the last day of the month following the month of application.

(8) The number of replacement issuances which a household may receive shall be limited to:

(a) A total of two (2) countable replacements in six (6) months for:

1. Authorization documents; or

2. Coupons:

a. Not received in the mail;

b. Stolen from the mail; or

c. Destroyed in a household misfortune.

3. Authorization documents stolen after receipt; and

4. Partial coupon allotments; and

(b) No limit shall be placed on the number of replacements for:

1. Partial allotments if the partial allotments were due to an error by the cabinet;

2. Authorization documents or coupons which were:

a. Improperly manufactured; or

b. Mutilated; or

c. Food purchased with food stamp benefits which was destroyed in a household misfortune.

(9) The replacement shall not be considered a countable replacement if:

(a) The original or replacement issuance is returned or otherwise recouped by the cabinet;

(b) The original authorization document is not transacted;

(c) The replacement authorization document is not transacted; or

(d) The replacement issued due to an error by the cabinet.

(10) A replacement issuance shall be provided:

(a) In the amount of the loss of the household; and

(b) Up to a maximum of one (1) on the allotment; unless

(c) The issuance includes restored benefits which shall be replaced up to their full value.

(11) The cabinet shall provide a replacement issuance to an eligible household in accordance with 904 KAR 3:045, Section 4.

MIKE ROBINSON, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 30, 1991
FILED WITH LRC: November 4, 1991 at 3 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 23, 1991 at 9 a.m. at the Department for Employment Services Conference Room, Second Floor West, CHR Building. Individuals interested in attending this hearing shall notify this agency in writing by December 18, 1991, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: James E. Randall, Director
(1) Type and number of entities affected: There is no method available to determine the type or number of entities affected by this policy. However, due to the small number of alien recipients in Kentucky, the effect should be negligible.
(a) Direct and indirect costs or savings to those affected: None
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict: None
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None
(6) Any additional information or comments: None
TIERING: Was tiering applied? No. Federal and state statutes mandate that eligibility requirements for the Food Stamp Program be implemented in a like manner on a statewide basis, thereby prohibiting tiering.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 7 CFR 273.1(b)(2)(viii); 7 CFR 273.11(c).
2. State compliance standards. This regulation pertains to the certification process requirements of the Food Stamp Program as prescribed by the Food and Nutrition Service. There are no separate state compliance standards.
3. Minimum or uniform standards contained in the federal mandate. The certification process requirements contained in this administrative regulation are applied on a statewide basis and are consistent with the certification process requirements which are applied in the National Food Stamp Program.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. The provisions of this administrative regulation are consistent with those mandated by the Food and Nutrition Service.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation will not impose any stricter requirements or any additional or different responsibilities than those required by the federal mandate.

CABINET FOR HUMAN RESOURCES
Department for Social Services
(Proposed Amendment)

905 KAR 8:090. Personal care assistance services.

RELATES TO: KRS 205.900 through 205.920
STATUTORY AUTHORITY: KRS 194.050, 205.910
NECESSITY AND FUNCTION: KRS 205.910 requires [directs] the Cabinet for Human Resources to establish [promulgate] an eligibility standard for personal care assistance services which shall take [takes] into consideration the unique economic and social needs of severely physically disabled adults. The Department for Social Services has drafted procedures that shall enable provisions of KRS 205.910, concerning personal care assistance services to be implemented. [The purpose of this regulation is to satisfy the requirements of KRS 205.910.]

Section 1. Definitions. (1) The definition of "cabinet" is governed by KRS 205.900(1).
(2) The definition of "evaluation team" is governed by KRS 205.900(2).
(3) The definition of "personal care assistance services" is governed by KRS 205.900(3).
(4) The definition of "qualified agency or organization" is governed by KRS 205.900(4).
(5) The definition of "secretary" is governed by KRS 205.900(5).
(6) The definition of "severely physically disabled adult" is governed by KRS 205.900(6).
(7) "Activities of daily living (ADLs)" means feeding, bathing, and dressing oneself; transferring and toileting.
(8) "Administrative support personnel" means staff designated within the contract agency who offer technical assistance to, and monitor the activities of the qualified agency.

(9) "Approved plan" means the response written by the contract agency to the request for proposal and agreed upon by the Division of Aging Services.

(10) "Authorized representatives of the cabinet" means the Director of the Division of Aging Services or official designee.

(11) "Evaluation team's recommendations" means the official response of the evaluation team signed by all three (3) team members.

(12) "Income eligibility criteria" means a formula to determine eligibility for the personal care attendant program which complies with the statutorial requirement that the "unique economic needs of severely physically disabled adults" shall be addressed.

(13) "Instrumental activities of daily living (IADLs)" means cooking, shopping, laundry, housekeeping, and other assistance necessary to maintain a person in his own home.

(14) "Contract agency" means the agency with whom the Cabinet for Human Resources has contracted to administer the personal care attendant program.

(15) "Living arrangement" means a noninstitutional environment for a physically disabled adult who lives alone or with family or others.

(16) "Mentally capable" means an adult who is able to recruit, hire, fire, and supervise the persons who provide personal care assistance services. There is no provision for a proxy.

(17) "Participant" means a person accepted into the personal care attendant program who has met the eligibility requirements of a severely physically disabled adult.

(18) "Personal care attendant" means a person who provides personal care attendant services.

(19) "Personal care attendant services" means services to assist an adult with physical disabilities in performing:

(a) Activities of daily living;

(b) Instrumental activities of daily living;

(c) Routine bodily functions care (bowel and bladder);

(d) Turning;

(e) Repositioning; and

(f) If necessary, ambulation and emergency procedures.

(20) "Prescreening" means a process, using a quick checklist, which assesses whether or not an applicant appears to meet the basic requirements for eligibility.

(21) "Subsidy" means a financial reimbursement paid by the state through the contract agency to the participant for services provided by an attendant. The subsidy shall not be considered income for any purpose to the extent permitted by federal law and regulation.

(22) "Work agreement" means an agreement of time and tasks developed by the participant as the employer, for the attendant as the employee.

Section 2. Participant Responsibilities. The participant's responsibilities shall include:

(1) Recruiting attendants;

(2) Screening attendants;

(3) Interviewing attendants;

(4) Selecting attendants;

(5) Hiring attendants;

(6) Instructing attendants on specific personal care duties;

(7) Supervising attendants;

(8) Evaluating attendant care;

(9) Firing attendants;

(10) Discussing and coming to agreement with each attendant about what services shall be provided;

(11) Keeping records and reporting to the agency time worked for payment to the attendant;

(12) Computing required employee payroll, withholdings, and actual payment of required withholdings and taxes appropriate to being an employer;

(13) Establishing terms of employment for attendant to include time, hours, duties, and responsibilities. This shall be in the form of a written agreement between the disabled adult and the attendant; and

(14) Coordinating with the program coordinator the aspects of program requirements.

Section 3. Attendant Responsibilities. The attendant's responsibilities shall include:

(1) Entering into written agreement for terms of work as specified by the participant.

(2) Performing the tasks agreed on between the participant and attendant.

(3) Performing the tasks as instructed by the participant.

(4) Reporting to work as scheduled.

(5) Maintaining the privacy and confidentiality of the participant.

(6) Notifying participant at least six (6) hours in advance when unable to report for work as scheduled.

(7) Maintaining a list of emergency numbers.

(8) Attending attendant training related to specific care needs.

(9) Keeping a daily record of hours worked and services rendered.

(10) Submitting to the participant, documents and material necessary to comply with the formal payment process.

(11) Meeting with participant and program coordinator regarding the participant's progress and the state of the relationship between the participant and the attendant.

(12) Disclosing misdemeanor or felony convictions to the participant and authorize the participant to obtain a record check on the attendant through law enforcement agencies.

(13) Notifying program coordinator of conditions which seriously threaten the health or safety of the participant or attendant.

Section 4. Program Coordinator Responsibilities. The program coordinator's responsibilities shall include:

(1) Locating severely physically disabled persons who may be eligible for participation.

(2) Prescreening applicants who may be eligible to participate in the personal care attendant program.

(3) Assisting the participant in how to conduct an interview and screen prospective attendants.

(4) Assisting in the recruitment and referral of attendants to participants.

(5) Assisting in or arranging for the training of attendants if necessary.

(6) Reviewing with the participant the evaluation completed by the evaluation team.

(7) Assisting the participant in developing a work agreement between the disabled adult and attendant.

(8) Monitoring the progress of each participant on a quarterly basis.

(9) Assisting the participant in finding back-up attendants for emergencies or regular

attendant's time off.
(10) Assisting in the recruitment of personal care attendants when requested.
(11) Maintaining a list of qualified personal care attendants.
(12) Assuring that participants receive training in recordkeeping and tax responsibilities related to services.
(13) Completing ten (10) hours of initial care management training and any follow-up training required by the cabinet.

Section 5. Qualified Agency Responsibilities. The responsibilities of the qualified agency shall include:
(1) Employing or contracting with an evaluation team consisting of three (3) individuals:
(a) A program coordinator or social worker;
(b) An occupational or physical therapist; and
(c) A registered nurse.
(2) Providing monthly programmatic and financial reports on attendants per participant to the contract agency.
(3) Developing procedures for payment of subsidies and establishing appropriate fiscal control procedures within the agency.
(4) Employing or contracting for the services of a program coordinator.

Section 6. Evaluation Team Responsibilities. The responsibilities of the evaluation team shall include:
(1) Completing the initial evaluation of applicants.
(2) Reevaluating participants annually or more frequently if changes occur in the participant's situation.

Section 7. Contract Agency Responsibilities. The responsibilities of the contract agency shall include:
(1) Implement the personal care attendant program according to a plan approved by the Division of Aging Services.
(2) Assume fiscal accountability for the state funds designated for the program.
(3) Provide necessary administrative support personnel within the contract agency office.
(4) Provide an appeals procedure and hearing process in compliance with the requirements of 905 KAR 8:140.
(5) Monitor management practices, including program evaluation, to assure effective and efficient program operation and compliance with financial audit requirements.
(6) Provide, in conjunction with provider agencies, a procedure for attendant payment.
(7) Review all recommendations of the evaluation team regarding applicant eligibility and participant services.
(8) Follow the recommendations of the evaluation team or give notice to the applicant within twenty (20) days of receipt of the recommendations and the reasons for not acting upon them.
(9) Respond in writing to the provider agency regarding the evaluation team's recommendations within ten (10) working days.
(10) Submit monthly program reports to the Division of Aging Services.
(11) Maintain files and records for cabinet audit, including participant records and statistical reports.

Section 8. Division of Aging Services Responsibilities. The responsibilities of the Division of Aging Services shall include:
(1) Review proposed plans submitted by contract agencies to administer the personal care attendant program.
(2) Inform the contract agency in writing of the action taken regarding the proposed plan for administration of the personal care attendant program. Action taken by the Division of Aging Services shall include the following:
(a) Approve the plan as submitted;
(b) Require the contract agency to revise the plan; or
(c) Reject the plan.
(3) Monitor the contract agency at least annually, and the qualified agencies and participants as deemed necessary by the division.
(4) Allocate available funding.
(5) Advocate for program expansion.
(6) Provide technical assistance.

Section 9. Eligibility. [1. Eligibility Criteria.] To be eligible for participation in the personal attendant care services program a person shall meet: [must meet both the physical eligibility standard and the income eligibility standard as set forth in this regulation.]
(1) The physical eligibility standard which requires that a person shall:
(a) Be eighteen (18) years old or older;
(b) Be severely physically disabled as defined by KRS 205.900(6);
(c) Need not less than fourteen (14) hours of attendant care per week or need an attendant at night;
(d) Reside, or through this program be able to reside, in a noninstitutional setting;
(e) Agree to evaluation of his eligibility for personal care services by an evaluation team from a qualified agency or organization;
(f) Be mentally capable of recruiting, hiring, firing, and supervising attendants;
(g) Agree that his need for continuing attendant care shall be subject to an initial evaluation and reevaluations at yearly intervals;
(h) Work with the program coordinator in establishing a personal care plan as the basis of agreement between the disabled person and his attendant; and
(i) Be capable of preparing attendant payroll reports and required employer tax statements.

[Section 2. Physical Eligibility Standard. To participate in the personal care assistance program a person must be eighteen (18) years of age or older with permanent, temporary, or recurring functional loss of two (2) or more limbs, need not less than fourteen (14) hours a week of personal care assistance services or need an attendant at night, and have the ability to select and manage an attendant.]

(2) The income equity standards [Section 3. Income Eligibility. (1) Income eligibility for receiving personal care assistance services] shall be determined by the following formula contained on a form prescribed by the cabinet:
(a) Deduct from the annual gross income the cost of unreimbursed extraordinary medical expenses and impairment related expenses, an amount adjusted to a family size of one (1) at sixty (60) percent of the median income as published in the Title XX Block Grant Plan, dependent care expenses[, and any other

extraordinary expenses] for which a waiver has been obtained from the cabinet to obtain the adjusted gross income.

(b) From the adjusted gross income subtract a basic cost of living factor of $1,260 to obtain the adjusted gross income less the cost of living allowance.

(c) Divide the adjusted gross income less the cost of living allowance by two (2) to allow for the unique economic and social needs of the severely disabled adults.

(d) To obtain the remaining income subtract from the adjusted gross income less the basic cost of living allowance divided by two (2) a supplemental cost of living allowance which shall be calibrated annually so that a participant requiring the minimum level of service at the maximum rate for care shall [will] become ineligible when the difference between the adjusted gross income and the remaining income equals or exceeds eighty (80) percent of the median income as published in the Title XX Block Grant Plan.

(e) [(2)] If the remaining income equals the cost of care the client is ineligible.

(f) [(3)] If the remaining income is more than four (4) dollars but less than the cost of care the client shall contribute to the cost of care.

Section 10. [4.] Clients' Contribution to Cost of Care. When the eligibility determination indicates the client shall contribute to the cost of care, the following shall apply:

(1) The weekly amount of the clients' contribution shall be determined by dividing the remaining income by fifty-two (52).

(2) The required contribution shall be paid to the attendant.

(3) It shall be the responsibility of the qualified agency [or the attendant] to collect the contribution.

Section 11. [5.] Acceptance for Services. (1) A client shall be accepted for service when: [Pursuant to the established requirements of the demonstration project, and within budgetary limitations, eligible clients shall be accepted for service.]

(a) It is determined that he is eligible to participate in the program; and

(b) Funds are available.

(2) When programs are at capacity, eligible clients' names shall be placed on a chronological waiting list and as vacancies occur be accepted for service on a first come basis.

(3) If [In the event of] several potential participants make [making] application at the same time, an equitable procedure for selecting applicants shall [will] be proposed by the service provider agency to be approved by the contract agency, subject to the approval of the Division of Aging Services.

Section 12. Application and Assessment. (1) Referrals to the personal care attendant program may be by self, family, or other persons or agencies.

(2) When prescreening information indicates interest and eligibility, the evaluation team shall visit the applicant and assist in the completion of the "application form" herein incorporated by reference.

(3) The "evaluation team report" herein incorporated by reference shall be completed and signed by all team members.

(4) The "evaluation team findings and Recommendations" herein incorporated by reference shall be completed and signed by the three (3) team members.

(5) The provider agency shall report the evaluation team's findings and recommendations to the contract agency for final review of participants.

(6) The qualified agency shall be notified in writing as to the final determination.

(7) The qualified agency shall notify the applicant or participant when the findings and recommendations of the evaluation team are accepted by the contract agency.

(8) When the recommendations of the evaluation team are not accepted by the contract agency, the contract agency shall notify the applicant or participant in writing within twenty (20) days and state the reasons for not accepting the recommendations.

Section 13. Attendant Payment. The amount of attendant payment determined shall be in compliance with the following:

(1) The maximum hourly rate for direct personal attendant care shall be established by the Division of Aging Services annually and stated in the contract. Minimum hours per week shall be fourteen (14); maximum hours per week shall be forty (40).

(2) In an extreme situation, a temporary waiver of maximum hours and cost may be granted by the contract agency.

(3) A special night rate may be negotiated when:

(a) A participant does not require an attendant during the day;

(b) A participant does not need direct personal attendant care services from this attendant;

(c) Or to provide for caregiver respite service.

(4) It shall be the responsibility of the participant who is in need of a live-in attendant to directly negotiate with potential attendants on room and board for personal care attendant services. A live-in attendant shall not be excluded from employment as a part-time attendant. Maximum payment under this arrangement shall be for forty (40) hours of personal attendant care services per week.

Section 14. Reporting and Recording. (1) An individual record for each personal care attendant program participant shall be maintained by the qualified agency and shall include:

(a) Prescreening information form;

(b) Application;

(c) Income eligibility form (updated annually);

(d) Evaluation team findings and recommendations (updated annually);

(f) Authorization for extraordinary medical expenses (if applicable);

(g) Employee tax agreement; and

(h) A chronological record of contacts with the participant, family, physician and others involved in care with quarterly monitoring reports.

(2) Each program coordinator shall submit to the provider agency a completed monthly activity report herein incorporated by reference by the designated date in the contract. Copies shall be forwarded to the contract agency and made

available to the Division of Aging Services by the contract agency.

Section 15. Suspension of Services. Suspension of services shall occur for the following reasons:

(1) Condition improved - on reevaluation participant is determined to need less than fourteen (14) hours of care per week.

(2) Condition worsened - on reevaluation participant is determined to need more hours of care than the program can provide and to be in danger when left alone due to lack of other caregivers.

(3) Participant's behavior clearly presents a danger to the program coordinator or attendant.

(4) Participant is unwilling or unable to submit required employer taxes.

(5) Participant moves from Kentucky or to an area where funding limitations prohibit services being rendered.

(6) Participant moves into an area of Kentucky where no services are contracted, unless such relocation remains feasible for the closest qualified agency, feasibility being determined by the qualified agency.

(7) Participant expires or is admitted to a long-term care facility.

(8) Participant requests suspension of services.

Section 16. Request for Fair Hearing. The applicant may request a fair hearing within thirty (30) days of any decision by the cabinet, the contract agency or qualified agency as provided by 905 KAR 8:140.

Section 17. Material Incorporated by Reference. (1) Forms necessary for the implementation of the personal care assistance program shall be 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 40601. Office hours are 8 a.m. to 4:30 p.m.

LARRY MICHALCZYK, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 10, 1991
FILED WITH LRC: October 18, 1991 at 1 p.m.

PUBLIC HEARING: A public hearing on this regulation will be held on December 23, 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 December 18, 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: Sue Tuttle

(1) Type and number of entities affected: The type and number of entities affected are approximately 200 severely physically disabled adults aged 18 and over.

(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 and 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 and 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 provides personal care assistance services.

(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 regulations only clarify and correct 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 regulations only clarify and correct terminology in the existing regulations.

2. Continuing costs or savings: There will not be any continuing cost or savings for the Department for Social Services as the proposed regulations only clarify and correct terminology in 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 for Social Services as the proposed regulations only clarify and correct terminology in 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 regulations.

(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 regulations.

(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 establishes the statewide procedures for the personal care assistance program and is applicable to all applicants and contractors.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Proposed Amendment)

907 KAR 1:140. Alternative home and community based services for the mentally retarded (AIS/MR).

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.050, 42 CFR 441 Subpart G, 42 USC 1396a, b, d, n

NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance [in accordance with Title XIX of the Social Security Act]. KRS 205.520 empowers the cabinet, by regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation sets forth the coverage provisions applicable to home and community based services provided to the mentally retarded as an alternative to intermediate care facility services for the mentally retarded.

Section 1. General Coverage Provisions. The home and community based services described in this regulation shall [may] be provided only to those individuals eligible for Medicaid [medical assistance] who meet intermediate care for the mentally retarded patient status criteria as set forth in 907 KAR 1:022 [1:024]. These services [described herein] are designed to prevent or reduce institutionalization at the intermediate care level and shall [may] therefore be provided only to individuals in community residence living situations [(which may include personal care facilities)]. These services are termed alternative intermediate services for the mentally retarded [/mental retardation] (AIS/MR)[, and are henceforth referred to as AIS/MR services].

Section 2. Provider Participation. Any qualified provider may provide AIS/MR services, upon application to the cabinet for a provider participation agreement accompanied by data sufficient in the opinion of the cabinet to show that the provider is qualified under applicable law to provide the services and has the capability to do so. Providers certified by the cabinet shall [Community mental health/mental retardation centers, which are required by law and Kentucky administrative regulations to provide services to the mentally retarded, need only to be licensed by the cabinet to] be considered qualified to enter into the appropriate AIS/MR provider participation agreement. Certification shall be determined by the Division of Licensing and Regulation, Office of the Inspector General, or other agency designated by the Department for Medicaid Services in accordance with the qualifications in Section 3 of this regulation. Participating providers shall be required to provide, or arrange for the provision of, [all] services appropriate to their certification described in this regulation[, and to operate the AIS/MR program as described herein].

Section 3. Provider Certification. Providers shall be certified as case management, in-home training, homemaker and home health aide, personal care, residential care, habilitation, day habilitation, respite care, and multiservice providers after survey by the certification agency if the provider has been found to be in major compliance with the provider qualification requirements shown in the AIS/MR provider qualifications manual, dated November 1, 1991, herein incorporated by reference. Providers requesting certification under this regulation shall be considered certified through the date of their first survey to provide any services which were provided by that agency during the period from September 1, 1991 through the effective date of this regulation if those services were provided by or through contract with a participating provider. The AIS/MR provider qualifications manual shall be on file in the Commissioner's Office, Department for Medicaid Services, Third Floor East, CHR Building, 275 East Main Street, Frankfort, Kentucky 40601 and will be available for review on normal working days (Monday through Friday) from 8 a.m. through 4:30 p.m. Copies may be obtained from that office upon payment of an appropriate fee which approximates cost. [The Cluster Concept. The cluster concept shall be used in the provision of AIS/MR services. Each cluster shall consist of one (1) core residence and several alternative residences that are administratively attached to the core, in which specified residential services as shown in Section 4 of this regulation are provided. The cluster will also include those eligible individuals living in their own homes who are being provided specified covered services under the direction of core personnel. Within the cluster, the core residence personnel will perform five (5) major functions: client evaluation, program administration, program support, emergency back-up, and respite care.]

Section 4. Covered Services. The following services shall be [are] covered as AIS/MR services:

(1) [Cluster] Residential care services to include provision of [, including the core residence and alternative living units, providing residential (home)] training, homemaker and [/] home health aide support, and personal care[, and respite care]. Room and board shall be [are] excluded.

(a) "[Residential (home)] Training" which includes [means] services designed to facilitate the acquisition of communication, sensory-motor, independent living, and social skills.

(b) [As part of the residential service

residential staff may provide] Homemaker and [/] home health aide support which includes [, including] the provision of [minor home physical adaptation,] laundry services, meal planning and preparation, shopping and light housekeeping.

(c) "Personal care" which includes [means] services to assist and train in ambulation, grooming, feeding, etc.

[(d) "Respite care" means short-term care (more than one (1) hour, less than thirty (30) days) provided to AIS/MR residential clients for the temporary relief of residential alternative living unit staff. Respite care for the residential client may not exceed forty (40) total days per year, except that extended respite exceeding this limit may be provided when preauthorized in writing by the cabinet's AIS/MR project manager (or his/her designee) based on a crisis situation.]

(2) Case management services, which includes the following: provision of intake; evaluation or assessment; access and assuring freedom of choice of provider of AIS/MR; plan-of-care development and coordination; monitoring and support; operation of the core residence; assuring the availability of needed waiver services; meeting with and providing information to clients, parents or legal representatives; establishing and overseeing a human rights committee for review of overall procedures and individual behavioral plans; and acting on behalf of the client to assist him in gaining access to and receiving services from qualified AIS/MR service providers. In addition to the above, the case management provider shall assist the client, his family or legal representatives in accessing other services, as needed. The case management provider shall be responsible for monitoring the health, safety and welfare of the client. Each core residence stay shall be limited to no more than ninety (90) days per patient. [Case management/client evaluation, including case coordination, client evaluation, and plan of care preparation and implementation, provided by core staff to all cluster service recipients.]

[(3) In-home support, including in-home training, homemaker/home health aide services, and personal care services provided to persons living in nonspecialized residential settings (family homes, apartments, etc.) other than alternative living units (which are under more direct supervision by core personnel).]

(3) [(a)] "In-home training" which includes [means] services designed to facilitate the acquisition, retention and improvement of language and communication, sensory-motor, social and self-help skills.

(4) [(b)] "Homemaker and [/] home health aide support" which includes [means] services to clients in their own family homes including the provision of [minor physical adaptations,] laundry services, meal planning and preparation, shopping and house cleaning.

(5) [(c)] "Personal care" which includes [means] services to assist and train in ambulation, dressing, grooming, eating [feeding], toileting, etc.

(6) [(4)] Habilitation services which includes [, including] behavior management, psychological services, minor home physical adaptations (including in-home and alternate living units other than group homes), medical services, occupational therapy, physical therapy, speech therapy, expressive therapies and leisure and recreation therapy [time services]. Services shall be [are] available to both adults and children if [when] not required to be provided by the local schools and if [when] directed at the resolution of problems not associated with mental illness.

(7) [(5) Effective June 1, 1987,] Day habilitation services shall [may] be provided for a minimum of four (4) hours per day, five (5) days per week, twelve (12) months per year, in nonresidential noninpatient settings. Services shall [must] be age appropriate. Adult means an individual not less than eighteen (18) years of age. For children, day habilitation services shall [will] be covered only during the summer months when school is not in session. Day habilitation services may include supported employment and prevocational training for eligible persons, i.e., those participating individuals who have been deinstitionalized.

(8) Respite care which includes short-term care and supervision of the AIS/MR client provided for the temporary relief of the family or staff, or for the safety or relief of the client. Coverage shall be limited to a maximum of sixty (60) days per calendar year for clients (excluding those residing in group homes or staff residences), with no more than thirty (30) consecutive days of respite.

[(6) Respite services, meaning short-term care (more than one (1) hour, less than thirty (30) days) provided to nonresidential AIS/MR clients in or out of their home residential environments for the temporary relief of the individual or the family. Respite care may be provided in a variety of settings. Respite service to the nonresidential client may not exceed thirty (30) consecutive days and sixty (60) total days per year, except that extended respite exceeding these limits may be provided when preauthorized in writing by the cabinet's AIS/MR project manager (or his/her designee) based on a crisis situation.]

Section 5. Patient Status Determinations. The cabinet shall make patient status determinations using the criteria specified in 907 KAR 1:024.

Section 6. Authorization for Services; Hearing Rights. The cabinet shall authorize AIS/MR services to insure that patient status is met, that AIS/MR services are adequate for the needs of the client, and that AIS/MR services are financially feasible (i.e., do not cost significantly more than would institutional services). A client found unsuitable due to failure to meet any of the specified reasons shall [may] be denied AIS/MR services. An individual, if eligible for AIS/MR services, shall [will] be given the choice of AIS/MR services or traditional intermediate care facility services for the mentally retarded. Any denial of service may be appealed in the manner provided for by 907 KAR 1:075 [and/]or 904 KAR 2:055 as appropriate.

[Section 7. Subcontracting. A participating provider may subcontract for services. Such service must be provided in accordance with the provider participation agreement and the terms and conditions contained herein, and the subcontractor must meet applicable requirements of law and regulations governing the performance of the service. When subcontracting is used, the

participating provider remains responsible for the provision of the service.]

Section 7. [8.] Auditing and Reporting. All participating providers[, including subcontract providers,] shall be required to maintain fiscal and service records and to provide [such] reports [as may be] determined necessary by the cabinet for the effective functioning and administration of the program. Providers[, including subcontract providers,] shall be required to make available upon request all service and financial records to representatives of the Cabinet for Human Resources; the federal Department of Health and Human Services, Comptroller General and Health Care Financing Administration; and the General Accounting Office, and[/or] their designees, for auditing and[/or] monitoring purposes.

Section 8. [9. Effective Date.] The amendments to this regulation shall apply to certification of providers on November 1, 1991 and with regard [be effective with regard] to services provided on or after January 1, 1992 [June 1, 1987.]

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 22, 1991
FILED WITH LRC: November 7, 1991 at 3 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 23, 1991 at 9 a.m. in the Department for Employment Services Conference Room, Second Floor West, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by December 18, 1991, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street – 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler
(1) Type and number of entities affected: All providers of alternative home and community based services for the mentally retarded.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: *
2. Continuing costs or savings: *
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: *Cost reflected in companion regulation 907 KAR 1:150.
TIERING: Was tiering applied? No. Federal Medicaid regulations require that similarly situated providers be treated in a similar manner.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Proposed Amendment)

907 KAR 1:150. Payments for alternative home and community based services for the mentally retarded.

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050, 42 USC 1396a, b, c, d, n; 42 CFR 441 Subpart G
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance. KRS 205.520 empowers the cabinet, by regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation sets forth the payment provisions relating to home and community based services provided to the mentally retarded as an alternative to intermediate care facility services for the mentally retarded.

Section 1. Coverage. (1) The cabinet [for Human Resources] shall reimburse participating providers of alternative intermediate services for the mentally retarded (AIS/MR) for services [rendered] to Medicaid [eligible medical assistance] recipients who:
(a) Meet patient status criteria for intermediate care for the mentally retarded; and
(b) [who] Are authorized for the AIS/MR service by the cabinet.
(2) In order to be covered, [The covered service elements shall be those] services shall be described and defined; and [in 907 KAR 1:140, Alternative home and community based services for the mentally retarded, and services must be] provided in accordance with the terms and conditions specified in 907 KAR 1:140, Alternative home and community based services for the mentally retarded. [described therein. Payments shall not exceed the limits specified in Section 3 of this regulation.]

Section 2. Payment Amounts. (1) Participating in-state AIS/MR case management, in-home training, homemaker and home health aide,

personal care, residential care, day habilitation, habilitation, respite care and multiservice providers certified in accordance with 907 KAR 1:140 shall be reimbursed a prospective rate per unit of service during the first year of participation based on a budgeted cost report.

(2) Reimbursement for each subsequent year shall be made using a prospective rate per unit of service based on a budgeted cost report in which the budgetary assumptions made were based on an actual annual cost report of the prior fiscal year ending June 30.

(3) The annual cost report shall be subject to audit. Audit adjustments to the annual cost report shall be carried through to the budgeted cost report based on the budgetary assumptions used in preparation of the budgeted rate.

(4) Habilitation services payments for medical services and items such as dentures, eyeglasses, and hearing aids shall be paid at reasonable cost if they are prescribed for a recipient by a specialist as necessary for a client's habilitation and are not otherwise covered by the Medicaid program. The habilitation services shall be paid apart from the services paid through the cost report but shall be limited to reasonable cost. Minor home physical adaptations shall be paid on the basis of reasonable cost not to exceed $1,500 per client per patient year. The "patient year" for a client begins on the first day of admittance of the client to the AIS/MR program, with a new patient year beginning for that client on that same day in each succeeding calendar year.

(5) All payments and rates established shall be subject to the test of reasonableness.

(6) Utilizing the formula described in 42 CFR 441.303(d)(1) as a guideline and applying accumulated statistical data, the cabinet shall set effective January 1 each year an annualized upper limit to be applied to the total payments for AIS/MR services for the waiver year January 1 through December 31, applicable for waiver years beginning January 1, 1992 and thereafter.

(7) The cabinet may reduce established rates or limit new rates by the percentage amount which will assure that the total payments to the providers do not exceed the annualized upper limit. Reduction factors shall (to the extent possible) be applied in a manner as to ensure an even flow of reimbursement to the AIS/MR providers through the year, i.e., to ensure that the payments for any one (1) month shall not exceed by a substantial amount the prorated annual amount.

[(1) Residential services, including residential (home) training, personal care, and homemaker/home health aide, shall be paid for at the rate of forty-nine (49) dollars per day.]

[(2) Case management services shall be paid for at the rate of fifty (50) dollars per hour.]

[(3) Habilitation services shall be paid for at the rate of forty-eight (48) dollars per hour; however, medical services and/or items (e.g., dentures, eyeglasses, hearing aids, etc.) prescribed for a recipient by an appropriate specialist as necessary to the client's habilitation but not otherwise covered by the medical assistance programs shall be paid for on the basis of reasonable cost. Minor home physical adaptations shall be paid for on the basis of reasonable cost not to exceed $1,500 per client per patient year. The "patient year" for a client begins on the first day of admittance of the client to the AIS/MR program, with a new patient year beginning for that client on that same day in each succeeding calendar year.]

[(4) Day habilitation services shall be paid for at the rate of six (6) dollars per hour.]

[(5) In-home support services shall be paid for at the following rates:]

[(a) In-home training services shall be paid for at the rate of forty-eight (48) dollars per hour.]

[(b) Homemaker/home health aide support services shall be paid for at the rate of twenty-four (24) dollars per hour.]

[(c) Personal care services shall be paid for at the rate of twenty-four (24) dollars per hour.]

[(6) Respite care (twenty-four (24) hours or more) shall be paid for at the rate of forty (40) dollars per day. Respite care (less than twenty-four (24) hours) shall be paid for at the rate of four (4) dollars and fifty (50) cents per hour, with the total not to exceed the upper limit of forty (40) dollars for one (1) full day of care.]

Section 3. Units of Service. The units of service shall be as follows:

(1) The residential care services unit of service: twenty-four (24) hours.

(2) Case management services shall have four (4) different units of service as follows:

(a) Intake, evaluation, and stay (for up to fourteen (14) days) in the core residence for preresidential placement or transition: one (1) unit.

(b) Intake and evaluation in the home of an in-home client: one (1) unit.

(c) Twenty-four (24) hours of continuing evaluation in a core residence: one (1) unit.

(d) One (1) month of ongoing case management for persons living at sites other than the core residence: one (1) unit.

(3) Habilitation services unit of service: one-fourth (1/4) hour.

(4) Day habilitation services unit of service: one (1) hour.

(5) In-home training services unit of service: one-fourth (1/4) hour.

(6) Homemaker and home health aide services unit of service: one-fourth (1/4) hour.

(7) Personal care services unit of service: one-fourth (1/4) hour.

(8) Respite care services shall have two (2) units of services as follows:

(a) Twenty-four (24) hours if respite care is provided continuously for twenty-four (24) hours or more; and

(b) One (1) hour if respite care is provided continuously for less than twenty-four (24) hours.

Section 4. [3.] Payment Exclusions and Limitations. [Limits.] (1) No payment shall include:

(a) The cost of room and board;

(b) The cost of maintenance, upkeep and improvements to the residence when it is a group home or other licensed facility.

(2) No payment shall be made to:

(a) An in-home training provider for routine care and supervision which would be provided by a family and which is duplicative of homemaker and personal care services;

(b) A day habilitation provider for

prevocational and supported employment services for clients receiving them under the Rehabilitation Act of 1973 or the Education of the Handicapped Act or for a recipient who has not been in an intermediate care facility prior to receiving AIS/MR services;

(c) A case management provider for ongoing case management provided non-in-home clients during any evaluation period.

(3) Payment to a provider for one (1) hour units of respite care on the same day shall not exceed the budgeted rate for that provider for a twenty-four (24) hour unit of service of respite care.

[(1) Payments shall be made on the above stated rate basis not to exceed the AIS/MR cluster annualized upper limit on payment.]

[(2) Under this system, an AIS/MR cluster shall receive a total of Medicaid payments during the year in the amount of the established rates for services rendered Medicaid eligible recipients, so long as such payments (on a cumulative basis) do not exceed the annualized upper limits (total payment amount) which has been set for the cluster. Each cluster shall also be required to maintain average expenditures per recipient (on a cumulative basis) as described by the Health Care Financing Administration, 42 CFR 441.303(d)(1), and interpreted for the AIS/MR cluster by the Cabinet for Human Resources.]

[(3) Utilizing the formula described in 42 CFR 441.303(d)(1) as a guideline and applying accumulated statistical data, the cabinet shall set effective April 1 each year the annualized upper limits and averages to be applied to the AIS/MR cluster services for the waiver year April 1 through March 31, applicable for waiver years beginning April 1, 1985 and thereafter.]

[(4) The cabinet may reduce payment by the percentage amount which will assure that the payments to the cluster do not exceed the annualized upper limit or average expenditures. Reduction factors shall (to the extent possible) be applied in such a manner as to ensure as even flow of reimbursement to the AIS/MR cluster through the year, i.e., generally so as to ensure that the payments for any one (1) month do not exceed by a substantial amount the prorated annual amount.]

[(5) Any overpayment due the program at the end of the period as a result of exceeding the upper limit shall be recouped by settlement or by withholding payment.]

Section 5. [4.] Implementation. The amendments to this regulation shall apply [be effective with regard] to services provided on or after January 1, 1992 [1991].

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 22, 1991
FILED WITH LRC: November 1, 1991 at 3 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 23, 1991 at 9 a.m. in the Department for Employment Services Conference Room, Second Floor West, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by December 18, 1991, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler
(1) Type and number of entities affected: All providers of alternative home and community based services for the mentally retarded.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: (Cost) $100,000.
2. Continuing costs or savings: (Cost) $100,000.
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? No. Federal Medicaid regulations require that similarly situated providers be treated in a similar manner.

CABINET FOR HUMAN RESOURCES
Department for Mental Health and Mental Retardation Services
(Proposed Amendment)

908 KAR 1:010. Definitions for nonmedical alcohol treatment and education center programs (NATE).

RELATES TO: KRS 222.210 to 222.310
STATUTORY AUTHORITY: KRS 194.050, 222.230
NECESSITY AND FUNCTION: KRS 194.050 and 222.230 empowers the cabinet to promulgate rules and regulations establishing standards for the licensing and approval of facilities offering alcoholism rehabilitation programs. The purpose of this regulation is to define terms applicable

to regulations adopted by the cabinet regarding facility standards for nonmedical alcohol treatment and education center programs.

Section 1. Definitions. [As pertaining to the cabinet's regulations regarding alcoholism rehabilitation programs unless the content otherwise requires:]

(1) "Agency" means a legal entity that operates a nonmedical alcohol treatment and education (NATE) center.

(2) "Alcohol" means beverage alcohol.

(3) "Alcohol abuse" means a dysfunctional use of alcohol characterized by one (1) or more of the following patterns of use:

(a) Continued use despite knowledge of having a persistent or recurrent social, legal, occupational, psychological, or physical problem that is caused or exacerbated by the use of alcohol;

(b) Recurrent use in situations which are physically hazardous (e.g., driving while intoxicated);

(c) Some symptoms of the disturbance have persisted for at least one (1) month, or have occurred repeatedly over a longer period of time.

(4) "Alcoholism" is defined in KRS 220.011(3).

(5) [(3)] "Cabinet" is defined in KRS 220.011(6) [means the Cabinet for Human Resources].

(6) "Certified chemical dependency counselor" means an individual who meets the standards and requirements of the Kentucky Chemical Dependency Counselors' Professional Certification Board, Inc.

(7) [(4)] "Client" means any individual on whom a record has been opened by a [that receives treatment services rendered in a nonmedical alcohol treatment and education center program such as] detoxification, residential, residential transitional, outpatient or [and day/night] intensive outpatient treatment program. [Such an individual shall have a medical record that documents the nature of the services they are receiving.]

[(5) "Day/night intensive outpatient treatment program" means a facility that provides a structured program of services in an outpatient setting. Services shall be planned to be comprehensive in nature and intensive in the amount of time where client contact is prescribed. The day/night intensive outpatient treatment program shall offer therapeutic, educational and rehabilitative activities to individuals and their families experiencing problems involving alcohol abuse and alcoholism. The purpose of a day/night intensive outpatient treatment program shall be to provide a variety of diagnostic and treatment services according to a prescribed plan in an outpatient setting to alcohol abusers and their families, whose physical and emotional status allows them to function in their natural environment.]

(8) [(6)] "Detoxification program" means a residential facility providing for short-term, supervised, nonmedical withdrawal from alcohol induced intoxication, and [. The purpose of such a detoxification program shall be to provide a supportive setting to help persons recover from acute withdrawal from alcohol, wherein the motivation level of alcohol dependent persons can be raised to promote continued involvement in the recovery process. A detoxification program serves detoxification needs of persons without known serious physical or immediate psychiatric complications requiring medical attention. A detoxification program provides an opportunity to conduct] an assessment of the client's need for further care resulting in a referral(s) to appropriate community resources [for continued help with problems, for treatment, and for greater utilization of supportive community health agencies]. This program shall serve the detoxification needs of persons without known serious physical or immediate psychiatric complications requiring medical attention. Room and board are provided twenty-four (24) hours a day, seven (7) days a week.

(9) [(7)] "Education program" means a program that offers a structured learning process involving a didactic exchange of information with an individual or groups directed at increasing awareness, imparting knowledge, and changing attitudes and behaviors [which involves a didactic exchange of information to individuals or groups] regarding alcohol [use and] abuse and alcoholism. [The purpose of an education program shall be to develop or increase competence of individuals, their families, service providers and others to make healthy decisions and help themselves or others in relation to alcohol abuse problems.]

(10) [(8)] "Host family" means a family unit other than an individual's natural family that is utilized by an intensive outpatient [a licensed nonmedical alcohol] treatment program to temporarily house an individual who is receiving [nonmedical alcohol treatment] services from this [in his/her] program.

(11) "Intensive outpatient treatment program" means a facility that provides a structured program of treatment services in an outpatient setting. Services shall be planned so that they are comprehensive in nature and intensive in the amount of client contact time.

(12) [(9)] "Nonmedical alcohol treatment and education (NATE) center" means a facility that provides any of the following [one (1) or more nonhospital based] alcohol treatment [and/]or education programs: [such as] detoxification, residential, residential transitional, outpatient, [day/night] intensive outpatient treatment or [program and] education.

(13) [(10)] "Outpatient treatment program" means a facility providing nonresidential alcohol abuse or alcoholism treatment services on both a scheduled and nonscheduled basis. [Outpatient treatment offers therapeutic services for the treatment and rehabilitation of individuals with problems involving alcohol abuse. The purpose of outpatient treatment shall be to provide a variety of diagnostic and primary alcohol abuse treatment services. These services shall be provided in an outpatient setting according to a prescribed plan for persons abusing alcohol and their families, whose physical and emotional status allows them to function in their natural environment.]

(14) [(11)] "Resident" means a client [person] in a twenty-four (24) hour treatment facility.

(15) [(12)] "Residential transitional program" means a facility providing long-term residential accommodations in a therapeutic group setting for persons recovering from alcohol abuse or [and] alcoholism. Programs of this nature shall be designed as a transition for persons recovering from alcohol abuse and alcoholism who are attempting social and vocational adjustments

prior to returning to family or independent living within the community. Room and board are provided twenty-four (14) hours a day, seven (7) days a week.

(16) [(13)] "Residential treatment program" means a facility that provides a twenty-four (24) hour, seven (7) days a week structured program for individuals recovering from [with] alcohol abuse or alcoholism [problems]. The program shall provide [provides the structure necessary for the alcohol abuser to acquire the tools needed to function independently when returned to his/her natural environment and to maintain an abstinent lifestyle. The purpose of such a residential treatment program shall be to facilitate the rehabilitation of the alcohol abuser by placing him/her in] an organized therapeutic environment in which the client shall [he may] receive diagnostic services, counseling, and peer support. Such programs shall also offer support services to a resident's family members in order to educate about [treat] the problems of codependency. [A residential treatment program enables alcohol abusers and their family members to change feelings, attitudes, and behavior in the direction of more effective and rewarding patterns of living.]

(17) "Treatment" is defined in KRS 222.011.

(18) "Treatment plan" means a document in the record that: identifies the clinical needs of the client based on the psychosocial assessment; contains specific treatment objectives that address the client's needs, that are written in measurable terms with expected achievement dates; documents the specific criteria to be met for termination of treatment; includes treatment modalities, frequency of contact, staff assigned and referrals to other community resources.

DENNIS D. BOYD, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 10, 1991
FILED WITH LRC: October 18, 1991 at 1 p.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for December 23, 1991, at 9 a.m. in the Employment Services Conference Room, Second 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 December 18, 1991, of their desire to appear and testify at the hearing: 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: Dennis D. Boyd

(1) Type and number of entities affected: There are a total of 166 licensed alcohol treatment and education centers which would be affected.

(a) Direct and indirect costs or savings to those affected: There are no direct and indirect costs or savings because the amendments merely define additional terminology used throughout 908 KAR 1:020 to 1:140, simplify definitions and delete terminology that is prohibited as defined in KRS 13A.222(4) followed by the addition of appropriate terminology.

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: Same as above.

(a) Direct and indirect costs or savings:

1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: No effect is anticipated because the amendments merely define additional terminology used throughout 908 KAR 1:020 to 1:140, simplify definitions and delete terminology that is prohibited as defined in KRS 13A.222(4) followed by the addition of appropriate terminology.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because the amendments merely define additional terminology used throughout 908 KAR 1:020 to 1:140, simplify definition as and delete terminology that is prohibited as defined in KRS 13A.222(4) followed by the addition of appropriate terminology.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. The amendments only define additional terminology used throughout 908 KAR 1:020 to 1:140, simplify definitions and delete terminology that is prohibited as defined in KRS 13A.222(4) followed by the addition of appropriate terminology.

CABINET FOR HUMAN RESOURCES
Department for Mental Health and Mental Retardation Services
(Proposed Amendment)

908 KAR 3:020. Care and treatment of inmates of penal institutions.

RELATES TO: KRS 202A.201

STATUTORY AUTHORITY: KRS Chapter 13A, 194.050, 202A.191, 202B.060

NECESSITY AND FUNCTION: KRS Chapters 202A and 202B, relating to the hospitalization of mentally ill or mentally retarded persons, direct that the Secretary for the Cabinet for Human Resources shall adopt rules and regulations to effectuate the purposes of that chapter, including, but not limited to, the transfer of mental patients and alternate methods for involuntary hospitalization. The function of this regulation is to prescribe the procedure to be employed in the hospitalization, care and treatment of an inmate of a penal institution who has been transferred to a hospital, forensic psychiatric facility or residential treatment center.

Section 1. Care and Treatment of Inmates. In the event that an inmate of any penal or correctional institution is transferred to a hospital, forensic psychiatric facility or residential treatment center pursuant to KRS

202A.201, the following rules shall apply:
(1) If the inmate voluntarily agrees to receive treatment in accordance with the individual treatment plan, the [such] treatment may be provided until [such time as] it is determined that treatment is no longer necessary or until the patient refuses continued treatment;
(2) If the inmate refuses to receive treatment, proceedings for involuntary hospitalization may be instituted in accordance with the provisions of KRS Chapters 202A and 202B and 501 KAR 6:020 [6:010] addressing involuntary transfer proceedings pursuant to Vitek v. Jones, 445 U.S. 480, 100 S.Ct. 1254, 63 L.Ed.2d 552 (1980).
(3) Patients in a forensic psychiatric facility shall have the same rights as set forth in 908 KAR 3:010; provided, however, that locking patients in their cells for sleeping or census count purposes and restraints used for transportation or prevention of escape shall not be considered as seclusion or restraint as defined in the patient's bill of rights.

DENNIS D. BOYD, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: November 8, 1991
FILED WITH LRC: November 12, 1991 at 3 p.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for December 23, 1991, at 9 a.m. in the Employment Services Conference Room, Second 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 December 18, 1991, of their desire to appear and testify at the hearing: 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: Dennis D. Boyd
(1) Type and number of entities affected: Approximately 27,639 severe, chronic mentally ill; approximately 3,000 mental health petitions filed; and approximately 1,200 mental health petitions resulting in incarceration.
(a) Direct and indirect costs or savings to those affected: This regulation affects the care and treatment of patients and does not directly relate to cost or savings.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements:
(2) Effects on the promulgating administrative body: There is no financial effect on the administrative body.
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: This regulation has no effect on revenue.
(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: There is no statute or regulation in conflict.
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? No. This regulation will be applied equally to all affected individuals.

CABINET FOR HUMAN RESOURCES
Department for Mental Health and Mental Retardation Services
(Proposed Amendment)

908 KAR 3:050. Per diem rate pursuant to the "Patient Liability Act of 1978."

RELATES TO: KRS 210.700 to 210.760
STATUTORY AUTHORITY: KRS 13A.210, 210.720 to 210.760
NECESSITY AND FUNCTION: KRS 210.720(2) directs the Secretary of Human Resources to fix the patient cost per day for board, maintenance and treatment for each facility operated by the cabinet at frequent intervals which shall be the uniform charge for all persons receiving such services. The function of this regulation is to fix the patient cost per day for board, maintenance and treatment at facilities operated by the cabinet.

Section 1. Facilities with an All-inclusive Per Diem Rate. The following facility shall be on an all-inclusive per diem rate:

Facility
Eastern State Hospital

Section 2. Facilities with a Routine Service Charge Per Diem with Separate Charges for Treatment Services on an Individual Basis.

Facility
Central State Hospital
Central State - ICF/MR
Western State Hospital
Western State Nursing Facility [ICF]
Outwood ICF/MR
Oakwood [ICF/MR]
Hazelwood Center [ICF/MR]
Glasgow State Nursing Facility [ICF]

The treatment services furnished and/or available at Department for Mental Health and Mental Retardation Services Facilities shall be: physicians services, EEG, EKG, occupational therapy, physical therapy, x-ray, laboratory, speech and hearing therapy, psychology, pharmacy, respiratory therapy, and electroshock therapy.

Section 3. Board, Maintenance and Treatment Charges. Cost per day for board, maintenance and treatment charges shall be fixed using the last available audited third party cost report (Medicare and Medicaid) trended and indexed for inflation for subsequent years. The basis for trending and indexing shall be current Data Resources Inc. Index for hospitals and intermediate care facilities. Current rates shall be posted at each facility and shall be available for public inspection in the Office of

the Commissioner for Mental Health and Mental Retardation Services.

DENNIS D. BOYD, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: November 6, 1991
FILED WITH LRC: November 12, 1991 at 3 p.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for December 23, 1991, at 9 a.m. in the Employment Services Conference Room, Second 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 December 18, 1991, of their desire to appear and testify at the hearing: 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: Dennis D. Boyd
(1) Type and number of entities affected: 1,830 mentally ill and retarded persons utilizing the facilities operated by the Department for Mental Health and Mental Retardation Services.
(a) Direct and indirect costs or savings to those affected: The cost or savings is different in each case based upon family income.
1. First year: Undeterminable for each family unit depending on their income.
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 reporting needs for individuals utilizing the medical facilities.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: Minimal reduction in self-pay revenues.
(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: There is no statute or regulation in conflict.
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? No. This regulation will be applied uniformly to all individuals utilizing the facilities.

CABINET FOR HUMAN RESOURCES
Department for Mental Health and Mental Retardation Services
(Proposed Amendment)

908 KAR 3:100. Policies and procedures of Eastern State Hospital.

RELATES TO: KRS Chapters 202A, 202B, 210
STATUTORY AUTHORITY: KRS 202A.196, 202B.060, 210.010, 210.040, 210.055, 210.285, 42 CFR 440 through 489
NECESSITY AND FUNCTION: KRS 210.010 directs that the Secretary for the Cabinet for Human Resources shall adopt rules and regulations which insure proper administration and enforcement of these chapters. These polices and procedures describe the treatment and care of patients at Eastern State Hospital.

Section 1. Policies and procedures of Eastern State Hospital as set forth in Volume I, General Hospital Policies and Procedures, dated November 15, 1991; Volume II, Activity Therapy Services Policies and Procedures, dated November 15, 1991; Volume III, Admission Office Policies and Procedures, dated April 15, 1989; Volume IV, Community Relations Policies and Procedures, dated April 15, 1989; Volume V, Dental Policies and Procedures, dated April 15, 1989; Volume VI, Medical Department Policies and Procedures, dated April 15, 1989; Volume VII, Medical Records Policies and Procedures, dated April 15, 1989; Volume VIII, Medical Services Policies and Procedures, dated April 15, 1989; Volume IX, Pharmacy Policies and Procedures, dated April 15, 1989; Volume X, Psychology Services Policies and Procedures, dated April 15, 1989; Volume XI, Hospital Security Policies and Procedures, dated April 15, 1989; and Volume XII, Social Work Policies and Procedures, dated April 15, 1989 are incorporated by reference. [The function of this regulation is to incorporate by reference the polices and procedures of Eastern State Hospital as found in the July 15, 1991, edition of the policy and procedure manual.]

Section 2. These policies and procedures [The Eastern State Hospital policy and procedure manual consists of twelve (12) volumes relating to the operation of Eastern State Hospital. They] are available for inspection and copy at the office of the Commissioner for Mental Health/Mental Retardation Services, 275 East Main Street, Frankfort, Kentucky 40621, and at the Facility Director's Office, Eastern State Hospital, 627 West Fourth Street, Lexington, Kentucky 40508.

DENNIS D. BOYD, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: November 6, 1991
FILED WITH LRC: November 15, 1991 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for December 23, 1991, at 9 a.m. in the Employment Services Conference Room, Second 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 December 18, 1991, of their desire to appear and testify at the hearing: 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: Dennis D. Boyd
(1) Type and number of entities affected: Eastern State Hospital admits and treats approximately 2400 individuals per year.
(a) Direct and indirect costs or savings to those affected:
1. First year: Policy #9, "Criteria for the Use of Clozapine (Clozaril) will result in an additional cost to the hospital. At the present time this amount is unknown as the hospital is presently in the process of selecting patients who might benefit from this medication. It is estimated that it will cost $4,000 per individual per year; however, if patient has not shown improvement in 4 to 6 months, the Clozaril will be discontinued.
2. Continuing costs or savings: Could result in a savings in the long run if patient(s) improve to the point where hospitalization is no longer needed.
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: Initially, some additional statistics will be kept on the patients who are on Clozaril, but no major additional paperwork requirements.
(2) Effects on the promulgating administrative body: There will be very little change in the operation of the hospital.
(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: This will have no effect on revenue.
(4) Assessment of alternative methods; reasons why alternatives were rejected: There are no alternative methods.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute in conflict.
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? Yes. In relation to the policy on Clozaril, only certain long-term patients who meet the criteria will be prescribed this medication. The smoking policy applies equally to all staff, visitors, and patients.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. This regulation incorporates by reference manual material used by agency staff and is federally mandated.
2. State compliance standards. This regulation incorporates by reference manual material used by agency staff and contains state compliance standards.
3. Minimum or uniform standards contained in the federal mandate. There are standards cited in 42 CFR 440 through 42 CFR 489. These federal regulations mandate requirements implemented by this regulation. The requirements contained in this regulation are neither stricter, in addition to, or different from those in the federal requirement.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This regulation incorporates by reference manual material used by agency staff. Stricter requirements or responsibilities are not imposed.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional standards, requirements, or responsibilities are imposed.

CABINET FOR HUMAN RESOURCES
Department for Mental Health and Mental Retardation Services
(Proposed Amendment)

908 KAR 3:110. Policies and procedures of Central State Hospital.

RELATES TO: KRS Chapters 202A, 202B, 210
STATUTORY AUTHORITY: KRS 194.050, 202A.196, 202B.060, 210.010, 210.040, 210.055, 210.285, 42 CFR 440 through 489
NECESSITY AND FUNCTION: KRS 210.010, relating to the hospitalization of mentally ill and mentally retarded person, directs that the Secretary for the Cabinet for Human Resources shall adopt rules and regulations which insure proper administration and enforcement of these chapters.

Section 1. Polices and procedures of Central State Hospital as set forth in Volume I, General Hospital Policies and Procedures, dated November 15, 1991, and Volume II, Treatment Program, dated November 15, 1991, [the July 15, 1991, edition of the Central State Hospital Policy and procedure manual consisting of two (2) volumes relating to the operation of Central State Hospital] are incorporated by reference.

Section 2. These policies and procedures [have two (2) volumes. They] are available for inspection or copy at the office of the Commissioner for the Department of Mental Health/Mental Retardation Services, 275 East Main Street, Frankfort, Kentucky 40621, and in the office of the Director at Central State Hospital, LaGrange Road, Louisville, Kentucky 40223.

DENNIS D. BOYD, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: November 6, 1991
FILED WITH LRC: November 15, 1991 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for December 23, 1991, at 9 a.m. in the Employment Services Conference Room, Second 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 December 18, 1991, of their desire to appear and testify at the hearing: 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: Dennis D. Boyd
(1) Type and number of entities affected: The group of persons affected are those 1800 admissions to Central State Hospital each year, and their families.
(a) Direct and indirect costs or savings to those affected:
1. First year: The use of Clozaril will result in an additional cost to the hospital. At the present time this amount is unknown as the hospital is presently in the process of selecting patients who might benefit from this medication. It is estimated that it will cost $4,000 per individual per year; however, if patient has not shown improvement in 4–6 months, the Clozaril will be discontinued.
2. Continuing costs or savings: Could result in a savings in the long run if patient(s) improves to the point where hospitalization is no longer needed.
3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors.
(b) Reporting and paperwork requirements: Initially, some additional statistics will be kept on the patients who are on Clozaril, but no major additional paperwork requirements.
(2) Effects on the promulgating administrative body: There will be very little change in the operation of the hospital.
(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: This will have no effect on revenue.
(4) Assessment of alternative methods; reasons why alternatives were rejected: There are no alternative methods.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute in conflict.
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: There is no additional information.
TIERING: Was tiering applied? Yes. In relation to the policy on Clozaril, only certain long-term patients who meet the criteria will be prescribed this medication. The smoking policy applies equally to all staff, visitors, and patients.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. This regulation incorporates by reference manual material used by agency staff and is federally mandated.
2. State compliance standards. This regulation incorporates by reference manual material used by agency staff and contains state compliance standards.
3. Minimum or uniform standards contained in the federal mandate. There are standards cited in 42 CFR 440 through 42 CFR 489. These federal regulations mandate requirements implemented by this regulation. The requirements contained in this regulation are neither stricter, in addition to, or different from those in the federal requirement.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This regulation incorporates by reference manual material used by agency staff. Stricter requirements or responsibilities are not imposed.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional standards, requirements, or responsibilities are imposed.

CABINET FOR HUMAN RESOURCES
Department for Mental Health and Mental Retardation Services
(Proposed Amendment)

908 KAR 3:120. Policies and procedures of Western State Hospital.

RELATES TO: KRS Chapters 202A, 202B, 210
STATUTORY AUTHORITY: KRS 194.050, 202A.196, 202B.060, 210.010, 210.040, 210.055, 210.285, 42 CFR 440 through 489
NECESSITY AND FUNCTION: KRS 210.010, relating to the hospitalization of mentally ill and mentally retarded persons, directs that the Secretary for the Cabinet for Human Resources shall adopt rules and regulations which insure proper administration and enforcement of these chapters.

Section 1. Polices and procedures of Western State Hospital as set forth in Volume I, General Hospital Policies and Procedures, dated November 15, 1991; Volume II, Recreational Therapy Services, dated August 15, 1988; Volume III, Occupational Therapy Services, dated August 15, 1988; Volume IV, Social Work Services, dated September 15, 1988; Volume V, Medical Records, dated August 15, 1988; Volume VI, Infection Control, dated August 15, 1988; Volume VII, Nursing Services, dated August 15, 1988; Volume VIII, Patient Advocate, dated August 15, 1988; Volume IX, Chaplaincy Services, dated August 15, 1988; Volume X, Employee Health Program, dated August 15, 1988; Volume XI, Administrative Services, dated September 15, 1988; Volume XII, Pharmacy, dated August 15, 1988; Volume XIII, Miscellaneous, dated August 15, 1988, [the July 15, 1991, edition of the Western State Hospital policy manual consisting of thirteen (13) volumes] relating to the operation of Western State Hospital are incorporated by reference.

Section 2. These policies and procedures are [in thirteen (13) volumes relating to the operation of Western State Hospital. They are] available for inspection and copy at the office of the Commissioner for the Department for Mental Health and Mental Retardation Services, 275 East Main Street, Frankfort, Kentucky 40621, and in the office of the Director, Western State Hospital, P.O. Box 2200, Hopkinsville, Kentucky 42240.

DENNIS D. BOYD, Commissioner
HARRY J. COWHERD, M.D., Secretary

APPROVED BY AGENCY: November 6, 1991
FILED WITH LRC: November 15, 1991 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for December 23, 1991, at 9 a.m. in the Employment Services Conference Room, Second 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 December 18, 1991, of their desire to appear and testify at the hearing: 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: Dennis D. Boyd
(1) Type and number of entities affected: Those affected are 950 mentally ill patients admitted each year from 42 counties along with their families.
(a) Direct and indirect costs or savings to those affected:
1. First year: The use of Clozaril will result in an additional cost to the hospital. At the present time this amount is unknown as the hospital is presently in the process of selecting patients who might benefit from this medication. It is estimated that it will cost $4,000 per individual per year; however, if patient has not shown improvement in 4–6 months, the Clozaril will be discontinued.
2. Continuing costs or savings: Could result in a savings in the long run if patient(s) improves to the point where hospitalization is no longer needed.
3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors.
(b) Reporting and paperwork requirements: Initially, some additional statistics will be kept on the patients who are on Clozaril, but no major additional paperwork requirements.
(2) Effects on the promulgating administrative body: There will be very little change in the operation of the hospital.
(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: This will have no effect on revenue.
(4) Assessment of alternative methods; reasons why alternatives were rejected: There are no alternative methods.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute in conflict.
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: There is no additional information.
TIERING: Was tiering applied? Yes. In relation to the policy on Clozaril, only certain long-term patients who meet the criteria will be prescribed this medication. The smoking policy applies equally to all staff, visitors, and patients.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. This regulation incorporates by reference manual material used by agency staff and is federally mandated.
2. State compliance standards. This regulation incorporates by reference manual material used by agency staff and contains state compliance standards.
3. Minimum or uniform standards contained in the federal mandate. There are standards cited in 42 CFR 440 through 42 CFR 489. These federal regulations mandate requirements implemented by this regulation. The requirements contained in this regulation are neither stricter, in addition to, or different from those in the federal requirement.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This regulation incorporates by reference manual material used by agency staff. Stricter requirements or responsibilities are not imposed.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional standards, requirements, or responsibilities are imposed.

CABINET FOR HUMAN RESOURCES
Department for Mental Health and Mental Retardation Services
(Proposed Amendment)

908 KAR 3:180. Policies and procedures of Oakwood.

RELATES TO: KRS Chapters 202A, 202B, 210
STATUTORY AUTHORITY: KRS 202A.196, 202B.060, 210.010, 210.040, 210.045, 210.055, 210.285, 42 CFR 440 through 489
NECESSITY AND FUNCTION: KRS 210.010, directs that the Secretary for the Cabinet for Human Resources shall adopt rules and regulations which insure proper administration and enforcement of these chapters.

Section 1. Polices and procedures of Oakwood as set forth in Volume I, Organization, dated July 15, 1990; Volume II, Interdisciplinary Team Process, dated November 15, 1991; Volume III, General Facility, dated November 15, 1991; Volume IV, Residents' Rights, dated May 1, 1988; and Volume V, Social Work Services/Resident Record Department, dated July 1, 1986, [the July 15, 1991, edition of the Oakwood consisting of five (5) volumes] relating to the operation of Oakwood are incorporated by reference.

Section 2. These policies and procedures are [contained in five (5) volumes relating to the operation of Oakwood. They are] available for inspection and copy at the office of the Commissioner of the Department of Mental Health/Mental Retardation Services, 275 East Main Street, Frankfort, Kentucky 40621, and in the office of the Director at Oakwood, U.S. 27 South, P.O. Box 1106, Somerset, Kentucky 42501.

DENNIS D. BOYD, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: November 6, 1991
FILED WITH LRC: November 15, 1991 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for December 23, 1991, at 9 a.m. in the Employment Services Conference Room, Second 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 December 18, 1991, of their desire to appear and testify at the hearing: 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: Dennis D. Boyd
(1) Type and number of entities affected: Persons affected are 420 residents from counties throughout the state along with their families.
(a) Direct and indirect costs or savings to those affected: These policies and procedures affect the treatment and residential care of residents and do not directly relate to costs or savings.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements:
(2) Effects on the promulgating administrative body: There is no financial effect on the administrative body.
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: This has no effect on revenue.
(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: There is no statute in conflict.
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: This is a regulation to incorporate manuals by reference.
TIERING: Was tiering applied? No. These policies and procedures are applied equally to all the residents of Oakwood.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. This regulation incorporates by reference manual material used by agency staff and is federally mandated.
2. State compliance standards. This regulation incorporates by reference manual material used by agency staff and contains state compliance standards.
3. Minimum or uniform standards contained in the federal mandate. There are standards cited in 42 CFR 440 through 42 CFR 489. These federal regulations mandate requirements implemented by this regulation. The requirements contained in this regulation are neither stricter, in addition to, or different from those in the federal requirement.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This regulation incorporates by reference manual material used by agency staff. Stricter requirements or responsibilities are not imposed.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional standards, requirements, or responsibilities are imposed.

PROPOSED REGULATIONS RECEIVED THROUGH NOON, NOVEMBER, 15, 1991

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY

11 KAR 12:001. Repeal of regulations.

RELATES TO: KRS 164A.300 through 164A.380
STATUTORY AUTHORITY: KRS 164A.325(10), 164.748(4), Executive Order 90-433
NECESSITY AND FUNCTION: The Kentucky Educational Savings Plan Trust was created by KRS 164A.300 to 164A.380 in 1988 as an independent entity governed by a board of directors. Pursuant to Executive Order 88-1055, the Kentucky Educational Savings Plan Trust was attached to the Office of the Secretary of the Finance and Administration Cabinet, and all administrative and programmatic functions for the Savings Plan Trust were transferred from the Kentucky Higher Education Assistance Authority to the Office of the Secretary of the Finance and Administration Cabinet. Subsequently, regulations were promulgated by the Kentucky Educational Savings Plan Trust Board of Directors. Those regulations were codified as 200 KAR 16:010 through 16:090. In 1990 Executive Order 90-433 abolished the Board of Directors of the Kentucky Educational Savings Plan Trust, and transferred all powers, functions, and duties to the Kentucky Higher Education Assistance Authority. That executive order provided that all powers pursuant to KRS 164A.300 through 164A.380 shall be vested in the Board of Directors of the Kentucky Higher Education Assistance Authority, and that administrative regulations previously promulgated shall remain in effect until superseded by amendment, replacement, or repeal by the authority's board of directors. On April 30, 1991 the Kentucky Higher Education Assistance Authority promulgated administrative regulations pertaining to the Kentucky Educational Savings Plan Trust. Those regulations became effective August 2, 1991, and are codified as 11 KAR 12:010 through 12:090. Those regulations superseded and replaced the prior regulations codified at 200 KAR 16:010 through 16:090. Subsequently, it has been determined that the Kentucky Higher Education Assistance Authority, rather than the Secretary of the Finance and Administration Cabinet, is the appropriate administrative body authorized to repeal 200 KAR 16:010 through 16:090. Accordingly, this regulation is necessary to repeal the regulations previously promulgated by the Kentucky Educational Savings Plan Trust.

Section 1. The following regulations are hereby repealed: 200 KAR 16:010, General rules; 200 KAR 16:020, Definitions; 200 KAR 16:030, Eligibility of beneficiary and participant; 200 KAR 16:040, Residency classification for tuition purposes; 200 KAR 16:050, Substitution of a beneficiary; 200 KAR 16:070, Payment of refund and the rate of return after notice of termination; 200 KAR 16:080, Benefits payable from the program fund; 200 KAR 16:090, Benefits payable from the endowment fund.

GEORGE SHAW, Chairman
APPROVED BY AGENCY: October 22, 1991
FILED WITH LRC: November 14, 1991 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Monday, December 23, 1991 at 9 a.m., at 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by Wednesday, December 18, 1991, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. Paul P. Borden, Executive Director, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Paul P. Borden
(1) Type and number of entities affected: No entities are affected. This proposed regulation merely repeals regulations which formerly governed the administration of the Kentucky Educational Savings Plan Trust when the trust was attached to the Office of the Secretary of the Finance and Administration Cabinet. Executive Order 90-433 abolished the Board of Directors and transferred all powers, functions, and duties to the Kentucky Higher Education Assistance Authority. Subsequently, regulations were promulgated by the authority and codified as 11 KAR 12:010 through 12:090.
(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. The promulgating body has already adopted similar regulations.
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body: None. The promulgating body has already promulgated administrative regulations governing the administration of the trust.
(a) Direct and indirect costs or savings: None affecting administrative regulations have already been promulgated.
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. The repeal of the regulations addressed by this proposed administrative regulation has no effect on any revenues.
(4) Assessment of alternative methods; reasons why alternatives were rejected: There are no alternatives. Repeal of regulations promulgated by a board, prior to its abolition, to govern the administration of a program which has been transferred to a different agency, is necessary

to prevent needless duplication and potential future conflict with new regulations which have already been promulgated.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: 11 KAR 12:010 through 12:090, which have recently been adopted by KHEAA, following transfer of the program, potentially duplicate and overlap the regulations being repealed.

(a) Necessity of proposed regulation if in conflict: This proposed regulation (repealing other regulations) is necessary to eliminate potential duplicity and conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: The proposed repeal of prior regulations would have been adopted at the time of adopting new regulations, but it was delayed pending discussions and a determination among LRC staff, KHEAA, and the Office of the Secretary of the Finance and Administration Cabinet as to which agency had the authority to repeal the prior regulations.

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. The concept of tiering is not applicable to the repeal of administrative regulations under these circumstances.

PUBLIC PROTECTION AND REGULATION CABINET
Board of Claims

108 KAR 1:030. Filing of claims, original signature of claimant required.

RELATES TO: KRS 44.080, 44.086, 44.090

STATUTORY AUTHORITY: KRS Chapter 13A, 44.090

NECESSITY AND FUNCTION: KRS 44.080 requires the Board of Claims to establish rules for its government and for the regulation of the method of pleading and practice before it. The purpose of this regulation is to require the original signature of a claimant.

Section 1. All claims filed with the board pursuant to KRS 44.070 et seq., shall contain the original signature of the claimant irrespective of whether such claimant is represented by an attorney. If the claimant is represented by an attorney, the claim shall also contain the original signature of such attorney.

JACK D. RAZOR, Chairman

APPROVED BY AGENCY: September 26, 1991

FILED WITH LRC: October 16, 1991 at 11 a.m.

PUBLIC HEARING: A public hearing on these proposed regulations will be held on December 23, 1991 at the hour of 10 a.m. at the offices of the Kentucky Board of Claims, 115 Myrtle Avenue, Frankfort, Kentucky 40601. Any person interested in commenting on these regulations at that hearing should contact Ms. Sandra Godbey, Kentucky Board of Claims, 115 Myrtle Avenue, Frankfort, Kentucky 40601 in writing by December 18, 1991.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sandra Godbey

(1) Type and number of entities affected: All claimants.

(a) Direct and indirect costs or savings to those affected: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body: Minimal

(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? None because all claimants are treated alike.

DEPARTMENT OF AGRICULTURE

302 KAR 20:230. Fee basis schedule.

RELATES TO: KRS Chapter 257

STATUTORY AUTHORITY: KRS 257.020, 257.030

NECESSITY AND FUNCTION: To establish procedures for setting a fee basis schedule for the purpose of reimbursement payments to licensed and accredited veterinarians by the department for expenses incurred in performing the professional services mandated by the pseudorabies testing program as set out at 302 KAR 20:220.

Section 1. Definitions. (1) "Fee basis agreement" means the agreement between the state veterinarian and a licensed and accredited veterinarian establishing the rate of reimbursement for professional services performed in connection with the pseudorabies testing program.

(2) "Per head allowance" means the allowance or rate of reimbursement by the department for professional veterinarian services performed under the pseudorabies testing program which is based on the testing performed on each animal.

(3) "Stop fee" means the allowance or rate of reimbursement by the department for professional veterinarian services performed under the pseudorabies testing program based on each farm at which animals are tested.

Section 2. Contract for Fee Basis. Licensed and accredited veterinarians providing the professional services required by the pseudorabies testing program shall receive payment for professional services from the department at the rate specified in the fee basis agreement. The fee basis agreement may provide for a stop fee not to exceed twenty (20) dollars and a per head allowance not to exceed three (3) dollars.

(6) Any additional information or comments:
TIERING: Was tiering applied? No. Control and eradication of pseudorabies requires that regulatory procedures for controlling the disease be applied to all owners of swine.

TRANSPORTATION CABINET
Department of Vehicle Regulation

601 KAR 1:180. Repeal of 601 KAR 1:120.

RELATES TO: KRS Chapter 281
STATUTORY AUTHORITY: KRS 281.600
NECESSITY AND FUNCTION: KRS 281.637 was passed by the 1984 General Assembly and appears to be in conflict with 601 KAR 1:120, which has been in existence since 1975. Therefore, 601 KAR 1:120 is being repealed.

Section 1. 601 KAR 1:120, Charter bus operations, is hereby repealed.

JEROME L. LENTZ, Acting Commissioner
MILO D. BRYANT, Secretary
APPROVED BY AGENCY: November 4, 1991
FILED WITH LRC: November 8, 1991 at 2 p.m.
PUBLIC HEARING: A public comment hearing will be held on this administrative regulation on December 23, 1991 at 9 a.m., local prevailing time in the Transportation Cabinet, Fourth Floor Conference Room, Corner of High and Holmes Streets, Frankfort, Kentucky 40622. Any person who intends to attend this hearing must in writing by December 18, 1991 so notify this agency. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public comment hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the administrative regulation. If the hearing is cancelled, written comments will only be accepted until December 18, 1991. Send written notification of intent to attend the public hearing or written comments on the administrative regulation to: Sandra G. Pullen, Executive's Staff Advisor, Transportation Cabinet, State Office Building, Frankfort, Kentucky 40622.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sandra G. Pullen
(1) Type and number of entities affected: None
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body: Removes an outdated administrative regulation and reduces administrative confusion.
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None. We contacted each certificate holder who might think he was operating under the provisions of this administrative regulation. We explained that KRS 281.637 provided for grandfathering of their charter bus operations and that this administrative regulation was going to be repealed. While there were many questions asked, no one has requested grandfathered charter bus authority.
(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:
TIERING: Was tiering applied? No. Repeal of regulation does not allow tiering.

WESTERN KENTUCKY UNIVERSITY
Board of Regents

770 KAR 1:010. Acquisition and disbursement of funds, accounting system – records and annual report.

RELATES TO: KRS 164A.560, 164A.565
STATUTORY AUTHORITY: KRS 164A.560
NECESSITY AND FUNCTION: The governing boards of the public institutions of higher education may elect to perform the financial management functions of KRS 164A.555 to 164A.630 by issuing regulations to do so. This regulation implements the provisions of KRS 164A.560 and 164A.565 at Western Kentucky University.

Section 1. The Western Kentucky University Board of Regents elects to perform the financial management functions set forth in KRS 164A.560, Section 2, related to the receipt, deposit, collection, retention, investment, disbursement, and accounting of all funds; and KRS 164A.565 related to the installation of and accrual basis accounting system, other records and annual reports.

Section 2. The Western Kentucky University Board of Regents elects to comply with KRS 164A.560, Section (2)(b) to limit disbursements to the accounts and for the purposes for which the state appropriations, or other monies have been received for through the enacting resolution of the institution's annual operating budget.

Section 3. The Western Kentucky University Board of Regents shall use an accrual basis accounting system and fund structure that conforms with generally accepted accounting principles and procedures established for colleges and universities by the National Association of College and University Business Officers and the American Institute of Certified Public Accountants, and shall act to ensure further compliance with Sections (2), (3), (6), (7), and (8) of KRS 164A.565.

Section 3. Reimbursement Due. The fee basis agreement shall provide that a claim for payment shall be submitted on a pseudorabies testing program statement of services performed. Further, the agreement shall provide that no payment for pseudorabies testing services shall be made until the appropriate pseudorabies test chart has been received and validated by the state veterinarian. All samples must be of test quality.

Section 4. The state veterinarian may determine the terms and conditions of the fee basis agreement and may determine the terms and conditions for participation of a licensed and accredited veterinarian in the agreement. The state veterinarian may suspend, terminate, deny or not renew a fee basis agreement when he has good cause to believe that the licensed and accredited veterinarian has:

(1) Failed to perform services in a reasonably prudent and professional manner;

(2) Misrepresented or concealed facts in order to receive or enable others to receive payments;

(3) Misrepresenting facts regarding animals tested or test results;

(4) Failure to comply with the terms and conditions of the fee basis agreement;

(5) Submitting false or questionable requests for fee basis payments.

Section 5. Auditing Reporting. All participating veterinarians shall be required to maintain fiscal and service records and to provide such records as may be determined necessary by the state veterinarian for the effective administration of the program. A participating veterinarian shall be required to make available upon request all professional service and financial records relating to the fee basis agreement to the Office of the State Veterinarian, Kentucky Department of Agriculture, its representatives or designees for auditing and monitoring purposes.

Section 6. Fee Basis Forms. A fee basis agreement and pseudorabies testing statement of services performed must be made on forms provided by the state veterinarian. The fee basis agreement and pseudorabies statement of professional services forms are incorporated by reference. The fee basis agreement and pseudorabies testing statement of services performed forms are effective fist day of February, 1992, and may be obtained at the Office of the State Veterinarian, 100 Fair Oaks Lane, Frankfort, Kentucky 40601. The effective day of this regulation shall be February 1, 1992.

CHARLES L. HAMILTON, Chairman

APPROVED BY AGENCY: October 30, 1991

FILED WITH LRC: October 30, 1991 at 1 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 23, 1991 at 9 a.m. at the Department of Agriculture Conference Room, 7th Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by December 18, 1991, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: J. Michael Noyes, General Counsel, Department of Agriculture, Capital Plaza Tower, 500 Mero Street, 7th Floor, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: D. L. Notter

(1) Type and number of entities affected: There are 11,000 swine herds that are affected by this regulation.

(a) Direct and indirect costs or savings to those affected:

1. First year: With the initiation of this regulation on disease control in the swine industry, the savings could increase from 80% of productivity now to 100%.

2. Continuing costs or savings: Continued practice of this regulation would decrease the costs and add to the savings for the producer.

3. Additional factors increasing or decreasing costs (note any effects upon competition): As the numbers of infected animals decrease the costs decrease.

(b) Reporting and paperwork requirements: Minimal required reporting.

(2) Effects on the promulgating administrative body: There will be no additional manpower. Existing personnel will be used.

(a) Direct and indirect costs or savings:

1. First year: $263,000 has been budgeted for implementing this regulation for eradication of pseudorabies, equipment and sample analysis for the year of (90-91).

2. Continuing costs or savings: The rate of decrease in the numbers of infected animals dictates the declining costs and/or savings. $224,000 has been budgeted for the year (91-92).

3. Additional factors increasing or decreasing costs: This regulation compliments the existing surveillance regulation and as infected animals decrease costs would decrease and savings would increase.

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: None. This regulation relates only to control of a communicable disease and does not effect revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Based upon clinical veterinary practice and disease protocols as applied to other diseases, there is no reasonable alternative to the regulation and eradication of pseudorabies through a herd cleanup plan.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: 302 KAR 20:210 relates to the pseudorabies surveillance 302 KAR 20:220, Pseudorabies testing program in swine.

(a) Necessity of proposed regulation if in conflict: This regulation is not in conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: The regulation is not in conflict with any other regulation.

JOSEPH IRACANE, Chairman
APPROVED BY AGENCY: October 8, 1991
FILED WITH LRC: November 14, 1991 at 10 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 21, 1991 at 9 a.m. in the Regent's Room, Weatherby Administration Building at Western Kentucky University . Individuals interested in attending this hearing shall notify this agency in writing by December 16, 1991, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Dr. Paul B. Cook, Executive Vice President for Administrative Affairs, Western Kentucky University, 109 Weatherby Administration Building, Bowling Green, Kentucky 42101.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dr. Paul Cook
(1) Type and number of entities affected: Since the university internally enacted this regulation in 1982 and given that the purpose of this regulation is only to codify the elective provisions of KRS Chapter 164A, there are no new entities which will be affected. The original entities affected were: Western Kentucky University, Treasury Department, Division of Accounts, State Computer Services, vendors and others doing business with the university.
(a) Direct and indirect costs or savings to those affected:
1. First year: During the first year in which the university operated under the internally authorized regulation it greatly reduced the number of checks issued, the processing and filing of documents, the computer time involved in processing transactions, and the quantity of computer reports produced. The codification of the regulation will not result in any additional savings.
2. Continuing costs or savings: Same as above.
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: The internal authorization of this regulation resulted in fewer layers of the decision-making process.
(2) Effects on the promulgating administrative body: The internal authorization of this regulation resulted in fewer layers of the decision-making process.
(a) Direct and indirect costs or savings:
1. First year: The first year of internal authorization of this regulation resulted in more processing of transactions with less paper work. The actual codification of the regulation will not affect costs or savings.
2. Continuing costs or savings: Same as above.
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: The internal authorization of this regulation resulted in a significant decrease in the paperwork processed in Frankfort with increased accountability at the university level.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: This is the only alternative permitted by KRS Chapter 164A.
(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:
(6) Any additional information or comments: The purpose of this regulation is to codify the elective provisions of KRS Chapter 164A which the university has previously internally authorized and is currently following. This internally authorized regulation implemented new statutory delegation of certain financial management functions from the Executive Branch (Finance and Administration Cabinet) to the university for the purpose of increasing efficiency and accountability.
TIERING: Was tiering applied? No. Tiering was not applied because the university has uniform standards.

WESTERN KENTUCKY UNIVERSITY
Board of Regents

770 KAR 1:020. Delegation of financial management responsibility.

RELATES TO: KRS 164A.560, 164A.565, 164A.575, 164A.620
STATUTORY AUTHORITY: KRS 164A.560
NECESSITY AND FUNCTION: The governing boards of the public institutions of higher education may elect to perform the financial management functions of KRS 164A.555 to 164A.630 by issuing regulations to do so. This regulation implements the provision of KRS 164A.560 at Western Kentucky University.

Section 1. The Western Kentucky University Board of Regents, under the provision of KRS 164A.560, elects to delegate responsibility for the financial management provisions of KRS 164A.560, 164A.565, 164A.575 and 164A.620 to the president of the university. Further, the Board of Regents delegates to the president responsibility for submitting to the State Property and Buildings Commission information and requests for approval of any bond project approved by the Board of Regents.

JOSEPH IRACANE, Chairman
APPROVED BY AGENCY: November 12, 1991
FILED WITH LRC: November 15, 1991 at noon
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 21, 1991 at 9 a.m. in the Regent's Room, Weatherby Administration Building at Western Kentucky University. Individuals interested in attending this hearing shall notify this agency in writing by December 16, 1991, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date,

the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Dr. Paul B. Cook, Executive Vice President for Administrative Affairs, Western Kentucky University, 109 Weatherby Administration Building, Bowling Green, Kentucky 42101.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dr. Paul Cook
(1) Type and number of entities affected: Since the university internally enacted this regulation in 1982 and given that the purpose of this regulation is only to codify the elective provisions of KRS Chapter 164A, there are no new entities which will be affected. In addition, the only entity originally affected was the university.
(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
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: The codification of this regulation will not change the internally authorized regulation requiring the official delegation authority.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: This is the only alternative permitted by KRS Chapter 164A.
(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:
(6) Any additional information or comments: The purpose of this regulation is to codify the elective provisions of KRS Chapter 164A which the university has previously internally authorized regulation implemented the new statutory delegation of certain financial management functions from the Executive Branch (Finance and Administration Cabinet) to the university for the purpose of increasing efficiency and accountability.
TIERING: Was tiering applied? No. Tiering was not applied because the university has uniform standards.

WESTERN KENTUCKY UNIVERSITY
Board of Regents

770 KAR 1:030. Annual audit.

RELATES TO: KRS 164A.570
STATUTORY AUTHORITY: KRS 164A.560
NECESSITY AND FUNCTION: The governing boards of the public institutions of higher education may elect to perform the financial management functions of KRS 164A.555 to 164A.630 by issuing regulations to do so. This regulation implements the provision of KRS 164A.570 at Western Kentucky University.

Section 1. The Western Kentucky University Board of Regents elects to engage a qualified firm of certified public accountants for the purpose of submitting an independent opinion concerning the internal accounting controls and compliance with the provisions of KRS 164A.560, 164A.565, 164A.575, and 164A.620. The engagement of the qualified firm, scope of the audit, and report of findings shall be in accordance with the provisions of KRS 164A.570.

JOSEPH IRACANE, Chairman
APPROVED BY AGENCY: November 12, 1991
FILED WITH LRC: November 14, 1991 at 10 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 21, 1991 at 9 a.m. in the Regent's Room, Weatherby Administration Building at Western Kentucky University. Individuals interested in attending this hearing shall notify this agency in writing by December 16, 1991, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Dr. Paul B. Cook, Executive Vice President for Administrative Affairs, Western Kentucky University, 109 Weatherby Administration Building, Bowling Green, Kentucky 42101.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dr. Paul Cook
(1) Type and number of entities affected: Since the university internally enacted this regulation in 1982 and given that the purpose of this regulation is only to codify the elective provisions of KRS Chapter 164A, there are no new entities which will be affected. The original entities affected were: Western Kentucky University, Finance and Administration Cabinet, Auditor of Public Accounts.
(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:

Filing copies of the audit reports.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: The internal authorization of this regulation resulted in no significant increase in the cost of the audit for compliance testing. The actual codification of the regulation will not affect costs or savings.
2. Continuing costs or savings: Same as above.
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: Filing copies of the audit reports.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: There are no alternatives as an audit is required by statute, outstanding bond issue trust indentures, and other governing documents with regulations.
(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:
(6) Any additional information or comments: The purpose of this regulation is to codify the elective provisions of KRS Chapter 164A which the university has previously internally authorized and is currently following. This internally authorized regulation implemented new statutory delegation of certain financial management functions from the Executive Branch (Finance and Administration Cabinet) to the university for the purpose of increasing efficiency and accountability.
TIERING: Was tiering applied? No. Tiering was not applied because the university has uniform standards.

WESTERN KENTUCKY UNIVERSITY
Board of Regents

770 KAR 1:040. Purchase – inventories – sales of surplus property procedures.

RELATES TO: KRS 164A.575
STATUTORY AUTHORITY: KRS 164A.560
NECESSITY AND FUNCTION: The governing boards of the public institutions of higher education may elect to perform the financial management functions of KRS 164A.555 to 164A.630 by issuing regulations to do so. This regulation implements the provision of KRS 164A.575 at Western Kentucky University.

Section 1. The Western Kentucky University Board of Regents, under the provisions of KRS 164A.560, elects to purchase and manage interests in real property, contractual services, rentals of all types, supplies, materials, equipment, printing, and services in accordance with Sections (1), (2), (3), (4), (5), (6), (7), (8), (10), (11), and (12) of KRS 164A.575.

JOSEPH IRACANE, Chairman
APPROVED BY AGENCY: November 12, 1991
FILED WITH LRC: November 14, 1991 at 10 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 21, 1991 at 9 a.m. in the Regent's Room, Weatherby Administration Building at Western Kentucky University. Individuals interested in attending this hearing shall notify this agency in writing by December 16, 1991, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Dr. Paul B. Cook, Executive Vice President for Administrative Affairs, Western Kentucky University, 109 Weatherby Administration Building, Bowling Green, Kentucky 42101.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dr. Paul Cook
(1) Type and number of entities affected: Since the university internally enacted this regulation in 1982 and given that the purpose of this regulation is only to codify the elective provisions of KRS Chapter 164A, there are no new entities which will be affected. The original entity affected besides the wniversity was the state purchasing office.
(a) Direct and indirect costs or savings to those affected:
1. First year: During the first year in which the university operated under the internally authorized regulation, it greatly reduced the number of checks issued, the processing and filing of documents, the computer time involved in processing transactions, and the quality of the computer reports produced. This reduction of the processing time of transactions facilitated the required payment of vendors' invoices within 30 days of receipt (KRS 45.453). The codification of the regulation will not result in any additional costs or savings.
2. Continuing costs or savings: Same as above.
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: The internal authorization of this regulation improved administrative functions through closer, on-site management which allowed for greater control and flexibility.
2. Continuing costs or savings: Same as above.
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: This is the only alternative permitted by KRS Chapter 164A.
(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:
(6) Any additional information or comments: The purpose of this regulation is to codify the elective provisions of KRS Chapter 164A which the university has previously internally authorized and is currently following. This internally authorized regulation implemented new statutory delegation of certain financial management functions from the Executive Branch (Finance and Administration Cabinet) to the university for the purpose of increasing efficiency and accountability.
TIERING: Was tiering applied? No. Tiering was not applied because the university has uniform standards.

WESTERN KENTUCKY UNIVERSITY
Board of Regents

770 KAR 1:050. Issuance of bonds.

RELATES TO: KRS 164A.605
STATUTORY AUTHORITY: KRS 164A.560
NECESSITY AND FUNCTION: The governing boards of the public institutions of higher education may elect to perform the financial management functions of KRS 164A.555 to 164A.630 by issuing regulations to do so. This regulation implements the provision of KRS 164A.605 at Western Kentucky University.

Section 1. The Western Kentucky University Board of Regents, under the provision of KRS 164A.560, elects the authority to issue bonds subject to the conditions as set forth in KRS 164A.605.

JOSEPH IRACANE, Chairman
APPROVED BY AGENCY: November 12, 1991
FILED WITH LRC: November 14, 1991 at 10 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 21, 1991 at 9 a.m. in the Regent's Room, Weatherby Administration Building at Western Kentucky University. Individuals interested in attending this hearing shall notify this agency in writing by December 16, 1991, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Dr. Paul B. Cook, Executive Vice President for Administrative Affairs, Western Kentucky University, 109 Weatherby Administration Building, Bowling Green, Kentucky 42101.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dr. Paul Cook
(1) Type and number of entities affected: Since the university internally enacted this regulation in 1982 and given that the purpose of this regulation is only to codify the elective provisions of KRS Chapter 164A, there are no new entities which will be affected. The original entities affected were: Western Kentucky University, State Property and Building Commission and Finance and Administration Cabinet.
(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: The codification of this regulation will not change the authorized internal regulation in effect requiring approval of the State Property and Building Commission and Board of Regents.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: The codification of this regulation will not change the authorized internal regulation in effect requiring approval of the State Property and Building Commission and the Board of Regents.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: There are no alternatives.
(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:
(6) Any additional information or comments: The purpose of this regulation is to codify the elective provisions of KRS Chapter 164A which the university has previously internally authorized and is currently following. This internally authorized regulation implemented new statutory delegation of certain financial management functions from the Executive Branch (Finance and Administration Cabinet) to the university for the purpose of increasing efficiency and accountability.
TIERING: Was tiering applied? No. Tiering was not applied because the university has uniform standards.

WESTERN KENTUCKY UNIVERSITY
Board of Regents

770 KAR 1:060. Fund for excellence.

RELATES TO: KRS 164.410, 164A.620
STATUTORY AUTHORITY: KRS 164A.560
NECESSITY AND FUNCTION: The governing boards of the public institutions of higher education may elect to perform the financial management

functions of KRS 164A.555 to KRS 164A.630 by issuing regulations to do so. This regulation implements the provision of KRS 164A.620 at Western Kentucky University.

Section 1. The Western Kentucky University Board of Regents, under the provisions of KRS 164A.560, elects and authorized the establishment of a fund for excellence under the conditions and for the purpose as set forth in KRS 164A.620.

JOSEPH IRACANE, Chairman
APPROVED BY AGENCY: November 12, 1991
FILED WITH LRC: November 14, 1991 at 10 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 21, 1991 at 9 a.m. in the Regent's Room, Weatherby Administration Building at Western Kentucky University. Individuals interested in attending this hearing shall notify this agency in writing by December 16, 1991, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Dr. Paul B. Cook, Executive Vice President for Administrative Affairs, Western Kentucky University, 109 Weatherby Administration Building, Bowling Green, Kentucky 42101.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dr. Paul Cook
(1) Type and number of entities affected: Since the university internally enacted this regulation in 1982 and given that the purpose of this regulation is only to codify the elective provisions of KRS Chapter 164A, there are no new entities which will be affected. The original entity affected was the university.
(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
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: This is the only alternative permitted by KRS Chapter 164A.
(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:
(6) Any additional information or comments: The purpose of this regulation is to codify the elective provisions of KRS Chapter 164A which the university has previously internally authorized and is currently following. This internally authorized regulation implemented new statutory delegation of certain financial management functions from the Executive Branch (Finance and Administration Cabinet) to the university for the purpose of increasing efficiency and accountability.
TIERING: Was tiering applied? No. Tiering was not applied because the university has uniform standards.

CABINET FOR HUMAN RESOURCES
Department for Social Services

905 KAR 8:210. Kentucky long-term care ombudsman program.

RELATES TO: KRS 216.535, 216.540-543, 209.030(5), 205.201, 42 USC 3001 et seq.
STATUTORY AUTHORITY: KRS 194.050, 205.204
NECESSITY AND FUNCTION: 42 USC 3001 et seq., the Older Americans Act of 1965, as amended, requires states to establish and operate, either directly or by contract, a long-term care ombudsman program to protect the rights of older individuals. KRS 194.050 authorizes the Cabinet for Human Resources to adopt regulations as necessary to implement programs mandated by federal law. KRS 205.204 designates the Cabinet for Human Resources as the state agency to administer the Older Americans Act in Kentucky. The function of this regulation is to implement a statewide long-term care ombudsman program as required by federal law, and in compliance with the statutory requirement of KRS 13A.221 that requires a separate administrative regulation for each topic of general subject matter. This administrative regulation contains the substance of 905 KAR 8:070 which is repealed.

Section 1. Definitions. (1) "Access" means the right to enter a long-term care facility, meet with the residents and review the records of a resident.
(2) "Administrator" means any person charged with the general administration or supervision of a long-term care facility without regard to whether the person has an ownership interest in the facility or to whether the person's functions and duties are shared with one (1) or more other persons.
(3) "Certification" means the official notification by the Kentucky long-term care ombudsman that local long-term care ombudsman individual staff are qualified and acceptable to function in that capacity.
(4) "Complaint" means an allegation filed by residents or on behalf of residents relating to the health, safety, welfare and rights of a resident.
(5) "Complaint resolution" means either corrective action taken in regard to an allegation or a determination as to the validity of the allegation.
(6) "Complaint verification" means a

determination through investigative means that allegations relating to the health, safety, welfare and rights of a patient are valid.

(7) "Designation" means formal notification by the long-term care ombudsman that a district program meets requirements, and shall be considered a subdivision of the state office.

(8) "District ombudsman" means that individual certified by the long-term care ombudsman to implement the ombudsman provisions of the approved area agency on aging plan.

(9) "Evaluation" means periodic analysis and review conducted by the long-term care ombudsman, of district, regional and state ombudsman programs, including quality assurance and outcome measures pertaining to individual and programmatic performance.

(10) "Investigation" means the formal response by a long-term care ombudsman to complaints of issues involving the health, safety, welfare and rights of a resident.

(11) "Kentucky long-term care ombudsman" means the individual charged with the administration of the Kentucky long-term care ombudsman program under the provisions of the Older Americans Act of 1965, as amended.

(12) "Monitoring" means periodic review conducted by the Division of Aging Services and the area agency on aging measuring ombudsman program's adherence to approved plans, including analysis of nonclient specific data relating to program performance.

(13) "Primary client group" means residents of long-term care facilities and those persons making application for admission to long-term care facilities and their families.

(14) "Referral" means the appropriate channeling of information so as to effect a desired outcome of a complaint.

(15) "Regional long-term care ombudsman" means ombudsmen who operate directly from the Kentucky long-term care ombudsman program and whose responsibilities include coordination of a multiarea development district area.

(16) "Unit of service" means one-half (1/2) hour of staff time, paid or volunteer, provided to or on behalf of a client or a group of clients.

(17) "Unduplicated client" means counting each individual served by the ombudsman program one (1) time within each fiscal year.

(18) "Volunteer ombudsman" means a nonsalaried individual serving within a district program to assist a district ombudsman.

Section 2. Responsibilities of Kentucky Long-term Care Ombudsman Program. (1) The Kentucky long-term care ombudsman program shall be administered by a full time ombudsman who shall be assigned to the Office of the Director, Division of Aging Services, Cabinet for Human Resources.

(2) The Kentucky long-term care ombudsman program shall be responsible for the:

(a) Design, implementation and management of a statewide uniform system for receiving, investigating, resolving and reporting complaints on behalf of residents in long-term care facilities and provide ongoing support to assist in the resolution of those complaints;

(b) Investigation of complaints made by or on behalf of residents in long-term care facilities from areas of the state temporarily without local ombudsman programs;

(c) Development and implementation of policies and procedures for operation of the program, including those related to:

1. Receipt, investigation and resolution of complaints;

2. Protecting confidentiality of records and identity of complainants;

3. Establishing the right of public access to information regarding conditions in long-term care facilities; and

4. Securing ombudsman access to long-term care facilities, residents and residents' personal and medical records.

(d) Development and management of a system for the operation of a statewide network of district programs, including:

1. Designation of district programs;

2. Development of district program operating procedures and reporting requirements; and

3. Establishment of a communications link between the state and district programs.

(e) Establishment and maintenance of program official files and adoption of procedures to protect the confidentiality of those files;

(f) Provision of information and education regarding program activities, the long-term care system and the rights and concerns of residents and potential residents of long-term care facilities;

(g) Provision of assistance to citizen organizations, consumer groups and other interested community organizations to enhance the rights of residents in long-term care facilities;

(h) Promotion of the development of citizen organizations at the state and local level to participate in the program;

(i) Use of publicity and outreach efforts directed at long-term care residents and families, network staff and the general public about the availability of the program to receive and investigate complaints;

(j) Review of complaint, case and issue data submitted by the district programs and analysis for trends, pattern and issue identification;

(k) Annual report to the state licensing and certifying agency, the Governor, the federal Administration on Aging and the public including:

1. Operation of the Kentucky long-term care ombudsman program;

2. Status of complaints and resolutions;

3. Conditions in long-term care facilities;

4. Serious issues of widespread concern; and

5. Proposals for corrective action at relevant levels of government.

(l) Preparation of progress reports and other required program reports;

(m) Assistance to the area agencies on aging and district programs to establish, develop and coordinate ombudsman activities;

(n) Development of agreements and working relationships with relevant agencies to encourage their cooperation and assistance with the program at the state and local levels;

(o) Development, in cooperation with the legal services developer, of agreements and working relationships with legal services programs, particularly those funded by the Older Americans Act of 1965, as amended;

(p) Development and provision of training on an ongoing basis for state and local program staff and volunteers;

(q) Identification and development of additional funding and staffing resources for the program;

(r) Support and promotion of the formation of

resident councils in long-term care facilities;
(s) Development and provision of testimony and comment on proposed legislation, regulations, policies and rule changes affecting the institutionalized elderly;
(t) Conduction of other activities related to the protection and dignity of residents of long-term care facilities; and
(u) Performance of other activities required by the Commissioner on Aging, federal Administration on Aging.

Section 3. Responsibilities of the Regional Ombudsman. The regional ombudsman shall be a full-time staff member of, and report directly to the Kentucky long-term care ombudsman and shall have the following responsibilities:
(1) Receive, investigate and resolve complaints;
(2) Technical assistance and coordination of district programs within the geographic area assigned;
(3) Assist in training of volunteers and local program personnel;
(4) Provide information to public agencies regarding problems of long-term care residents;
(5) Abide by established procedures related to reporting and confidentiality; and
(6) Perform other job duties as required by the Kentucky long-term care ombudsman.

Section 4. Designation of District Programs. (1) The area agency on aging plan shall contain an ombudsman portion which shall serve as the application for designation of a district ombudsman. Information contained shall include:
(a) Definition of program in terms of the following personnel:
1. Program supervisor;
2. Area development district monitor;
3. Ombudsman advisory council;
4. District ombudsman; and
5. Volunteer ombudsman.
(b) Agency to conduct the program;
(c) Ability to receive, investigate and resolve complaints on behalf of long-term care residents;
(d) Maintenance of a complaint documentation system;
(e) Ability to monitor the development and implementation of laws, policies and regulations which apply to residential long-term care;
(f) Ability to recruit and provide standardized training for volunteers;
(g) Ability to respond in a timely fashion to requests from the Kentucky long-term care ombudsman program for statistical data and other information;
(h) Ability to receive training and continuing education from the Kentucky long-term care ombudsman program;
(i) Ability to assure confidentiality of files;
(j) Ability to inform and educate residents, sponsors, organizations, the long-term care industry and the general public relative to issues affecting the long-term care system, the ombudsman program and resident rights and concerns; and
(k) Provision that no individual involved in the appointment of a subdivision of the office and that no officer, employee or other representative of the office is subject to a conflict of interest.
(l) Provision that representatives of the Kentucky long-term care ombudsman program shall not be liable under state law for the good faith performance of official duties.
(2) The Kentucky long-term care ombudsman program shall:
(a) Review applications for designation by area agencies on aging contained in their area plans for operating programs either directly or under subcontract;
(b) Review applications for designation received independently of the area agency if independently operated ombudsman services are indicated in the area plan; and
(c) Provide written confirmation of the designation.
(3) Designated ombudsmen shall be representatives of the Kentucky long-term care ombudsman program and shall be accorded rights and privileges of that office.

Section 5. Responsibilities of the District Ombudsman Program. The district ombudsman program shall:
(1) Provide services under the supervision of qualified personnel as follows:
(a) There shall be a staff person, qualified by training and experience, responsible for administering each service and supervising assigned staff;
(b) There shall be designated staff who are trained and skilled in assessing and dealing with the needs of the elderly and in the delivery of each service;
(c) Volunteers and paid staff with the same responsibilities shall meet comparable requirements for training and skills;
(d) New staff shall receive an orientation and shall be trained prior to assuming responsibilities;
(e) Staff shall attend required training and provide in-service training for staff and volunteers of local programs;
(f) Staff shall not accept personal gifts or money from participants or vendors; and
(g) Staff shall not, without prior approval of the supervisor, pay bills or cash checks for clients or participants.
(2) Assure services are accessible to older persons by telephone, correspondence or person-to-person contact.
(3) Represent residents residing in long-term care facilities within the assigned geographical areas.
(4) Assure residents' rights are upheld and promote quality care in long-term care facilities.
(5) Investigate and work to resolve complaints on behalf of long-term care residents.
(6) Promote community involvement in the program by:
(a) Publicizing the existence and function of the local and state programs;
(b) Advising the public about the availability of current state, local and federal inspection reports, statements of deficiency and plans for correction for individual long-term care facilities in the service area;
(c) Organizing and implementing an active volunteer program;
(d) Assisting in the development of resident or family and friends councils;
(e) Sponsoring community education and training programs for long-term care facilities, human service workers, families and the general public about long-term care and residents' rights issues; and

(f) Promoting citizen involvement in order to ensure regular visitations especially for those residents without available family or friends.

(7) Implement accurate recordkeeping procedures to assure:

(a) An accurate record shall be maintained on each participant which documents:

1. Participant identification data;
2. Requests for service;
3. Eligibility for services provided; and
4. Follow-up.

(b) Reports for the Kentucky long-term care ombudsman are prepared and submitted in a format and time frame as directed;

(c) Procedures are followed to protect the identity, confidentiality and privacy of clients; and

(d) Nonclient-specific statistical and financial data is submitted to the area agency on aging as required.

Section 6. Responsibilities of the Volunteer Ombudsman. The volunteer ombudsman shall:

(1) Complete required training, including training and certification requirements for those involved in complaint investigation;

(2) Provide regular visitation of residents in nursing homes;

(3) Adhere to guidelines provided by state and district ombudsmen; and

(4) Complete required paperwork.

Section 7. Ombudsman Advisory Council. (1) The designated district ombudsman program shall have an advisory council whose functions are to:

(a) Review and advise programs on policies and procedures;

(b) Provide ongoing support and leadership; and

(c) Identify and generate funding resources for program viability.

(2) The advisory council shall be comprised as follows:

(a) Members shall be persons with a strong interest in improving the quality of life for the institutionalized elderly and for protecting their rights;

(b) Group size and composition shall be individualized to the needs of the local program but shall not be less than seven (7); and

(c) One-third (1/3) of the members shall be consumers or family members of consumers.

(3) Advisory council members shall not:

(a) Be responsible for certifying or licensing long-term care facilities;

(b) Be a provider of long-term care services or part of an association of providers;

(c) Have any interest or association which may impair the ability of the ombudsman to objectively and independently investigate and resolve complaints; or

(d) Gain economically or receive any compensation from a long-term care facility or association.

Section 8. Training. The Kentucky long-term care ombudsman shall provide training as follows:

(1) Staff and volunteers shall participate in a basic training program designed to give trainees a working knowledge of the ombudsman program and the long-term care system.

(2) Program sponsors, area agency on aging directors and directors of other sponsoring agencies shall receive basic training whenever possible.

(3) The district long-term care ombudsman shall receive a minimum of twenty-four (24) hours of training including at least the following areas:

(a) The Older Americans Act of 1965, as amended, and the aging network;

(b) Characteristics, special needs and problems of the long-term care resident;

(c) Characteristics of nursing homes including:

1. Numbers of beds;
2. Levels of care;
3. Services; and
4. Costs.

(d) The long-term care reimbursement system including:

1. Medicaid;
2. Medicare;
3. SSI; and
4. State supplementation.

(e) The regulation of facilities and the enforcement of regulations;

(f) Complaint investigation and resolution;

(g) Guardianship;

(h) Residents' rights;

(i) Development of residents' councils;

(j) Recruiting, screening, selecting, training, placing and supporting volunteers; and

(k) Use of public funds.

(4) In addition to the minimum training, district ombudsmen shall attend quarterly training meetings as provided.

Section 9. Confidentiality. Investigatory files, complaints, responses to complaints and other information related to complaints or investigations maintained by the ombudsman program shall be considered confidential information in accordance with the Older Americans Act of 1965, Section 307(12)(B) and (D). Confidentiality shall be maintained using the following criteria:

(1) Persons who gain access to residents' records shall not discuss or disclose information in the records or disclose a resident's identity outside of the program without:

(a) Written consent of the resident or complainant; or

(b) A court order to disclose.

(2) Information shall be secured as follows:

(a) Complaint files shall be contained in a locked file cabinet;

(b) Computerized systems shall have secured access codes; and

(c) Computer software containing confidential information shall be stored in a locked file.

(3) The confidentiality and disclosure criteria shall not preclude the ombudsman's use of otherwise confidential information in the files for preparation and disclosure of statistical, case study and other data, if the Ombudsman does not disclose the identity of persons otherwise protected in this section.

Section 10. Rights of Access. (1) Kentucky, regional and district ombudsmen shall have unrestricted access to long-term care facilities:

(a) Without prior notice;

(b) To meet with one (1) or more residents; and

(c) To observe the operation of the facility as it affects the patient.

(2) Volunteer ombudsmen shall have access during normal visiting hours to the:

(a) Residents' dining area;

(b) Residents' living area;

(c) Residents' recreational area;

(d) Lounges; and
(e) Areas open to the general public.
(3) Representatives of the Kentucky long-term care ombudsman program shall have access to a resident's medical and social records:
(a) With permission of the resident or his legal guardian, except as provided for under KRS 209.030(5); or
(b) By court order.
(4) Access shall not include the right to examine the financial records of the facility without the consent of the administrator.
(5) If the ombudsman is denied entry to a long-term care facility the administrator or operator shall be informed of the statutory authority for access. If entry is still denied, the ombudsman shall inform the Kentucky long-term care ombudsman, the Division of Licensing and Regulation, and secure assistance from local law enforcement officials.
(6) Willful interference, as governed by KRS 216.535(7), with representatives of the Kentucky long-term care ombudsman program in the performance of official duties shall be unlawful and:
(a) Result in a fine of $100 to $500 for each violation;
(b) Each day the violation continues shall constitute a separate offense.

Section 11. Referrals. (1) The Kentucky long-term care ombudsman shall refer reports of abuse, neglect, exploitation or spouse abuse to the Divisions of Family Services and, if appropriate, Licensing and Regulation for investigation. Referrals under this subsection shall not affect the continuing duty, full freedom and independence of the ombudsman to:
(a) Insure the continued adequacy and responsiveness of complaint investigation and resolution, monitoring and data collection systems consistent with the Older Americans Act;
(b) Maintain an independent capacity to investigate and resolve complaints;
(c) Receive and process, on a regular basis, information related to the number, type, and source of complaints, facilities involved, and the manner of complaint resolution; and
(d) Maintain by specific agreement the power, ability and right to monitor the agency's complaint processing performance and take action necessary to correct and improve deficiencies.
(2) District ombudsmen shall address concerns regarding the investigation or resolution of complaints referred under subsection (1) of this section to the Kentucky long-term care ombudsman.
(3) District ombudsmen shall make referrals to county attorneys, legal aid agencies and legal assistance offices. Referrals to the Office of the Attorney General and the Cabinet For Human Resources' Office of Counsel shall be made through the Kentucky long-term care ombudsman.

Section 12. Receiving Reports. (1) The Kentucky long-term care ombudsman, regional ombudsmen, district ombudsmen and persons identified and approved by these ombudsmen shall have the authority to provide intake of a complaint.
(2) The person receiving a report shall obtain as much information as possible, making a reasonable effort to obtain the:
(a) Name and location of the long-term care facility involved;
(b) Name and location of the resident;
(c) Name, address and telephone number of the person responsible for the resident;
(d) Nature of the complaint as specifically as possible;
(e) Name and location of alleged perpetrator; and
(f) Identity of the reporting source. Reports may be made anonymously.
(3) The person receiving the report may contact other agencies or individuals to secure additional information relevant to the investigation.

Section 13. Complaint Investigation. (1) Long-term care facility residents shall have the right to:
(a) Voice grievances and recommend changes in policies and services to facility staff and outside representatives of their choice, free from restraint, interference, coercion, discrimination or reprisal;
(b) Associate and communicate privately with persons of their choice; and
(c) Private meetings with the appropriate long-term care facility inspectors from the Cabinet for Human Resources.
(2) Long-term care ombudsmen shall investigate and resolve complaints:
(a) Made by or on behalf of elderly individuals who are residents of long-term care facilities relating to action which may adversely affect the health, safety, welfare and rights of the resident;
(b) Made by or on behalf of nonelderly long-term care facility residents if actions will:
1. Benefit elderly residents of that long-term care facility or elderly residents of long-term care facilities generally; or
2. Be the only viable avenue of assistance available to the resident; and
3. Not significantly diminish the long-term care ombudsman program's efforts on behalf of elderly persons.
(3) District and volunteer ombudsmen shall not investigate complaints unless certified by the Kentucky long-term care ombudsman program. Certification shall be extended after completion of minimum training requirements and attendance at an ombudsman competency conference conducted by the Kentucky long-term care ombudsman program or, in the case of volunteer ombudsmen, by the district long-term care ombudsman program.
(4) The Kentucky and regional ombudsmen shall inform the district ombudsmen of on-site investigations conducted in their districts.
(5) The investigation shall be conducted according to the following criteria:
(a) Investigation may include contact with the resident, staff of the long-term care facility and collateral contacts.
(b) Representatives of the program shall, upon entering the facility, promptly notify the administrator or his designated representative of their presence.
(c) Representatives of the program shall not enter the living area of residents without identifying themselves to the resident.
(6) The investigating ombudsman shall take immediate steps to resolve a substantiated complaint. Reasonable avenues of assistance to the complainant, directly or by referral, shall be addressed, and if efforts are unsuccessful, the ombudsman shall so advise the complainant and provide information explaining how to

proceed independently. Resolution may include:
(a) Persuading or negotiating at nursing home administrative level to change particular nursing home behavior, pattern or practice affecting the resident;
(b) Consulting with a resident, relative or nursing home staff member to resolve a problem;
(c) Effecting positive enforcement action by a regulatory agency;
(d) Proposing regulatory or statutory changes or additions;
(e) Communicating with community groups and professional organizations; and
(f) Encouraging the utilization of legal services assistance by the complainant.
(7) Written documentation shall be completed on complaint investigations and incorporated into the ombudsman files:
(a) The DSS 1240 Long-term Care Complaint form, herein incorporated by reference, shall be completed at the conclusion of the investigation; and
(b) A narrative documentation of the investigation shall include:
1. Identity of the resident on whom the report is made;
2. Identity of the long-term care facility;
3. Complaint;
4. Identity of persons interviewed and records or documents reviewed during the course of the investigation;
5. Factual information used to support findings and conclusions; and
6. Actions taken and services provided.
(8) Resolution shall include documented followup and ongoing monitoring of the situation for a reasonable period of time through contact with the complainant or resident, or otherwise if appropriate, for the purpose of determining the causes giving rise to the complaint have not been repeated and have not recurred.
(9) Retaliation and reprisals by a long-term care facility or other entity against an employee or resident for having filed a complaint or having provided information to the Kentucky long-term care ombudsman program shall be unlawful and:
(a) Shall result in a fine of $100 to $500 for each violation;
(b) Each day a violation continues shall constitute a separate offense.

Section 14. Reporting Requirements. The Kentucky long-term care ombudsman program shall maintain a statewide uniform reporting system to collect and analyze information on complaints and conditions in long-term care facilities for the purpose of identifying and resolving significant problems.
(1) The area agency on aging shall submit quarterly reports to the Kentucky long-term care ombudsman according to the following schedule:

1st quarter	Oct 1 – Dec 31	Due January 15
2nd quarter	Jan 1 – Mar 31	Due April 15
3rd quarter	Apr 1 – Jun 30	Due July 15
4th quarter	Jul 1 – Sep 30	Due October 15

(2) The district ombudsman shall submit an annual report to the Kentucky long-term care ombudsman no later than October 15 for inclusion in the annual state ombudsman report.
(3) Copies of the DSS 1240 Long-term Care Complaint form, herein incorporated by reference, shall be submitted by the district or regional ombudsman to the Kentucky long-term care ombudsman to be reviewed and retained in a confidential file. Supporting documentation shall be submitted upon request of the Kentucky long-term care ombudsman.
(4) The following activities facilitate the delivery of services but shall not be reported as units of service:
(a) Review, update or maintenance of resource or agency files;
(b) Travel time incurred in the delivery of the service;
(c) Training or staff meetings; and
(d) Project management.
(5) The following shall be utilized to determine unduplicated client count:
(a) Persons who directly receive a service from the program, including friendly visiting;
(b) Persons who reside in a long-term care facility and benefit from services directed at improving quality of life for residents in that facility, even if the resident did not directly receive the service; and
(c) Persons who participate in training conducted by the ombudsman program and are not a part of the program.

Section 15. Monitoring and Evaluation. (1) Ombudsman programs shall be monitored annually by the area agency on aging, or if services are provided directly by the area agency on aging, by the Division of Aging Services.
(2) Formal evaluations of the district ombudsman program shall be conducted at regular intervals, at least annually, by the Kentucky long-term care ombudsman. The results of the evaluation, omitting client identifying information, shall be made available to the area agency on aging to be used to plan and implement program changes to meet participant needs.

Section 16. Material Incorporated by Reference. (1) Forms necessary for the implementation of the Kentucky long-term care ombudsman program shall be herein incorporated.
(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.

Section 17. Repeal. 905 KAR 8:070 is hereby repealed.

LARRY MICHALCZYK, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: November 7, 1991
FILED WITH LRC: November 12, 1991 at 3 p.m.
PUBLIC HEARING: A public hearing on this regulation will be held on December 23, 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 December 18, 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 Rawlings
(1) Type and number of entities affected: The type and number of entities affected are those

applicants for approval as court resource homes as the regulation set minimum standards for all court resource homes.

(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 and 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 and 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 court resource homes are approved.

(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 regulations only clarify and correct terminology in the existing regulation.

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 regulations only clarify and correct terminology in the existing regulation.

2. Continuing costs or savings: There will not be any continuing cost or savings for the Department for Social Services as the proposed regulations only clarify and correct terminology in the existing regulation.

3. Additional factors increasing or decreasing costs: There are no additional factors that would increase or decrease costs or effect competition for the Department for Social Services because the proposed regulations only clarify and correct terminology in the existing regulation.

(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 regulations.

(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 regulations.

(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 amends an existing regulation to comply with KRS Chapter 13A and is applicable for the long-term ombudsman program statewide.

CABINET FOR HUMAN RESOURCES
Office of Inspector General

906 KAR 1:100. Nurse aide registry, abuse registry and hearing procedures.

RELATES TO: KRS 216.860, 216.865

STATUTORY AUTHORITY: KRS 194.030(12)(b), 216.865, 42 CFR 483.75, 483.150-.158

NECESSITY AND FUNCTION: KRS 216.865 states that the Secretary of the Cabinet for Human Resources shall adopt regulations relating to licensure fees, standards of care and service, and procedures for enforcement of penalties. The Office of Inspector General has been designated the promulgating agency in accordance with KRS 194.030(12)(b). The Cabinet for Human Resources (cabinet), as part of its agreement with the Health Care Financing Administration (HCFA), must establish and maintain a nurse aide registry. As part of that registry, the cabinet shall investigate allegations of resident neglect, abuse and misappropriation of resident property. Within this regulation the cabinet also provides for a hearing and appeals procedure for nurses aides that the cabinet finds reason to include on the abuse registry.

Section 1. Definitions. (1) "Abuse registry" means a computerized listing of those individual nurse aides who have had an allegation of resident neglect, abuse, or misappropriation of resident property substantiated through the process outlined in this regulation.

(2) "Nurse aide registry" means a computerized registry of those individuals who have successfully met the requirements of the Kentucky Department for Medicaid Services nurse aide training and competency evaluation program.

Section 2. Nurse Aide Registry. (1) The cabinet shall establish a nurse aide registry of individuals who have satisfactorily completed a state-approved nurse aide training and competency evaluation program.

(2) The registry shall include (as a minimum) the following:

(a) Name;

(b) Social Security number;

(c) Address;
(d) Date nurse aide was placed on the nurse aide registry; and
(e) Abuse registry indicator.
(3) If there is a twenty-four (24) month period during which the aide has not performed nursing related functions for compensation, the nurse aide's name shall be removed from the nurse aide registry.
(4) Required documentation of the nurse aide.
(a) Prior to the two (2) year anniversary date of nurse aide being placed on the nurse aide registry, the cabinet shall send a letter to the nurse aide. This letter shall request proof of employment as a nurse aide performing nursing or nursing related functions within the past twenty-four (24) months.
(b) If the nurse aide provides documentation, then the individual's record shall remain in good standing.
(c) If the nurse aide does not respond to this letter, it shall be noted in the individual's record that the individual is not in good standing. An individual may regain good standing by providing the following information:
1. Current address; and
2. Documentation that the individual has performed nursing or nursing related functions for compensation within the past twenty-four (24) months.
(d) If a nurse aide is not in good standing and cannot provide the necessary documentation within thirty (30) days after contacting the nurse aide registry, the individual's name shall be removed from this registry.
(5) If an individual's name has been removed from the nurse aide registry, the individual must complete the Medicaid nurse aide training and competency evaluation or competency evaluation before being placed back on the nurse aide registry.

Section 3. Abuse Registry, Notice, and Hearing Rights. (1) The cabinet shall establish an abuse registry to include information pertaining to findings of resident neglect, abuse, and misappropriation of resident property by a nurse aide.
(2) The cabinet shall investigate all allegations, and if an allegation is found to be substantiated, the implicated individual will be notified by mail of the following:
(a) The preliminary finding;
(b) The opportunity to make a written response to appear on the abuse registry concerning the cabinet's findings;
(c) The hearing procedure and appeal rights; and
(d) The intent to report the findings to the abuse registry.
(3) Within thirty (30) working days of the date that the cabinet makes a preliminary finding and mails the notice, the implicated individual may file a written request for a hearing with the secretary of the cabinet. If a request for a hearing is not filed, the findings of the cabinet's shall be considered final and shall be placed on the abuse registry.
(4) The abuse registry shall include a summary statement, if any, by the individual disputing the findings. Any disclosure made in response to inquiries to the registry shall include all findings and the summary statement.
(5) If the cabinet's preliminary finding of neglect, abuse or misappropriation of resident property is found unsubstantiated in the hearing process outlined in this regulation, then:
(a) The individual's name will not be placed on the abuse registry in regards to this specific case; and
(b) The individual will be notified by the cabinet.
(6) If the cabinet's preliminary finding of neglect, abuse or misappropriation of resident property is found substantiated in the hearing process, the cabinet shall place the individual's name and adverse findings on the abuse registry.
(7) If the cabinet's finding of neglect, abuse or misappropriation of resident property is overturned through the exercise of the individual's due process rights through adjudication or arbitration, then:
(a) The individual's name and accompanying information will be removed from the abuse registry in regards to this specific case; and
(b) The nurse aide shall be notified of this action by the cabinet.
(8) A nurse aide shall have the opportunity to correct any misstatements or inaccuracies in the individual nurse aide's record.

Section 4. Hearing Procedure. The hearing procedure shall provide the final finding of the cabinet in regards to resident neglect, abuse and misappropriation of resident property by a nurse aide.
(1) Upon receipt of the written request, the secretary shall appoint an impartial hearing officer.
(2) Notice of hearing shall be mailed to the individual not less than ten (10) days prior to the commencement of the hearing. The notice of hearing shall contain the reasons for the action. The notice of hearing shall be delivered by certified mail.
(3) The hearing must be held within sixty (60) calendar days from the receipt of the written request for a hearing.
(4) The individual and the cabinet may be represented by counsel and make oral or written argument, offer testimony, cross-examine witnesses, or take any combination of such actions. No depositions shall be permitted for the purpose of discovery, however, the hearing officer may authorize depositions of witnesses who, in his opinion, for good cause shown cannot be present at the hearing. A hearing officer shall preside at the hearing, shall keep order, administer oaths, may issue subpoenas and may admit relevant and probative evidence and shall conduct the hearing in accordance with reasonable administrative practice.
(5) All testimony at the hearing shall be recorded but need not be transcribed unless requested. The person or organization requesting a transcript shall bear the cost of such transcript.
(6) The 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.
(7) The hearing officer shall make a written determination as to the validity of the cabinet's finding. This determination shall include findings of fact and conclusions of law. With the determination, the hearing officer shall forward to the cabinet the record consisting of all documents, exhibits and

recorded testimony introduced in the hearing.
(8) The hearing officer's determination shall be the final finding of the cabinet. The cabinet shall forward this finding to the nurse aide within ten (10) days of the receipt of the determination of the hearing officer.

CLAY CESSNA, Inspector General
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 23, 1991
FILED WITH LRC: October 18, 1991 at 1 p.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for December 23, 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 December 18, 1991, of their desire to appear and testify at the hearing: 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: Eric Friedlander, Ralph Von Derau, David Crane
(1) Type and number of entities affected: 14,000 nurse aides.
(a) Direct and indirect costs or savings to those affected: There should be no additional cost to the vast majority of nurse aides. Those nurse aides who are found to be reportable may incur costs associated with their hearing rights. These costs are impossible to determine since nurse aides have a great deal of latitude in the way they may respond.
1. First year: Costs associated with hearings.
2. Continuing costs or savings: Costs associated with hearings.
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: This regulation would make it advantageous to the nurse aide to keep the nurse aide registry informed of their current address. There are reporting requirements a nurse aide may utilize if the aide is found by the cabinet to be reportable to the abuse registry.
(2) Effects on the promulgating administrative body: The costs of maintaining these registries and the investigations are required by the federal government through HCFA. There may be an additional staff person needed at an approximate cost of $18,000. This office already performs investigations related to these areas; however, investigations will become more specifically focused on the individual aide rather than exclusively on the long-term care facility. Costs for these investigations are already built into the costs of implementing OBRA. Additional costs due to nurse aide abuse hearings are imposibble to determine at this time without any experience.
(a) Direct and indirect costs or savings: $500 for printing new regulation. Since the federal government matches state expenditures on a 75%–25% basis, the cost for the additional staff position would be $6,000, in state dollars.
1. First year: $500 for printing costs. $6,000 for a staff position.
2. Continuing costs or savings: Continuing costs associated with this regulation will continue to be matched on a 75%–25% basis. Continuing costs will depend on the costs associated with a staff position.
3. Additional factors increasing or decreasing costs: The costs associated with hearings.
(b) Reporting and paperwork requirements: Additional paperwork associated with hearings and notification of nurse aides and facilities of individual's status.
(3) Assessment of anticipated effect on state and local revenues: There should be an increase of $12,000 of federal matching money.
(4) Assessment of alternative methods; reasons why alternatives were rejected: This regulation is required to implement the mandated federal program.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No conflict.
(a) Necessity of proposed regulation if in conflict: No conflict exists.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict exists.
(6) Any additional information or comments: None
TIERING: Was tiering applied? No. This regulation sets forth the responsibilities of the state in regards to nurse aides and their rights and as such must apply equally to all nurse aides.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 CFR Part 483.
2. State compliance standards. 902 KAR 20:310 – Facility specifications; nursing facilities. 902 KAR 20:300 – Operation and services; nursing facilities; 906 KAR 1:100 – Nurse aide registry, abuse registry and hearing procedures.
3. Minimum or uniform standards contained in the federal mandate. Federal standards include: resident rights, admission and discharge rights, resident behavior and facility practices, quality of life, resident assessment, quality of care, nursing services, dietary services, physician services, specialized rehabilitation services, dental services, pharmacy services, infection control, physical environment, administration, and nurse aide training requirements.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. The standards outline the state process for compliance with the mandated federal program.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional standards are imposed.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:545. Incorporation by reference of the nursing facility services manual.

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 13A.224, 194.050
NECESSITY AND FUNCTION: The Cabinet for Human Resources has the responsibility to administer the Medicaid program. KRS 205.520 empowers the

cabinet to comply with any requirement that is imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation incorporates into regulatory form, by reference, materials used by the cabinet in the implementation of the nursing facility services component of the Medicaid program. In the event of a conflict between manual materials incorporated by reference in this regulation and the primary subject administrative regulations of the cabinet relating to this component, the latter shall prevail.

Section 1. Incorporation by Reference. The cabinet incorporates by reference the nursing facilities services manual, effective November 1, 1991, used in the implementation of this component of the Kentucky Medicaid Program. This manual contains the policies and procedures issued by the cabinet for the implementation of this program element including benefit descriptions and operating instructions used by agency staff and participating providers.

Section 2. This manual incorporated by reference may be reviewed Monday through Friday between the hours of 8 a.m. and 4:30 p.m., Eastern time, in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky. Copies may be obtained from that office upon payment of an appropriate fee which shall not exceed approximate cost.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 25, 1991
FILED WITH LRC: November 1, 1991 at 3 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 23, 1991 at 9 a.m. in the Department for Employment Services Conference Room, Second Floor West, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by December 18, 1991, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler
(1) Type and number of entities affected: All participating providers of nursing facility services are potentially affected.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: There is no direct or indirect cost or savings to affected entities because this administrative regulation adopts manual materials incorporated by reference that outline procedures and operating instructions for agency staff and participating providers. Any direct or indirect cost or savings would be addressed in the primary component administrative regulation.
TIERING: Was tiering applied? No. Federal Medicaid regulations require that similarly situated providers be treated in a similar manner.

CABINET FOR HUMAN RESOURCES
Department for Mental Health and Mental Retardation Services

908 KAR 1:310. Administrative procedures for DUI facilities and programs.

RELATES TO: KRS Chapter 189A
STATUTORY AUTHORITY: KRS 189A.040(6), 194.030(9)
NECESSITY AND FUNCTION: KRS Chapter 189A requires the Cabinet for Human Resources to promulgate administrative regulations to prescribe standards for the licensing and operation of education and treatment facilities and programs, for offenders receiving assessment, education, or treatment under the driving while impaired law.

Section 1. Definitions. As pertaining to the cabinet's regulations regarding DUI programs unless the content otherwise requires:
(1) "Cabinet" means the Cabinet for Human Resources, Office of the Inspector General, Division of Licensing and Regulation, 275 East Main Street, Frankfort, Kentucky 40621.
(2) "Division" means the Cabinet for Human Resources, Department for Mental Health and Mental Retardation Services, Division of Substance Abuse, 275 East Main Street, Frankfort, Kentucky 40621.
(3) "DUI" means driving while under the influence of alcohol, drugs or intoxicating substances.
(4) "Program" means any public, private or

government entity eligible to deliver DUI assessment, education and treatment services.

(5) "Certification" means the process by which the Division of Substance Abuse recognizes and authorizes any program, assessor or instructor to provide DUI services.

(6) "Services" means the level of care appropriate for a client based on an evaluation of the client's needs.

(7) "Licensee" means the individual or entity approved and licensed by the Cabinet for Human Resources, Office of Inspector General, Division of Licensing and Regulation.

(8) "Assessment" means the procedure used to obtain information about a client's use of alcohol and other drugs and to determine the problems and needs of a client in order to recommend appropriate services.

(9) "Education" means a course which delivers factual information about alcohol and other drugs to increase awareness, knowledge, and change a client's attitude and behavior in relation to substance abuse.

(10) "Treatment" means outpatient, intensive outpatient, inpatient, residential, or detoxification services provided to clients in need of substance abuse services.

(11) "Program survey form" means a form issued by the division to the program to collect all necessary program information.

(12) "Program code" means a three (3) digit number issued to a program by the division when certification is granted.

(13) "Survey report of change form" means a form used by a program when submitting any new or revised information to the division.

(14) "Program administrator" means the person responsible for the services provided in a program and who has responsibility for determining if a client satisfactorily completes all required services.

(15) "Memorandum of understanding (MOU)" means a written communication between programs outlining the duties and responsibilities of each program.

(16) "Certified assessor" means a person who has been trained and approved by the division to evaluate the needs of clients and to recommend appropriate services.

(17) "Certified instructor" means a person who has been trained and approved by the division to provide education services in a DUI program.

(18) "Approved curriculum" means "talking about alcohol driving unimpaired nine (9) hour," "talking about alcohol driving unimpaired twenty (20) hour," "Kentucky alcohol and other drug education program nine (9) hour," and "Kentucky alcohol and other drug education program twenty (20) hour."

(19) "Individual" means a person certified by the division to conduct assessment and education services.

(20) "Uniform citation" means the citation given to the defendant when the defendant is arrested for driving under the influence.

(21) "Administrative Office of the Courts (AOC) Form 494" means the form completed by the circuit clerk on the day of the defendant's conviction and which is sent to the program where the defendant is referred for assessment.

(22) "Cabinet for Human Resources (CHR) Form PAM MHMR 052" means the form completed by the program which conducts the client's assessment, and which is then used to notify the court, the client, Department of Transportation (DOT), and the division when a client has satisfactorily completed any required services.

(23) "Computerized screening instrument" means the Kentucky driver risk inventory (DRI).

(24) "Completion notice" means the client's copy (pink) of CHR Form PAM MHMR 052.

(25) "Case management" means an administrative function to insure coordination of client services and continuity of care.

(26) "Court" means the court where a client is convicted of DUI.

(27) "Department of Transportation (DOT)" means the Commonwealth of Kentucky, Transportation Cabinet, Department of Vehicle Regulation, Division of Driver Licensing, State Office Building, Frankfort, Kentucky 40622.

(28) "Nine (9) hour basic education course" means an education service for low risk first-time offenders consisting of a minimum of nine (9) hours of instruction and group interaction.

(29) "Twenty (20) hour early intervention education course" means an education service for first or multiple offenders consisting of a minimum of twenty (20) hours of instruction and group interaction.

(30) "Client" means any individual receiving services in a DUI program.

(31) "First offender" means a person convicted of DUI for the first time within a five (5) year period.

(32) "Multiple offender" means a person convicted of a second or subsequent DUI within a five (5) year period.

(33) "Low risk" means a client who has been assessed as not having an alcohol or substance abuse problem requiring treatment.

(34) "Medium risk" means a client who has been assessed as having an alcohol or substance abuse problem but is not chemically dependent.

(35) "Satisfactorily completed" means a client has fulfilled all requirements of the program and has received maximum benefits from the services received.

(36) "Negative certification action" means an action by the division to revoke, modify, suspend, or deny certification or recertification of a DUI program, assessor or instructor.

(37) "Hearing officer" means the person designated by the division to conduct a hearing and make a recommendation to the division on any appeal of negative certification action.

(38) "DUI services" means assessment, education, or treatment services provided by an eligible DUI program.

(39) "Applicant" means any individual or entity who has been licensed by the cabinet, and is making application for certification to the division.

(40) "Facility" means the physical area, including the grounds and buildings where program functions take place.

(41) "Release of information" means a client's written authorization for a program to release information from that client's case file.

(42) "Clinical services supervisor" means a person who meets the qualifications pursuant to the definition in 908 KAR 1:190.

Section 2. Licensing Requirements. (1) An individual or entity desiring to provide DUI services as an assessment facility and program, education facility and program, or treatment facility and program shall first obtain a

license from the cabinet in accordance with the drug abuse treatment and education center (DATE center) regulations, 908 KAR 1:150 through 908 KAR 1:260; and the nonmedical alcohol treatment and education center (NATE center) regulations, 908 KAR 1:010 through 908 KAR 1:140.

(2) Programs conducted in a facility established and maintained by a licensed federal hospital shall be exempt from state licensing requirements, as such facilities are created subject to federal licensure and regulatory requirements, in accordance with 38 USC 201, 38 USC 620A, 38 USC 4133, and 38 USC 4134.

(3) Programs conducted in a facility established and maintained by a hospital licensed by the cabinet shall be exempt from obtaining a DATE or NATE center license in accordance with 908 KAR 1:160(1)(c).

(4) The cabinet shall notify the division in writing when an individual or entity:

(a) Is granted a license as a DATE or NATE center;

(b) Has stated in its application that it desires to provide DUI services; and

(c) If its license has been renewed, suspended or revoked.

Section 3. Certification Requirements. (1) An individual or entity, properly licensed, and desiring to provide DUI assessment or education services, shall obtain program certification from the division. A properly licensed treatment facility may provide DUI treatment services without receiving program certification from the division. A certified program may operate statewide if it is properly licensed in all service locations. All service locations shall be subject to the same qualifications as the central office location. A program may be certified to provide assessment, or education services. A program shall have at least one (1) individual on staff who has been certified by the division, to be a certified program.

(2) Any individual or entity eligible to be certified as a program shall make application in writing to the division. The division shall provide an application for program certification along with a program survey form to be completed by the applicant and returned to the division. The applicant shall be required to submit to the division a separate program survey form for each location where the applicant is licensed, and where the applicant desires to provide DUI assessment or education services. The applicant shall designate on the program survey form the types of services that will be provided, the fees charged for such services, and the names and titles of all certified staff providing assessment or education services. The division shall issue a program code to the program when certification is granted and include the name and location of the program on any published list of certified programs.

(a) The division shall publish, on an annual basis, on July 1, a directory listing all programs certified to provide assessment services, the fees charged for such services, and the program service location addresses. The division shall issue the directory to all district court judges, district court clerks, and certified programs, and shall make it available to the public upon request.

(b) The division shall issue directory additions, revisions and corrections on October 1, January 1, and April 1 each year. A program shall submit all additions, revisions and corrections, in writing, on a program survey report of change form at least thirty (30) days prior to the publication dates.

(3) The program certification shall remain in effect for the period of licensure not to exceed one (1) year, is renewable for a like period, and shall expire simultaneously with the expiration of the program's license, unless earlier suspended or revoked. The program shall request recertification, in writing, forty-five (45) days prior to the expiration of certification. If certification has lapsed for more than sixty (60) days, programs shall submit a new application and will be considered as a new applicant. The division shall notify the program, in writing, when certification is issued, renewed, suspended or revoked.

(4) The program certification shall apply only to the program so certified and is not transferable. The program shall be responsible for notifying the division, in writing, when there is a change in ownership or control, a change in location, a change in the types of services provided, or a change in fees charged for such services. In the event of a change of ownership, a new application for certification shall be made to the division in the same manner as if the owner were applying for a new program.

(5) A program shall accept referrals from other programs or from the courts. A program making a referral shall require a client to sign a release of information form, and such form shall be sent to the program receiving the referral. Copies of any other client records available in the client's file including, but not limited to, the assessment results may be sent to the program receiving the referral. The assessment results and any interview notes or other information pertaining to the assessment shall be confidential and shall remain in the client's file.

(6) A program making or receiving client referrals shall execute a written memorandum of understanding (MOU) with all other programs involved in the referrals. The MOU shall fully outline the duties and responsibilities of the programs to each other and the terms of agreement in the MOU shall remain in effect until one (1) of the programs terminates the agreement.

(7) The division shall conduct at least one (1) unannounced inspection of the program's facility annually to determine whether the program is in compliance with the applicable certification standards. In their discretion, the division may conduct more than one (1) inspection annually. The inspection may be at any of the program's locations. The division shall notify the program, in writing, within thirty (30) days of the results of the inspection.

(8) The division shall have the right to inspect any office, files, client records or other materials of any certified program to insure compliance. The division shall have the right to attend and observe any assessment or education session conducted by the program. During these inspections program administrators, office managers, employees, or agents of the program shall cooperate with the division's representatives and shall provide such records or materials requested. The client record shall contain all information pertinent to the provision of services. Program records shall be

confidential and shall not be released without written consent of the client, unless court ordered or requested by the division, as part of a compliance review. A program shall maintain client records for a minimum of five (5) years. When records are discarded they shall be burned or shredded.

(9) The division shall suspend or revoke the certification of any program that is not in compliance with the applicable certification standards. The division shall notify the program, in writing, of any pending certification action, and shall provide written reports citing observed deficiencies as they relate to the certification standards. The program must submit an acceptable plan of correction for cited deficiencies to the division within ten (10) working days. The revocation or suspension of program certification shall be effective on the date stated in the notice sent to the program by the division. Programs shall have the right to appeal any suspension or revocation of their program certification. Hearing procedures involving certification shall be conducted in accordance with this regulation.

(10) All individuals desiring to provide assessment or education services shall meet the requirements for certification and receive certification from the division. A program shall employ only individuals who hold valid certification from the division to provide DUI assessment and DUI education services. It shall be the duty and responsibility of the program to insure that any individual in their employ providing DUI assessment services or DUI education services complete all training required by the division. Only training approved by the division shall suffice as proper training for DUI assessment and DUI education services. An individual shall make application for DUI assessor or DUI instructor certification by submitting an application for DUI assessor or DUI instructor training. The application shall be accompanied by a copy of any required transcript, diploma, certificate, certification, or proof of work experience. An individual certified by the division shall not provide DUI assessment services or DUI education services except in a program that is certified by the division.

(a) An individual providing DUI assessment or DUI education services for a program shall be considered an agent of the program and the program shall share the responsibility for all acts performed by the individual within the scope of employment.

(b) If a certified DUI assessor or DUI instructor terminates association with a program, the program shall notify the division in writing.

(11) The division shall notify the program and the individual, in writing, within thirty (30) days after completion of a DUI assessor or DUI instructor training session that the individual has satisfactorily completed the training, has met all of the requirements for certification, and has been certified. The division shall notify the program and the individual, in writing, of any observed deficiencies, as they relate to DUI assessor and DUI instructor certification, within thirty (30) days after completion of a training session. The division shall state the reasons for withholding DUI assessor or DUI instructor certification and shall notify the program and the individual of any required corrective plan of action.

(12) An individual desiring certification as a DUI assessor shall demonstrate minimum competency in order to successfully complete the requirements for DUI assessor certification.

(a) An individual desiring DUI certification as an assessor shall have the following education or training:

1. Certified chemical dependency counselor (CCDC); or

2. Certified chemical dependency counselor (CCDC) trainee, working under the supervision of a clinical services supervisor; or

3. Qualified mental health professional defined as:

a. Psychiatrist – board certified or board eligible;

b. Psychologist – licensed clinical psychologist, certified psychologist, or a psychological associate;

c. Psychiatric nurse – or registered nurse with one (1) of the following combinations of education and experience:

(i) Master of science in nursing (MSN) with specialty in psychiatric or mental health nursing;

(ii) Bachelor of science in nursing (BSN) and a minimum of one (1) year of work experience in a mental health setting;

(iii) Three (3) year educational program diploma with two (2) years of work experience in a mental health setting;

(iv) Associate degree in nursing (ADN) with three (3) years of work experience in a mental health setting; or

d. Psychiatric social worker – MSW or MSSW; or

e. Professional equivalent as defined by the Division of Substance Abuse; or

f. Mental health associate – an individual with a bachelor's degree in a mental health related field, working under the supervision of a clinical services supervisor.

(b) An individual desiring certification as a DUI assessor shall complete the following training requirements:

1. Attend and participate in all sessions of the assessor training;

2. Obtain an eighty (80) percent or above overall score on performance in the following areas:

a. A written pretest and posttest on general course content;

b. A written pretest and posttest on the computerized assessment instrument;

c. A demonstration of ability to conduct an assessment interview; and

d. A demonstration of ability to make a client referral based on a case study.

3. Receive the recommendation of the trainer(s) and the division's representative.

4. Sign a statement agreeing to abide by a code of ethical practice and the standards stated in these regulations.

(13) An individual desiring certification as a DUI instructor shall demonstrate minimum competency in order to successfully complete the requirements for instructor certification.

(a) An individual desiring certification as a DUI instructor shall have the following education or training:

1. Bachelors degree in a related field – social work, psychology, sociology, counseling, or education; or

2. Associate degree and two (2) years of work

experience in the substance abuse field; or

3. High school diploma or a general education development (GED) equivalency certificate and four (4) years of work experience in the substance abuse field.

(b) An individual desiring certification as a DUI instructor shall successfully complete DUI instructor training in one (1) of the curricula approved by the division. The individual shall attend and participate in all sessions of the training; take a pretest and obtain a score of eighty (80) out of a possible 100 points on a written posttest; demonstrate ability to make an oral presentation of assigned material; demonstrate group facilitation skills; and receive the recommendation of the trainer(s) and the division's representative.

(14) Certification for DUI assessors and DUI instructors shall be for a period of five (5) years, is renewable for a like period, and shall expire on the anniversary date of certification, unless earlier suspended or revoked. It shall be the duty and responsibility of the individual, to submit to the division, a completed recertification application and all other required forms, at least sixty (60) days prior to the date of expiration of the DUI assessor or DUI instructor certification. An individual shall attend any recertification training required by the division, during the previous sixty (60) month period. If certification has lapsed for more than one (1) year, an individual's recertification application shall be processed as a new application, and the individual shall attend all additional training required by the division. An individual shall have the right to appeal any suspension or revocation of their DUI assessor or DUI instructor certification. Hearing procedures involving certification shall be conducted in accordance with this regulation.

(15) All complaints relating to a certified program, a certified DUI assessor, or a certified DUI instructor shall be sent to the division, in writing, and signed by the complainant. The division shall investigate the complaint and notify the complainant, in writing, within thirty (30) days, of the action taken.

Section 4. Assessment Requirements. (1) The courts shall refer all convicted first and multiple DUI offenders for an assessment to a certified program, listed in a directory, provided to the courts by the division. The court clerk, shall on the day of conviction, send a copy of the client's uniform citation, attached to the Administrative Office of the Courts (AOC) Form 494, to the program which will conduct the client's assessment.

(2) AOC Form 494 is hereby incorporated by reference. Copies of the form may be inspected or obtained at the Department for Mental Health and Mental Retardation Services, Division of Substance Abuse, 801 Schenkel Lane, Frankfort, Kentucky 40601 between the hours of 8 a.m. through 4:30 p.m., Eastern time, Monday through Friday.

(3) A program providing DUI assessment services shall use only the computerized screening instrument approved by the division. The DUI assessment shall be conducted by an assessor holding valid certification from the division. The computerized screening instrument portion of the assessment may be administered individually or in groups. A program shall arrange for the oral reading of the assessment questions and instructions for clients who are unable to read the written instructions. A program shall maintain a roster of all clients assessed, in a format approved by the division, and a copy of such roster shall be maintained in the program files and made available to the division upon request.

(4) An assessment shall include the administration of the approved computerized screening instrument; a structured private clinical interview between the certified DUI assessor and the client; a discussion of referral options and client resources; the determination of a diagnostic impression; and referral to a program offering services at the level of care needed by the client. A client shall pay all required fees for the assessment to the program. A program may reduce or waive the assessment fee as deemed necessary by that program.

(5) An assessor shall refer any client assessed as needing education or treatment services to any program eligible to provide substance abuse or chemical dependency education or treatment services. The assessor shall refer a client to receive the type of service appropriate to the client's needs at their own program or to any other eligible program. The client shall choose the program where the client desires to receive education or treatment services but the client shall not choose the level of care or type of service that the client is to receive.

(6) A program shall maintain a case file on each client assessed. The assessment results and any interview notes or other information pertaining to the assessment shall be maintained in the client's file. There shall be written documentation in each client's case file of all actions related to any referral to education or treatment services. Each client file shall contain the Cabinet for Human Resources (CHR) Form PAM MHMR 052 and this form shall be used as a referral notice and as a completion notice.

(7) CHR Form PAM MHMR 052 is hereby incorporated by reference. Copies of the form may be inspected or obtained at the Department for Mental Health and Mental Retardation Services, Division of Substance Abuse, 801 Schenkel Lane, Frankfort, Kentucky 40621 between the hours of 8 a.m. through 4:30 p.m. Eastern time, Monday through Friday.

(8) A program providing assessment services, shall maintain case management responsibilities, for every client the program assesses, whether the client receives DUI education or treatment services at the program conducting the assessment, or at another eligible program. The case management process shall include the coordination of services provided to each client; the responsibility of communicating with the court such information as the court requests on each client; the responsibility of notifying the court when a client is noncompliant; and the responsibility of notifying the Department of Transportation (DOT), the courts, and the division when a client has satisfactorily completed the required services. The program shall issue to each client, who has successfully completed the required services, a copy of their completion notice contained in CHR Form PAM MHMR 052, as referred to in subsection (6) of this section.

(9) Program discontinuing operations while still maintaining case management responsibility for a client, shall notify the client in writing, and shall transfer the client's case file to the division. The division shall then maintain case management responsibility for the client until the client satisfactorily completes any required services.

Section 5. Education Requirements. (1) A program desiring to provide DUI education services, shall use a curriculum approved by the division, and instruction shall be provided by an instructor holding valid certification from the division. Two (2) levels of DUI education services; a nine (9) hour basic education course, and a twenty (20) hour early intervention education course shall be provided. Two (2) nine (9) hour curricula and two (2) twenty (20) hour curricula have been approved by the division. A program may provide any or all levels of DUI education courses, and may use any or all of the approved curricula. The maximum number of clients in a class shall be no more than twenty-five (25). An instruction session shall not exceed three (3) hours per day.

(a) The nine (9) hour DUI basic education course shall be for first offenders only. Those first offenders assessed as low risk shall be enrolled in a nine (9) hour education course.

(b) The twenty (20) hour DUI early intervention education course shall be for first offenders or multiple offenders. A program may enroll first offenders and multiple offenders in the same session.

(2) The approved curricula are hereby incorporated by reference. Copies of the curricula may be inspected or obtained at the Department for Mental Health and Mental Retardation Services, Division of Substance Abuse, 801 Schenkel Lane, Frankfort, Kentucky 40621 between the hours of 8 a.m. through 4:30 p.m., Eastern time, Monday through Friday.

(3) A client shall attend and complete all sessions of class instruction, in the required sequence, and shall comply with all standards of behavior required by the program to satisfactorily complete a DUI education service. If a client demonstrates a need for services at a different level of care, the program administrator shall refer the client to any eligible program for the required services, and notify the program, which conducted the assessment of such action. The program administrator shall make the determination as to whether a client has satisfactorily completed the DUI education service, and shall be responsible for notifying the program, which conducted the client's assessment, when a client has satisfactorily completed the required DUI education services, or when a client is noncompliant.

(4) All required fees for an education service shall be paid to the program by the client and such fees shall cover the cost of all course materials. A program may reduce or waive fees for a client as deemed necessary by that program.

(5) A client not residing in the state may receive DUI education services in an out-of-state program that is licensed and eligible as determined by the division, based on the standards in this regulation, to provide comparable services at the level of care determined necessary to meet the client's individual needs.

Section 6. Treatment Requirements. (1) A program desiring to provide treatment services shall be licensed by the cabinet to provide the services offered, shall conform to the state licensure standards for treatment facilities, and shall employ qualified staff members, who have training and experience in dealing with the physical and psychological complications of alcohol and drug dependence. A program may provide outpatient, intensive outpatient, inpatient, residential or detoxification chemical dependency or substance abuse treatment services.

(a) A client assessed as having an alcohol or drug abuse problem, who is chemically dependent and who is not at risk for problems with withdrawal symptoms is eligible to receive outpatient or intensive outpatient treatment services. A client may also be referred to outpatient or intensive outpatient treatment services after receiving inpatient, residential or detoxification services.

1. A program may provide outpatient or intensive outpatient treatment services to a client individually or in a group. A group may include first and multiple offenders in the same session. The maximum number of clients in a group shall be no more than fifteen (15).

a. A client shall receive a minimum of one (1) hour of individual outpatient treatment each week or a minimum of two (2) hours of group outpatient treatment each week. If a client receives outpatient treatment services less than one (1) time each week, to meet the individual clinical needs of the client, the program administrator shall maintain proper documentation in the client's case file to show cause.

b. A client may receive intensive outpatient treatment services, more often, and in longer sessions, each week to meet the individual clinical needs of the client.

2. A client may be referred to a self-help group to supplement but not to replace the outpatient or intensive outpatient treatment services.

(b) A client assessed as having a severe alcohol or drug abuse problem, who is chemically dependent, who exhibits symptoms of withdrawal, and who has not been able to maintain sobriety while receiving outpatient treatment is eligible for referral to inpatient, residential, or detoxification treatment services. First or multiple offenders may be referred to receive inpatient, residential, or detoxification services.

(2) A program providing DUI treatment services shall be responsible for developing a treatment plan for each client accepted for treatment services. The treatment plan shall be individualized for the needs of each client and shall include a written statement of treatment goals and measurable objectives together with a realistic time schedule for achieving them. A client's treatment plan shall be reviewed at least once every ninety (90) days and all changes shall be recorded in the client's case file.

(3) A client shall comply with all attendance requirements of the treatment plan to satisfactorily complete a required treatment service. If a client demonstrates a need for service at a different level of care the program administrator shall refer the client to any eligible program for the required services, and

notify the program which conducted the client's assessment of such action. The program administrator shall make the determination as to whether a client has satisfactorily completed the treatment service, and shall be responsible for notifying the program, which conducted the client's assessment, when a client has satisfactorily completed the required treatment services, or when a client is noncompliant.

(4) All required fees for treatment services shall be paid to the program by the client. A program may reduce or waive fees for a client as deemed necessary by that program.

(5) Any client may receive treatment services at an out-of-state program that is licensed, and eligible, as determined by the division, based on the standards in this regulation, to provide comparable services at the level of care determined necessary to meet the client's individual needs.

Section 7. Hearing Requirements. (1) Any program or individual may appeal negative certification action taken by the division by notifying the division in writing within twenty (20) days of the issuance of notice of negative certification action. Upon receipt of notice of appeal, the director of the division shall designate a hearing officer.

(2) Notice of hearing shall be mailed to the program or individual not less than ten (10) days prior to the commencement of the hearing. The notice of hearing shall contain the reasons for negative certification action. The notice of hearing shall be mailed by certified mail, return receipt requested to the parties.

(3) The program, individual and the division may be represented by counsel and make oral or written argument, offer testimony, cross-examine witnesses, or take any combination of such actions. No depositions shall be permitted for the purpose of discovery, however, the hearing officer may authorize depositions or witnesses, who for good cause shown, cannot be present at the hearing. A hearing officer shall reside at the hearing, shall keep order, administer oaths, may issue subpoenas and may admit relevant and probative evidence and shall conduct the hearing in accordance with reasonable administrative practice.

(4) All testimony at the hearing shall be recorded but need not be transcribed unless requested. The person or organization requesting a transcript shall bear the cost of such transcript.

(5) The 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) The hearing officer shall send a written determination to the division including findings of fact and conclusion of law. With the determination, the hearing officer shall forward to the division the record consisting of all documents, exhibits, and recorded testimony introduced in the hearing.

(7) The division shall issue the hearing officer's final determination of certification status within ten (10) days of receipt of the determination from the hearing officer.

(8) No hearing officer shall participate in any hearing involving a program or individual with which the hearing officer has had in the past twelve (12) months preceding the hearing, any ownership, in whole or in part, employment, staff, fiduciary, contractual, creditor or consultative relationship.

(9) The division shall retain all records related to a hearing for a period of five (5) years.

DENNIS D. BOYD, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: September 23, 1991
FILED WITH LRC: October 18, 1991 at 1 p.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for December 23, 1991, at 9 a.m. in the Employment Services Conference Room, Second 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 December 18, 1991, of their desire to appear and testify at the hearing: 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: Dennis D. Boyd

(1) Type and number of entities affected: Currently there are 14 community mental health centers and 20 private programs providing services in 187 different locations, which are affected. These programs provide services to 30,000 clients per year. All programs will be affected by the additional licensing and certification requirements.

(a) Direct and indirect costs or savings to those affected: There will be a direct cost to programs providing DUI services. The amount for assessment services will be $1,600,000. The amount for education services will be $2,733,600. The amount for treatment services will be $13,868,800. The total direct cost to programs providing DUI services will be $18,202,400. 95 percent of the assessment costs will be paid by the client convicted of DUI. 90 percent of the DUI education costs will be paid by the client receiving the DUI education services. 60 percent of the treatment costs will be paid by the client receiving treatment services. The total cost for indigent care services to be reimbursed by CHR to contracted assessment education and treatment agencies (community mental health/mental retardation boards) is estimated to be $5,900,880 during fiscal year 1992. These funds will be earned through the CHR contract for indigent substance abuse services through a network of community mental health center's substance abuse programs. Approximately $1,500,000 is available through the DUI service fees available to CHR and subcontracted to community mental health centers. Another $1,500,000 is available to licensed DUI agencies through a deferment of a portion ($50) of the DUI service fee ($150) by the district courts to local treatment agencies for purpose of assessment, education or treatment services. Other cost offsets for treatment costs include insurance payment, self pay and charitable contributions provided by DUI assessment treatment and education agencies.

1. First year: $18,202,400 plus the cost of training and start-up computer costs.

2. Continuing costs or savings: $18,202,400 plus the cost of ongoing training.

3. Additional factors increasing or decreasing

costs (note any effects upon competition): a. Size of the client population; b. Program staff turnover and skill level of program staff; c. Impact of services delivered to the client population; d. Amount of indigent care required.

(b) Reporting and paperwork requirements: A program will be required to report to the courts the results of each client's assessment; when a client is noncompliant; and when a client satisfactorily completes education or treatment services. A program must report to the Transportation Cabinet and the Division of Substance Abuse when a client satisfactorily completes education or treatment services. There will be an increase in the amount of employee time required to perform these functions. There will be an increase in postage, paper and telecommunication costs.

(2) Effects on the promulgating administrative body: There will be a direct cost effect on the administrative body.

(a) Direct and indirect costs or savings: There will be a $150,000 direct cost for salaries, computer time, telecommunications, training, inspections, travel, printing, postage, paper and administrative support services.

1. First year: $150,000
2. Continuing costs or savings: $150,000
3. Additional factors increasing or decreasing costs: a. Number of inspections; b. Amount of paperwork and communication with the existing programs; c. Number of additional programs.

(b) Reporting and paperwork requirements: The administrative body will be required to report to the programs on all actions taken. This will result in the use of additional employee time and increased costs in paper and postage.

(3) Assessment of anticipated effect on state and local revenues: There will be an effect on state revenues through deployment of; purchase of equipment; and purchase of training, data processing, and inspection services.

(4) Assessment of alternative methods; reasons why alternatives were rejected: All other alternative methods were rejected because the methods chosen provide for the effective delivery of DUI services to the client population.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute or governmental policy in conflict.

(a) Necessity of proposed regulation if in conflict: None in conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None in conflict.

(6) Any additional information or comments: There is no additional information or comment.

TIERING: Was tiering applied? No. The requirements apply equally to all programs.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of the November 6 and 7, 1991 Meeting

The November meeting of the Administrative Regulation Review Subcommittee was held on Wednesday, November 6, 1991 at 2 p.m. in Room 327 of the Capitol and on Thursday, November 7, 1991 at 10 a.m. in Room 327 of the Capitol. Chairman Tom Kerr called the meeting to order, and the secretary called the roll. The minutes of the October 7 and 8, 1991 meeting were approved.

Present were:

Members: Representative Tom Kerr, Chairman; Senators Gene Huff, Pat McCuiston and Bill Quinlan; Representatives Woody Allen, Jim Bruce and James Yates.

Guests: Paul P. Borden, Richard F. Casey, Kentucky Higher Education Assistance Authority; Pete Pfeiffer, George Wright, Lauren Schaaf, Ted Crowell, Department of Fish and Wildlife; John T. Smither, Jack A. Wilson, Ralph Schiefferle, David W. Phillips, Martha Hall, Division of Water; Jim Villines, Dave Rosenbaum, Department for Surface Mining; Kevin Noland, Department of Education; Daniel F. Egbers, Personnel; Dan Tuttle, H. Gene Taylor, Lee Troutwine, Junie M. Tutterow, Department of Local Government; Dave Nicholas, Division of Occupations & Professions; Don C. Paris, John L. Ackman, Jr., Linda Poliskie, Kentucky Real Estate Commission; Roger Nesbitt, Chris Kring, Department of Agriculture; Tom Campbell, Lori Poole, Jack Damron, Corrections Cabinet; Charles E. McCoy, Labor Cabinet; Patrick Watts, Department of Insurance; Judith G. Walden, Department of Housing, Buildings and Construction; Danna Droz, Ed Crews, Mark Hooks, Ryan Halloran, David Thomas, David Nichols, Eric Friedlander, David Crane, Ralph Von Derau, Barbara Coleman, Cathy Mobley, Janice Kline, Cabinet for Human Resources; Henry Wilson, Onsite Sewage Advisory Committee; Bob Weiss, Home Builders Association of Kentucky; Albert Robinson; Ron Jackson, Robert H. Newberry, Kentucky Automobile Dealers Association; Joseph E. Smith, Mary Onley-Linder, Alliant Health System; Barbara Dermody, Kentucky Nurses Association; John L. Day, Day Realty & Appraisal; John P. Cooper, Kentucky Bankers Association; Kim O'Reel, Catholic Conference of Kentucky; James E. Baker, Western Kentucky Coal Association; Tom Fitzgerald, Kentucky Resources Council; Bill Caylor, Kentucky Coal Association.

LRC Staff: Joe Hood, Greg Karambellas, Susan Wunderlich, Donna Pierce, Peggy Jones.

The Subcommittee determined that the following administrative regulations do not comply with KRS Chapter 13A:

Kentucky Real Estate Appraisers Board

Don C. Paris, Chairman, and John Ackman, Attorney, Real Estate Appraisers Commission; John L. Day, Day Realty and Appraisal; and John P. Cooper, Kentucky Bankers Association, appeared before the Subcommittee. Mr. Day stated that these administrative regulations did not comply with KRS Chapter 324A; that state appraisers who did not wish to be certified under the federal program had a right to be certified under KRS Chapter 324A in one of the categories established for state certified appraisers; that the regulations were an amendment of KRS Chapter 324A and ignored the state categories; that the Commission refused to certify those appraisers who did not wish to be certified under the federal program; that other states, that had decided to accept the federal requirements had established less onerous requirements, and that Kentucky appraisers could qualify under other states' requirements but not under Kentucky's requirements; and, that the federal certification program was not mandatory.

Commission personnel stated that KRS Chapter 324A had been enacted before the federal agencies involved had established specific or final requirements, and that it had been intended to be enacted so that Kentucky could comply with the federal requirements when they were established. They stated that the program was mandatory and that failure to comply would result in disapproval of the state program, and that state appraisers would lose business because they would not be qualified to conduct appraisals in federally related transactions. Commission personnel added that the Commission had made every attempt to comply with federal requirements and were aware that the federal agencies believed state law did not conform to federal requirements.

Mr. Cooper stated that failure to establish and comply with the federal program would result in the inability of Kentucky appraisers to make appraisals in federally related matters such as those related to the banking and savings and loan industries, and could result in increased costs to the industry. He stated that the General Assembly needed to consider KRS Chapter 324A and make necessary amendments.

Subcommittee staff were requested to explain the federal and state requirements. Subcommittee members were informed that if a state wanted its appraisers to be certified to perform appraisals in federally related transactions, state appraisers would have to be certified under the federal program. However, KRS Chapter 324A provided for state categories of certification, and did not exclude certification of appraisers who did not wish to be certified under the federal program. It was pointed out that, whatever the intent, the statute was not drafted to specifically restrict certification to certification under the federal program; and that these regulations did not comply with KRS Chapter 324A. For example, Section 9 of 201 KAR 30:100 restricted the one year extension of education requirements established in KRS 324A.035(3). This violated KRS Chapter 13A and the constitutional prohibition against the amendment of a statute by anybody other than the General Assembly. Letters from the relevant federal agencies stated that KRS Chapter 324A did not comply with federal requirements. It appeared that certification under the categories for certification of those not wishing to be certified under the federal program would not be made, contrary to KRS Chapter 324A; and that certain documents containing requirements for certification had not been incorporated by reference as required by KRS Chapter 13A.

Subcommittee members stated that a finding that these regulations were deficient would allow them to exist until the deadline for expiration established by KRS Chapter 13A; since the regulations did not conform to KRS Chapter 324A, a finding of deficiency would ensure that the General Assembly would review applicable

statutes for necessary amendments. Questions were raised concerning the possibility of law suits if the Commission enforced these regulations before the statutes were amended or the regulations expired. It was explained that a court would conduct an independent review of regulatory compliance with KRS Chapter 324A, and that a finding of deficiency would not determine issues raised in a lawsuit. The Subcommittee approved a motion that these administrative regulations did not comply with statutory authority.

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

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

201 KAR 30:120 (Temporary appraisal permits.)

201 KAR 30:130 (Standards for education approval – fees.)

Education and Humanities Cabinet: Education Innovation Incentive Committee

702 KAR 7:065 (Designation of agent to manage high school interscholastic athletics.) On motion of Representative Bruce, the Subcommittee attached a letter of objection. Representative Bruce stated that the Kentucky High School Athletic Association has not recognized private and parochial schools adequately, and has treated them differently. He also stated that this regulation is of such importance that the entire legislature should look at it.

Public Protection and Regulation Cabinet: Department of Insurance: Credit Life Insurance and Credit Health Insurance

806 KAR 19:030 (Refunds, unearned premium; computation.) Representative Bruce stated that he and a number of other legislators had questions relating to conformity of this administrative regulation with statutory authority. It appeared that this administrative regulation did not comply with statutory authority in various areas. Because of the complexity of the questions raised, they could not be resolved at a Subcommittee meeting and should be considered by the General Assembly at its next regular session. In order to assure such consideration and a forum for all parties concerned, the Subcommittee approved a motion by Representative Bruce that this regulation did not comply with statutory authority.

The Subcommittee determined that the following administrative regulations, as amended, complied with KRS Chapter 13A:

General Government Cabinet: Board of Examiners of Social Work.

201 KAR 23:070 (Specialty certifications.) This administrative regulation was amended to comply with the drafting requirements of KRS 13A.222. An objection had been raised to language referring to the format of the notice governed by Section 2. It appeared to make a reference to a format or a document that was not incorporated by reference. Section 2(3) was amended to make it clear that the format specified in this section is the format that is required, and that no other format or document was intended or required. It was pointed out that certain other format changes, particularly those relating to the contents of the definitions section, were required; that Subcommittee staff would work with Board personnel to complete these changes; and that amendments would be filed with LRC upon completion.

Department of Agriculture: Ginseng

302 KAR 45:010 (Ginseng, general provisions.) Pursuant to the Subcommittee's request at its October meeting, the Department proposed to amend the RELATES TO to cite 50 CFR Part 23. The citation was necessary because the Department is complying with federal legislation and a U.S. treaty. Department personnel explained that in order to permit the export of ginseng under the treaty, an approved state certification program was required.

Natural Resources and Environmental Protection Cabinet: Department for Environmental Protection: Division of Water: Public Water Supply

The amendments to the following regulations were offered by the Cabinet to comply with questions raised by Subcommittee staff relating drafting requirements of KRS Chapter 13A.

401 KAR 8:010 (Definitions for Title 401 Chapter 8.) Sections 2 and 3 of this regulation were deleted to comply with KRS 13A.222(4)(e), relating to definitions. Sections 2 and 3 were not definitions.

401 KAR 8:020 (Public and semipublic water supplies – general provisions.) Section 5 was a severability section, which was not needed. The agency agreed to delete Section 5.

401 KAR 8:070 (Public notification.) Section 7 was a severability section, which was not needed. The agency agreed to delete Section 7.

401 KAR 8:150 (Disinfection and filtration.) Section 6 was a severability section, which was not needed. The agency agreed to delete Section 6. Also, new summaries for the items incorporated by reference were filed to contain the information required by KRS 13A.2251(2)(a) and (b).

401 KAR 8:200 (Microbiological and turbidity monitoring.) The Statutory Authority and Section 2(4)(e) were amended to correct the statutory citation of federal statutes. Section 4 was amended to properly state the implementation dates of the provisions of this section. Section 5(4) was amended to specify the date of the material incorporated by reference. Section 6 was a severability section, which was not needed; and was deleted. Also, new summaries for the items incorporated by reference were filed to contain the information required by KRS 13A.2251(2)(a) and (b).

Natural Resources and Environmental Protection Cabinet: Department for Surface Mining Reclamation and Enforcement: General Provisions

At its October meeting, the Subcommittee had objected to these administrative regulations because they did not comply with the requirements of KRS 13A.222 relating to definitions in administrative regulations. In addition, the Subcommittee had objected to the use of a definitions administrative regulation in one chapter governing definitions in a number of KAR chapters. Cabinet personnel had agreed to repeal noncomplying definitions regulations, and to create new definitions administrative regulations as part of the amendments to conform

required by the Subcommittee. As part of this agreement, these administrative regulations were amended at the November meeting to delete definitional material that should appear in an administrative regulation governing definitions for the KAR chapter in which these administrative regulations are found. In addition, these administrative regulations were amended to delete cross-references to definitions regulations, repetition of definitions, and unnecessary cross-references to incorporations by reference in an administrative regulation. The new definitions regulations will be filed as emergencies and will be in effect simultaneously with these amended regulations before they become effective.

405 KAR 7:035 (Exemption for coal extraction incidental to the extraction of other minerals.)

Bond and Insurance Requirements

405 KAR 10:200 (Kentucky bond pool.)

Performance Standards for Surface Mining Activities

405 KAR 16:190 (Backfilling and grading.)

405 KAR 16:210 (Postmining land use capability.)

Performance Standards for Underground Mining Activities

405 KAR 18:190 (Backfilling and grading.)

405 KAR 18:220 (Postmining land use capability.)

Corrections Cabinet

501 KAR 6:060 (Northpoint Training Center.) Pursuant to questions raised in the initial review, the following policies were amended: NTC 04-01-01 – It was specified that the training coordinator is also the instructor trainer, and that upon completion of training and evaluation, students are certified in first aid and cardiopulmonary resuscitation; all emergency squad members (correctional officer) shall have 40 hours of relevant emergency training, that may be satisfied at any time during tenure, but are required to be completed before appointment to the emergency unit; NTC 06-01-01 – a citation was made to KRS 319.111 with regard to psychological reports, medical records, etc.; KRS 61.878, relating to open records, was cited; language relating to preliminary memoranda that did not conform to KRS 61.878(1)(h) was deleted; language was amended to provide that confidential items that a court has ordered to be opened do not require inmate consent; NTC 08-05-04 – The citation of 29 CFR 1910.1200 was amended to the correct citation, 29 CFR 1910.120.

501 KAR 6:090 (Frankfort Career Development Center.) Pursuant to questions raised in the initial review, the following policies were amended: FCDC 12-03-01 – with regard to toilet paper and Polygrip, it was made clear the empty roll and the empty container shall be returned for replacement; FCDC 14-04-01 was amended to make it clear that telephone calls by inmates to their attorneys shall not be monitored; FCDC 15-01-01 – The statutory cite, KRS 197.045, relating to "meritorious good time", was added.

Education and Humanities Cabinet: Department of Education: Office of Commissioner

701 KAR 5:020 (Elementary and secondary education hearing officer.) KRS 156.070 authorizes the State Board to adopt administrative regulations providing for the appeal to the board of any decisions made by the designated managing organization or agency responsible for interscholastic athletics. KRS 156.071 permits the State Board to "delegate the taking of evidence and rendition of a written recommendation of disposition to the full board, to a panel of the board or to a single member of the board acting as a hearing officer, relative to any hearing, appeal, or decision, judicial or quasi-judicial in nature, which the board is empowered or directed, by this or any other chapter, to conduct, hear, or make; provided, the full board, as provided by statute, makes the final decision or determination, based upon the evidence submitted". This regulation, as proposed, established a position of hearing officer and authorized the State Board to appoint a person upon recommendation of the chief state school officer. Kevin Noland, representing the Department of Education, agreed to delete Section 1, which established the position of hearing officer. Section 2 was amended to specify that the hearing officer shall be a member of the board.

Public Protection and Regulation Cabinet: Department of Housing, Buildings and Construction: Kentucky Building Code

815 KAR 7:080 (Licensing of fire protection sprinkler contractors.) Section 4 was amended to correct the statutory citation from KRS 198B.570(2) to KRS 198B.570; and Section 4(1) was amended to place a period after the word "competent" and to insert "Certificates" before the word "shall".

Plumbing

815 KAR 20:020 (Parts or materials list.) This administrative regulation was amended to comply with the drafting requirements of KRS 13A.222, relating to the format of the definition section and the expression of mandatory and permissive requirements.

815 KAR 20:050 (Installation permits.) This administrative regulation was amended to provide the correct citation of statutory authority by changing the reference from KRS 318.010 to KRS 318.030; and to comply with the drafting requirements of KRS 13A.222, relating to the expression of mandatory requirements and prohibitions. Questions were raised concerning language relating to fees and whether there were "hidden" or new fees rather than a clarification of fees. Agency personnel stated that inspectors were confused as to the reasonable charge for the addition of backflow preventers to existing water service, taking over plumbing installations installed by unlicensed plumbers or incomplete installations abandoned by licensed plumbers, and for installation of a sewer service that did not require other plumbing. In addition, language in Section 3(4),(5) supported a $15 permit for each separately metered water service for the installation of water services or separately metered sewer services. Agency personnel stated that they did not believe that the regulation increased any fee, and that the fees imposed by the regulation were less than could have been justified by existing regulations. The Subcommittee accepted the explanation of fees charged.

Cabinet for Human Resources: 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.) Section 1(3), (4) were amended to require that the DEA Order Forms and the written record of the distribution of substances listed in Schedules III, IV or V be maintained in a readily retrievable manner. An objection was raised to the use of the words "copy one" and "copy two" with regard to DEA Order Form 222C, relating to Schedule II substances, and to the failure to use the word "file". The Subcommittee accepted the agency's explanation that "copy one" and "copy two" is the title used on the forms and that the amendment relating to retrieval negated the need to retain the word "file".

Department for Social Insurance: Public Assistance

904 KAR 2:360 (Transitional and at-risk child care.) This administrative regulation was amended to correct citations of other administrative regulations and other sections of this administrative regulation.

The Subcommittee determined that the following regulations complied with KRS Chapter 13A:

Kentucky Higher Education Assistance Authority: Teacher Scholarship Loan Program

11 KAR 8:030 (Teacher Scholarships.) This regulation was found deficient by the Administrative Regulation Subcommittee on September 4, 1991. Paul Borden, Executive Director, stated that the regulation was amended to correct the deficiency by amending the definition of qualified teaching service to include "or a private school certified pursuant to KRS 156.160(3)." The Subcommittee approved a motion by Senator Quinlan that this amendment corrected the deficiency and the regulation was not subject to expiration.

Department of Personnel: Classified

101 KAR 2:045 (Applications, qualifications and examinations.) Chairman Kerr informed the Subcommittee that this administrative regulation had been found deficient by the Subcommittee on November 7, 1990. He pointed out that the amendment being considered at this meeting did not correct the deficiency; but, in itself, was not objectionable. Chairman Kerr stated that approval of this amendment would not remove the objections previously made by the Subcommittee, and that this administrative regulation would expire on sine die adjournment of the next regular session.

Department of Local Government: Accounts

At its October meeting, questions had been raised over the statutory authority of the Department to promulgate these administrative regulations. It was unclear whether the confirmation of an executive order had transferred authority from the Finance and Administration Cabinet to the Department. Pursuant to a request by the Subcommittee, the Reviser of Statutes notified the Subcommittee that authority had been transferred to the Department; inadvertently, the necessary changes to the statutes did not reflect the transfer; and that he has directed the publishers of the official editions of the Kentucky Revised Statutes to change the references of the Finance and Administration Cabinet to the Department of Local Government pursuant to the authority granted the Reviser by KRS 7.136(2).

109 KAR 11:010 (Reimbursable revenues of local courts.)

109 KAR 11:020 (Reimbursement to law enforcement officers for certain expenses.) An objection had been raised that KRS 29A.180(1),(3) did not specifically provide for reimbursement of an official's own expenses incurred with regard to the needs of grand and petit jurors, or for other services and equipment. Agency personnel stated that the statutes had been interpreted to permit the questioned reimbursement since the 1970's. In response to a question by Chairman Kerr, agency personnel stated that the questioned reimbursement was not made from sheriffs' fees. The Subcommittee approved a motion made by Chairman Kerr that LRC be requested to refer the issue to the appropriate legislative Subcommittee for any necessary amendments to the statutes at the next regular session.

109 KAR 11:030 (Allocation of driving under the influence service fees.)

Tourism Cabinet: Department of Fish and Wildlife Resources: Fish

301 KAR 1:085 (Mussel shell harvesting.)

Game

301 KAR 2:140 (Seasons for wild turkey.)

Natural Resources and Environmental Protection Cabinet: Department for Surface Mining Reclamation and Enforcement: General Provisions

405 KAR 7:015 (Documents incorporated by reference.) Although this administrative regulation was approved, Chairman Kerr stated that the Cabinet understood that this administrative regulation incorporated material that related to a number of administrative regulations in violation of KRS 13A.221 and 13A.224; that the Subcommittee had agreed that the filing of new, or amendment of existing, administrative regulations to incorporate material in the regulation to which the material pertains, could be accomplished over a period of time; and, that this administrative regulation would be repealed upon completion of filing or amending administrative regulations.

405 KAR 7:020 (Definitions of terms used in 405 KAR Chapter 7 through 24.)

405 KAR 7:030 (Applicability.)

405 KAR 7:080 (Small operator assistants.)

Permits

405 KAR 8:020 (Coal exploration.)

Corrections Cabinet: Office of the Secretary

501 KAR 6:140 (Bell County Forestry Camp.)

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 Housing, Buildings and Construction: Kentucky Building Code

815 KAR 7:010 (Administration and enforcement.)

815 KAR 7:025 (Kentucky building code.)

Cabinet for Human Resources: Administration

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

Department for Health Services: Health Services and Facilities

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

902 KAR 20:072 (Operation and services; ambulatory care clinics.) Barbara Dermody, Kentucky Nurses Association, and Mary Onley-Linder, Alliant Health Systems, appeared before the Subcommittee. The proposed amendment filed with LRC by the agency would modify the staffing requirements of ambulatory care clinics. The existing requirement that both a registered nurse and a physician be present during operating hours would be modified to require that one licensed physician and one certified staff person be present during operating hours, and that aregistered nurse be on call but not required to be present during operating hours. Ms. Dermody spoke against this amendment. She stated that ambulatory care centers differ from private physician's offices because they are designed to offer services to a wide range of people with a wide range of problems and needs, such as pregnant women, infants, children, the elderly, chronic disease management, and trauma care. While a private physician may limit the type of patients he sees and control the number of patients seen, the comprehensive health care required in the clinics requires the presence of a registered nurse. Ms. Dermody felt that medical emergencies, such as asthmatic or heart attacks and traumatic injuries, required the presence of a registered nurse; and that medical assistants do not possess requisite knowledge, expertise, or license to provide the required care. In addition, Ms. Dermody stated that the Cabinet did not comply with KRS Chapter 13A in its statement of consideration because it did not give an adequate explanation as to the reasons for the amendment. The statement of consideration stated it was due to geographic and economic problems, but did not support this statement. Ms. Onley-Linder stated that the requirement that a registered nurse be present during operating hours would place a financial burden on the centers and would raise costs. She stated that she was a registered nurse and believed that the amendment would provide whatever medical personnel was necessary, and that additional needs would be met because a registered nurse was on call. Ms. Dermody stated that the licensing requirements relevant to the clinics and the various professions supported her claim that the presence of a registered nurse was required. Chairman Kerr stated that it did not appear that statutory authority had been exceeded, but that the issues were important enough to be considered by a legislative subcommittee with expertise in the matter. The Subcommittee approved a motion by Chairman Kerr that LRC be requested to refer these issues for consideration by Health and Welfare.

902 KAR 20:270 (Mobile health services.)

Department for Social Insurance: Public Assistance

904 KAR 2:016 (Standards for need and amount; AFDC.)

The following regulations were deferred upon agreement by the promulgating agency and the Subcommittee:

Board of Veterinary Examiners

201 KAR 16:010 (Code of conduct.)

Natural Resources and Environmental Protection Agency: Department for Surface Mining Reclamation and Enforcement: Permits

Dr. James Baker, Western Kentucky Coal Association; Tom Fitzgerald, Kentucky Resources Council; Bill Caylor, Kentucky Coal Association; and Jim Villines and Commissioner Dave Rosenbaum, Department for Surface Mining; appeared before the Subcommittee to discuss these regulations.

In the discussion of 405 KAR 8:030 and 405 KAR 8:040: Dr. Baker stated that these regulations mandate the use of the 1989 Federal Manual to identify and delineate wetlands. He felt that the use of this manual was inappropriate, because on August 17, 1991 the President signed the Energy and Water Development Appropriation Act, 2497. This Act instructed all federal agencies to discontinue the use of the 1989 manual, making it inappropriate for state use. He requested that the reference to the 1989 manual be removed from these regulations. The prohibition of the manual should also include a prohibition of TRM #20. Chairman Kerr asked whether another manual had been designated for use in the interim. Dr. Baker responded that another manual was being developed. Chairman Kerr asked what would be used in the meantime if TRM #20 and the federal manual are not to be used.

Mr. Fitzgerald stated that the 1987 manual, that had been used by the Corps of Engineers to delineate wetlands, was revised in 1989 by the group of federal agencies with authority. The 1989 manual cannot be used by federal agencies because of a recent act. Insofar as state administrative regulations are concerned, Mr. Fitzgerald stated it appears they should be amended to require use of the 1987 manual, especially since the proposed changes to the federal method used to delineate wetlands have not completed the federal regulatory process, and since the federal agencies are now using the 1987 manual.

Commissioner Rosenbaum stated that the cabinet believes the federal statute mandates the Corps use the 1987 manual, and that it is unclear what manual or requirements other federal agencies will use. The Cabinet interpretation is that under the recent federal act, only the Corps is prohibited from using the 1989 manual, and that other agencies (Conservation Service, Forestry, etc.) are prohibited from using the 1989 manual. The Cabinet has not been able to determine what they are using. Because of this, he proposed to amend 405 KAR 8:030 and 405 KAR 8:040, to delete the references to the 1989 manual and TRM #20, to advise applicants who are involved with wetlands that they need to coordinate closely with appropriate federal agencies, because if a wetland is going to be mined, a Section 404 of the 1972 Clean Water Act permit from the Corps is required. The ultimate authority is the federal agency, not the state.

Subcommittee staff stated that they were not informed that a recent federal act prohibited use of the 1989 manual until the meeting with the Cabinet on November 5, and that the regulations do not contain a reference to the federal act.

Representative Bruce asked what standards would be used during the period of deferral. Subcommittee staff stated that since the regulations are not emergency regulations, the proposed changes before the Subcommittee would

not be enforced, and that Cabinet personnel had notified Subcommittee staff that there was no current application relating to wetland delineation that would require immediate action. Representative Bruce stated that if the President or Congress had prohibited the use of one set of standards, it appeared that some standard would have to be used. Subcommittee staff stated that it was impossible to answer that question because of the lack of information: one federal agency is restricted, but it is not clear how other federal agencies are restricted.

Dr. Baker stated that he felt it might be better if the Corps used the 1987 manual but, he too was uncertain as to which standards were required. Mr. Fitzgerald stated that the Corps was using the 1987 manual and that he believed deferral would be better in order to resolve the issues raised. He added that the Corps assumes that state agencies will exercise their authority and resolve certain issues. If action were taken today, the result could be that neither the state or federal agencies would make the required review or take appropriate action.

Subcommittee staff stated that because of the number of federal agencies involved, it appeared that action taken today could result in the state being faced with different requirements from different agencies, and in federal disapproval. Commissioner Rosenbaum stated that the issue was not the reclamation or restoration of mined land, but only the delineation of wetlands. Staff stated that there was no confusion on the issues involved. Rather, the confusion concerned the specific requirements; that the legitimate concerns of Dr. Baker, Mr. Fitzgerald, and the industry can be addressed only if the required information is obtained. The Subcommittee had not been provided with the facts needed to make a decision. Representative Bruce moved that 405 KAR 8:030 be deferred. Chairman Kerr stated that similar problems existed with other regulations. Representative Bruce restated his motion to include both 405 KAR 8:030 and 405 KAR 8:040 and stated that unless these regulations were deferred, the only choice the Subcommittee would have would be to find them deficient.

Commissioner Rosenbaum stated it was almost certain that the issues on the federal level would not be resolved within a month or two. He understood that resolution on the federal level was not the condition on which deferral was suggested; that the Subcommittee wished to defer in order to obtain information it needs. Therefore, the Cabinet had no objection to deferral. Subcommittee staff recommended that the amendments relating to the definitions questions raised at last month's meeting also be deferred. Senator Huff requested Subcommittee staff to work with Cabinet staff on any necessary amendments. Subcommittee staff agreed and stated that one of the reasons for suggesting deferral was to permit Dr. Baker and others concerned to present their case and to provide the Subcommittee with additional information. Representative Bruce requested that Subcommittee and Cabinet staff work with Dr. Baker and others who are affected by these regulations.

Chairman Kerr requested that Mr. Fitzgerald address other issues to which he had referred. Mr. Fitzgerald stated that Kentucky has a very scant data base on the protection of fish and wildlife, and does not have sufficient information as to species involved, particularly those in smaller streams or headwaters on which mining has the greatest effect. The state approach in determining which streams require data collection before mining, in order to design the mining operation to protect wildlife, is underinclusive. It appears that a lot of the smaller more sensitive streams have been written off because there is no data on the existence of protected species. Mr. Fitzgerald stated that he would submit information to the Subcommittee before the next meeting. Representative Yates seconded Representative Bruce's motion, which was approved by the Subcommittee. Mr. Baker requested that Subcommittee staff notify him of the next meeting, information received, and offered to work with Subcommittee staff.

In the discussion of 405 KAR 16:180 and 405 KAR 18:180: Subcommittee staff stated that the amendments to the RELATES TO and STATUTORY AUTHORITY lines comply with the objections raised. Amendments to Sections 1(2)(d) and 2(2)(a),(b), relating to statutory authority, also comply. However, Sections 1(2)(a)2 and 2(1) refer to "important species of fish and wildlife" and "other species of wildlife", but do not define them. It is not clear whether federal law defines or establishes standards for the definition of "important" or "other" species. These regulations do not establish either the categories or standards. In discussions with Cabinet staff, they stated that the Cabinet would consult with the Department of Fish and Wildlife or the Nature Preserves Commission, who appear to have lists of what are important species. It was pointed out that KRS Chapter 13A requires that an administrative body cannot simply consult with another administrative body and use its list or standard without first incorporating it by reference in its own administrative regulation. The amendments to these sections still do not comply with KRS Chapter 13A.

Mr. Fitzgerald stated that the problem with these sections relates to the same problem he had previously discussed. He added that federal statutes suggest that in designing mining operations there should be provisions to protect wildlife resources, which is the meaning of protecting significant streams with specific biological communities reflected by diversity of species as well as federally endangered species. The state approach is that where there is an intrusion on the buffer zone, within 100 feet of a buffer zone around a stream, the stream would be monitored and mining plans designed accordingly. An additional category, "valuable streams", should also be defined. The problem is there has never been a comprehensive assessment of the diversity of wildlife and what they contribute to the stream system with regard to the coal fields. He added that the most effective streams, the headwaters, that act as refuges for important species, would not appear on the list. Even though the Cabinet might require monitoring if mining is conducted within 100 feet of the stream, a sediment or silt pond could be put in the stream and that would not be considered an encroachment on the buffer zone. Unless an analysis of what is in the stream is made, it cannot be determined what protective measures must be taken. If the time is not taken to make the proper analysis, important species would be destroyed.

Mr. Caylor stated that his association was opposed to these regulations, and that the regulations and TRM #20 would cost the industry a great deal of money because they would require the industry to test every stream. The coal industry was the only industry that was required, or did, monitor streams and protect wildlife. Since the legislature requires the protection of fish and wildlife across the board, the coal industry should not be the only industry that is required to spend time and money in compliance.

Chairman Kerr asked Cabinet personnel whether they had a list of important fish and wildlife species. Cabinet personnel stated they did not; that they had simply copied the language of the federal regulation which was very broad and protected species specified in state and federal law; and that the only available list of protected species was contained in federal law. Staff stated that: the federal regulation required important species be protected; Cabinet staff stated they consulted with other agencies with lists of species they considered important; federal law requires an affirmative act by the state agency to establish what species, in addition to those specifically protected by law, should be protected; the state agency did not determine that there were no other species requiring protection. The Cabinet consulted other agencies to determine what other species should be protected, and that consultation alone did not comply with KRS Chapter 13A. KRS Chapter 13A requires that the list developed by other agencies be incorporated in the Cabinet's regulations. Subcommittee staff stated that if standards and requirements were not incorporated in a regulation, Mr. Fitzgerald, Dr. Baker and Mr. Caylor would have no idea what standards they had to meet, and what actions or studies they were required to take or make. Subcommittee staff recommended that these regulations be deferred in order to determine what other species were protected and to incorporate the appropriate list.

Cabinet staff stated that if Subcommittee staff believed that the operable phrase was "applicable state or federal law", the Cabinet was unaware of any law that protects species other than endangered species. Subcommittee staff stated that the regulations should be deferred because the law refers to "important species", and the species included in this category are determined by Cabinet consultation with other agencies. This requires incorporation by reference of lists.

Dr. Baker stated that the manner in which it was determined who would pay for the inventory and research relating to important species resulted in the coal industry being the only regulated entity that was required to inventory and bear the cost. In order to comply with legal and constitutional requirements, the requirements should be applied universally on a statewide basis. Commissioner Rosenbaum stated that there was insufficient money to conduct the studies and agreed that the coal industry should not bear the cost for studies relating to every stream.

Chairman Kerr stated that unless "important species" was defined, the regulations were deficient, and they should be deferred. He recommended that persons appearing before the Subcommittee meet with Subcommittee staff to designate important species or the method by which they are determined.

Commissioner Rosenbaum stated that the only species specifically protected were those specified by laws governing endangered species, and that the location of species could make them "important". An example would be a small-mouth bass fish stream in Western Kentucky: since there cannot be many of these streams in that area because of water temperature, the impact there would make small-mouth bass an important species. However, in Eastern Kentucky, where that species is abundant, it may not be an "important species". The issue of "important species" is separate from the issue of when an applicant is required to collect instream aquatic monitoring data.

Chairman Kerr stated that when an application was submitted, someone made a determination whether a species was important or not and that standards were used. He asked whether the Cabinet was stating that it was a subjective decision by Cabinet staff who reviewed applications. Commissioner Rosenbaum stated that there was a degree of subjectivity in the determination but that the determination was made in consultation with other agencies that had the required data. Chairman Kerr stated that the regulations should be deferred.

Cabinet staff asked whether the amendments relating to definitions issues were also being questioned. Chairman Kerr said that there were no objections to the proposed definitions amendments, but that these would be deferred until the regulations were reconsidered. Subcommittee and the Cabinet agreed to defer the regulations.

In the discussion of 405 KAR 16:200 and 405 KAR 18:200: Subcommittee staff stated that there was a similar problem in Section 1(5)(a),(b). In Section 1(5)(a) there was a reference to compliance with federal laws or regulations governing the items specified. An objection was raised at last month's meeting because these were not cross-referenced. Subcommittee staff stated that if a violation occurred, the specific law or regulation would be cited as the basis for the violation.

A more important problem was with Section 1(5)(b), relating to the selection of seeds, species, and distribution patterns relating to mined land, because the required standards are not stated in these regulations. It would be impossible to determine what seeds, species, etc., were proper until after the fact; work could be completed only to have the industry informed that it did not comply with the regulation. The original amendment would have deleted "appropriate technical documents". Subcommittee staff stated that the deletion was appropriate because the technical documents were not specified; however, the regulation still does not contain standards to which regulated entities may conform.

Mr. Fitzgerald stated that an additional problem existed with the level of demonstration an operator is required to make when he mines cropland, under the requirement to restore cropland to its former productive capability. The method that had been used was the soil target yield, a comparison of the crop yield of the restored cropland with other cropland in the county. The Cabinet has substituted another method, the average county yield, and the mechanics of this method are not established in

these regulations. It appears the Cabinet intends to use a document produced by the Kentucky Agricultural Statistics Service, which employs an undifferentiated survey that does not consider soil types or restrict consideration to managed lands. Mr. Fitzgerald stated that the Service simply calls a farmer and finds out how much hay he has produced. This produces an artificially low-yield level that becomes the new target, and the miner will have to do less to restore the land in order for his bond to be refunded. This does not conform to the requirement that the land be returned to its former capability. He stated he did not believe the "average county yield" was consistent with federal and state requirements. However, if it is used, the method by which it is determined should be stated. In violation of KRS Chapter 13A, there is no reference to the methodology or standards.

The second issue Mr. Fitzgerald discussed related to bond release. After revegetation, the law requires reseeding and regrading, and a waiting period of five years. If successful revegetation is demonstrated in two of the five years, the bond, or the remainder of the bond that has not already been refunded, is refunded. In areas where roads, sediment ponds or other structures remaining after active mining exist, the Cabinet is releasing the bond after a two year period. Whether this policy is good is debatable; however, federal law requires a five year period before the bond is released. The shortening of this period by the state does not comply with federal law. The state has shortened the period because other states have done so.

With regard to average county yield, Cabinet staff stated that the Cabinet relied on the State Department of Agriculture statistics. Incorporation of documents issued by Agriculture would preclude the Cabinet from using new statistics as soon as they were issued. It was pointed out that KRS Chapter 13A required the incorporation of documents that impose or related to requirements or standards, and that the Cabinet could promulgate an emergency administrative regulation that was effective upon filing.

With regard to the average county yield, the Cabinet stated that it complied with federal law since it was used in Tennessee with federal approval; and the choice of yield standards is a policy decision, since either standard is federally approved. Mr. Fitzgerald responded that the program in Tennessee has not been tested for compliance with federal law, and that the Tennessee agency that is required to provide the statistical information under the Tennessee regulation does not exist. Therefore, the Tennessee regulation is inoperative and is not an option available to Kentucky.

Mr. Fitzgerald stated that the intent of the statute was to restore land to its original capability; that this was not accomplished by comparisons with unmanaged or dissimilar land; and that this could be accomplished only by measuring against the capability of land that is properly restored.

As to land with sedimentation ponds and roads, Cabinet staff stated that there was no need to wait five years before the bond refund. With regard to a question by Chairman Kerr as to the two out of five year approach, Cabinet staff stated that the two out of five years related to meeting productivity requirements, and that in these instances bond refunds are made in phases.

Chairman Kerr stated that the regulation clearly violates KRS Chapter 13A because it does not provide standards or requirements governing reseeding, species selection, etc., and does not identify or incorporate documents establishing the standards or against which performance is judged. Subcommittee staff stated that the deletions the Cabinet proposed to make would not satisfy the KRS Chapter 13A because the regulation would contain no standards. The Subcommittee and Cabinet agreed to defer these administrative regulations.

405 KAR 8:030 (Surface coal mining permits.)

405 KAR 8:040 (Underground coal mining permits.)

Performance Standards for Surface Mining Activities

405 KAR 16:180 (Protection of fish, wildlife, and related environmental values.)

405 KAR 16:200 (Revegetation.)

Performance Standards for Underground Mining Activities

405 KAR 18:180 (Protection of fish, wildlife, and related environmental values.)

405 KAR 18:200 (Revegetation.)

Special Performance Standards

405 KAR 20:010 (Coal exploration.)

Cabinet for Human Resources: Department for Health Services: Sanitation

902 KAR 10:140 (On-site sewage disposal system installer certification program standard.) Section 2(2)(d) was amended to require an applicant to submit proof of liability insurance, rather than proof of business bonding in the amount of $5,000 payable to the Cabinet. At the request of the Subcommittee, the agency agreed to defer final consideration of this regulation until the December 1991 meeting.

Health Services and Facilities

902 KAR 20:006 (Certificate of need process.)

The Subcommittee had no objections to emergency regulations which had been filed.

OTHER BUSINESS:

Real Estate Commission

201 KAR 11:230 (Mandatory continuing education.) Questions had been raised concerning the mandatory continuing education requirements imposed on brokers licensed prior to June 19, 1976. KRS 324.046(6) provided that these licensees were not subject to changes in educational requirements set out in KRS 324.046(1),(2). Although the agency stated that this exemption related only to the educational requirements for initial licensure, it was not clear that KRS 324.046 applied only to initial licensure educational requirements. KRS 324.160 provides specific grounds for the suspension or revocation of licenses. It neither imposes a continuing education requirement nor specifies that a license may be suspended or revoked for failure to comply with any continuing education requirement that may be imposed by the Commission. While KRS Chapter 324 establishes a fund to be used to conduct educational seminars and courses, it does not specifically require the establishment of required continuing education credits or courses. Commission personnel agreed to amend this regulation to exempt those licensed prior to June 1976 from the requirement to complete continuing education

courses. Members of the Subcommittee were informed that the amendment could not be made at this meeting, but must be filed with LRC. Senator McCuiston stated that because it was questionable whether KRS Chapter 324 imposed any mandatory continuing education requirements, the General Assembly needed to consider the chapter, and to determine whether additional amendments to the Chapter needed to be made. The Subcommittee approved a motion that this regulation did not conform to statutory authority.

Underground Storage Tanks for Gasoline

Representative Bruce requested that the Subcommittee consider the existing administrative regulation governing underground storage tanks for gasoline. Chairman Kerr agreed to place this issue on the December agenda and instructed Subcommittee staff to inform the administrative body of the appropriate administrative regulation.

The Subcommittee adjourned at 11:15 p.m. until December 6, 1991 at 10 a.m. in Room 327 of the Capitol

OTHER COMMITTEE REPORTS

COMPILER'S NOTE: In accordance with KRS 13A.290(9), the following reports were forwarded to the Legislative Research Commission by the appropriate jurisdictional committees and are hereby printed in the Administrative Register. The administrative regulations listed in each report became effective upon adjournment of the committee meeting at which they were considered.

INTERIM JOINT COMMITTEE ON AGRICULTURE AND NATURAL RESOURCES
Meeting of October October 23, 1991

The Interim Joint Committee on Agriculture and Natural Resources met October 23, 1991, and submits this report:

The committee determined that the following Department of Fish and Wildlife Resources administrative regulations comply with KRS Chapter 13A:

301 KAR 1:015
301 KAR 1:075
301 KAR 1:200
301 KAR 2:044
301 KAR 2:195

The committee on separate motions withdrew the committee's previous objections to Division of Water administrative regulations 401 KAR 5:026 and 401 KAR 5:029 and determined that administrative regulations 401 KAR 5:026 and 401 KAR 5:029 comply with KRS Chapter 13A.

The committee did not withdraw its previous objection to and determination of noncompliance with KRS Chapter 13A of administrative regulation 401 KAR 5:031. An amendment to administrative regulation 401 KAR 5:031 was filed October 15, 1991, with the Regulations Compiler, and the committee will review this administrative regulation in the normal review process.

The meeting adjourned at 2:53 p.m., October 23, 1991.

INTERIM JOINT COMMITTEE ON HEALTH AND WELFARE
Meeting of October 16, 1991

The Interim Joint Committee on Health and Welfare met on Wednesday, October 16, 1991, and submits this report. The Committee took no action on the following regulations:

902 KAR 13:080
902 KAR 20:018
902 KAR 20:041
902 KAR 20:111
902 KAR 20:220
902 KAR 20:240
902 KAR 20:260
902 KAR 45:100
904 KAR 2:015 & E
904 KAR 3:030
904 KAR 3:045
904 KAR 3:060
907 KAR 1:013 & E
907 KAR 1:025 & E
907 KAR 1:045 & E
907 KAR 1:535 & E
902 KAR 13:130
902 KAR 20:036
902 KAR 20:106
902 KAR 20:160
902 KAR 20:230
902 KAR 20:250
902 KAR 45:080
902 KAR 45:130
904 KAR 3:010
904 KAR 3:035
904 KAR 3:050
904 KAR 3:070
907 KAR 1:022 & E
907 KAR 1:044 & E
907 KAR 1:061

TASK FORCE ON ELECTIONS AND CONSTITUTIONAL AMENDMENTS
Meeting of November 1, 1991

The Task Force on Elections and Constitutional Amendments met on Friday, November 1, 1991, and submits this report:

(1) The Task Force determined that the following administrative regulation, as amended by the Administrative Regulations Review Subcommittee, complied with KRS Chapter 13A:
31 KAR 4:070 relating to recanvass procedures.

The Task Force adjourned at 1:00 p.m.

CUMULATIVE SUPPLEMENT

Locator Index – Effective Dates.....F2

KRS Index.....F12

Subject Index.....F21

LOCATOR INDEX — EFFECTIVE DATES

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

VOLUME 17

Emergency Regulation	17 Ky.R. Page No.	Effective Date
200 KAR 17:030E	3085	4-15-91
Replaced		8-22-91
200 KAR 17:040E	3088	4-15-91
Replaced		8-22-91
200 KAR 17:050E	3090	4-15-91
Replaced		8-22-91
415 KAR 1:010E	3356	4-25-91
Replaced		9-25-91
415 KAR 1:020E	3357	4-25-91
Replaced		9-25-91
415 KAR 1:030E	3358	4-25-91
Replaced		9-25-91
900 KAR 4:010E	3360	4-16-91
Replaced		10-6-91
902 KAR 20:290E	3363	5-7-91
Replaced	3538	8-21-91

Regulation	17 Ky.R. Page No.	Effective Date
201 KAR 16:010		
Amended	3494	
415 KAR 1:010	3592	(See 18 Ky.R.)
415 KAR 1:020	3594	(See 18 Ky.R.)
415 KAR 1:030	3597	(See 18 Ky.R.)
605 KAR 1:190	3600	(See 18 Ky.R.)
704 KAR 3:035		
Amended	3254	(See 18 Ky.R.)
780 KAR 2:130		
Amended	3260	(See 18 Ky.R.)
805 KAR 4:085		
Amended	3270	(See 18 Ky.R.)
805 KAR 4:100		
Amended	3272	(See 18 Ky.R.)
805 KAR 4:110		
Amended	3274	(See 18 Ky.R.)
807 KAR 5:014	3072	
Withdrawn		9-13-91
900 KAR 4:010	3342	(See 18 Ky.R.)
902 KAR 10:030		
Amended	3048	(See 18 Ky.R.)
902 KAR 20:290		
Amended	3538	8-21-91
902 KAR 55:075	3606	(See 18 Ky.R.)
905 KAR 1:180		
Amended	3558	8-22-91
905 KAR 1:320	3608	(See 18 Ky.R.)
905 KAR 1:330	3612	8-22-91
905 KAR 5:060	3075	
Amended	3470	(See 18 Ky.R.)
905 KAR 5:070	3618	8-22-91

VOLUME 18

Emergency Regulation	18 Ky.R. Page No.	Effective Date
101 KAR 1:325E	256	6-21-91
Replaced	82	9-6-91
101 KAR 2:035E	4	6-14-91
Died		10-7-91
105 KAR 1:215E	979	8-21-91
Replaced	1326	11-8-91
109 KAR 13:010E	1288	10-4-91
200 KAR 5:330E	980	8-30-91
301 KAR 2:044E	619	8-9-91
Replaced	1329	10-22-91
301 KAR 2:220E	1288	10-15-91
405 KAR 8:010E	1798	11-1-91
415 KAR 1:040E	7	6-13-91
Replaced	715	9-25-91
500 KAR 8:010E	9	5-31-91
Withdrawn		7-1-91
Resubmitted	257	7-1-91
Replaced	1333	11-8-91
500 KAR 8:020E	258	7-1-91
Replaced	1334	11-8-91
500 KAR 8:030E	259	7-1-91
Replaced	1132	11-8-91
501 KAR 6:020E	983	8-21-91
Replaced	795	11-8-91
Resubmitted	1813	11-13-91
501 KAR 6:150E	1814	10-16-91
601 KAR 12:060E	621	7-26-91
Replaced	1007	10-1-91
701 KAR 5:090E	10	5-29-91
Replaced	217	9-6-91
702 KAR 1:001E	259	7-11-91
Replaced	569	10-6-91
702 KAR 3:220E	1293	9-18-91
Replaced	476	11-8-91
704 KAR 3:006E	260	7-11-91
Replaced	1340	11-8-91
704 KAR 20:580E	263	6-17-91
Replaced	75	8-2-91
900 KAR 2:050E	1816	10-16-91
900 KAR 2:060E	1818	10-16-91
902 KAR 20:006E	985	8-22-91
903 KAR 5:270E	265	6-17-91
Replaced	608	9-6-91
904 KAR 2:006E	622	7-19-91
Replaced	1047	10-6-91
904 KAR 2:015E	1294	9-24-91
Replaced	881	10-16-91
904 KAR 2:016E	1298	9-24-91
904 KAR 2:110E	1308	9-24-91
904 KAR 2:360E	1310	9-24-91
904 KAR 3:010E	1819	11-7-91
904 KAR 3:020E	11	6-5-91
Replaced	202	8-21-91
904 KAR 3:025E	15	6-5-91
Replaced	246	8-21-91
904 KAR 3:035E	1822	11-7-91

Emergency Regulation	18 Ky.R. Page No.	Effective Date
905 KAR 2:080E	1313	10-8-91
905 KAR 8:150E	628	7-23-91
Replaced	593	10-6-91
907 KAR 1:004E	629	7-23-91
Replaced	507	10-6-91
907 KAR 1:010E	265	7-1-91
Replaced	519	10-6-91
907 KAR 1:011E	640	7-23-91
Replaced	520	10-6-91
907 KAR 1:012E	645	7-24-91
Replaced	525	10-6-91
907 KAR 1:013E	646	7-24-91
Replaced	911	10-16-91
907 KAR 1:021E	267	7-1-91
Replaced	594	10-6-91
907 KAR 1:022E	650	7-19-91
Replaced	526	10-16-91
907 KAR 1:025E	654	7-19-91
Replaced	1142	10-16-91
907 KAR 1:027E	268	7-1-91
Replaced	538	10-6-91
907 KAR 1:040E	269	7-1-91
Replaced	541	10-6-91
907 KAR 1:044E	661	7-29-91
Replaced	915	10-16-91
907 KAR 1:045E	662	7-29-91
Replaced	916	10-16-91
907 KAR 1:140E	1826	11-7-91
907 KAR 1:150E	1828	11-7-91
907 KAR 1:340E	664	7-23-91
Replaced	547	10-6-91
907 KAR 1:480E	270	7-1-91
Replaced	595	10-6-91
907 KAR 1:485E	271	7-1-91
Replaced	596	10-6-91
907 KAR 1:490E	271	7-1-91
Replaced	598	10-6-91
907 KAR 1:495E	272	7-1-91
Replaced	599	10-6-91
907 KAR 1:505E	665	7-23-91
Replaced	600	10-6-91
907 KAR 1:510E	666	7-23-91
Replaced	601	10-6-91
907 KAR 1:515E	666	7-23-91
Replaced	1053	10-6-91
907 KAR 1:520E	667	7-23-91
Replaced	603	10-6-91
907 KAR 1:525E	668	7-23-91
Replaced	1054	10-6-91
907 KAR 1:530E	669	7-23-91
Replaced	606	10-6-91
907 KAR 1:535E	670	7-29-91
Replaced	966	10-16-91
907 KAR 1:540E	1318	9-24-91
907 KAR 1:300E	1830	10-16-91
908 KAR 1:310E	1831	10-22-91

Regulation	18 Ky.R. Page No.	Effective Date
11 KAR 4:040		
Amended	320	
Amended	1056	11-8-91
11 KAR 8:030		
As Amended	274	7-8-91
Amended	1152	
11 KAR 12:001	2069	
30 KAR 1:040		
As Amended	276	8-2-91
30 KAR 1:050		
As Amended	276	8-2-91
31 KAR 4:070	555	
As Amended	1320	
45 KAR 1:030	1692	
45 KAR 1:040	1693	
45 KAR 1:050	1695	
101 KAR 1:325		
Amended	82	9-6-91
101 KAR 2:035		
Amended	83	
Withdrawn		10-7-91
101 KAR 2:045		
Amended	1155	
105 KAR 1:070		
Amended	722	11-8-91
105 KAR 1:110		
Repealed	932	11-8-91
105 KAR 1:120	920	
As Amended	1320	11-8-91
105 KAR 1:130	921	
As Amended	1321	11-8-91
105 KAR 1:140	922	
As Amended	1321	11-8-91
105 KAR 1:150	924	11-8-91
105 KAR 1:160	925	
As Amended	1322	11-8-91
105 KAR 1:170	927	
As Amended	1323	11-8-91
105 KAR 1:180	928	11-8-91
105 KAR 1:190	929	11-8-91
105 KAR 1:200	931	
As Amended	1324	11-8-91
105 KAR 1:210	932	11-8-91
105 KAR 1:215	934	
As Amended	1326	11-8-91
105 KAR 1:220	936	11-8-91
105 KAR 1:230	939	11-8-91
105 KAR 1:240	940	11-8-91
106 KAR 1:080		
Amended	54	
Withdrawn		8-27-91
106 KAR 1:081	1697	
106 KAR 1:090		
Amended	68	
Withdrawn		8-27-91
106 KAR 1:091	1712	
106 KAR 1:100		
Amended	73	
Withdrawn		8-27-91
106 KAR 1:101	1717	
106 KAR 1:111	1719	
106 KAR 1:120		
Amended	73	
Withdrawn		8-27-91
106 KAR 1:121	1720	
106 KAR 1:131	1721	
107 KAR 1:025		
Amended	1910	
107 KAR 1:050		
Amended	1910	
108 KAR 1:030	2070	
109 KAR 10:010		
Recodified from 200 KAR 4:005		7-8-91
Amended	723	
As Amended	1326	11-8-91
109 KAR 11:010		
Recodified from 200 KAR 8:010		7-8-91
Amended	725	
109 KAR 11:020		
Recodified from 200 KAR 8:020		7-8-91
Amended	727	

Regulation	18 Ky.R. Page No.	Effective Date
109 KAR 11:030		
Recodified from 200 KAR 8:030		7-8-91
Amended	728	
109 KAR 12:010		
Recodified from 200 KAR 11:010		7-8-91
109 KAR 12:020		
Recodified from 200 KAR 11:020		7-8-91
Amended	729	
As Amended	1328	11-8-91
109 KAR 12:030		
Recodified from 200 KAR 11:030		7-8-91
Amended	730	
As Amended	1328	11-8-91
109 KAR 12:040		
Recodified from 200 KAR 11:040		7-8-91
Amended	731	
As Amended	1329	11-8-91
109 KAR 12:050		
Recodified from 200 KAR 11:050		7-8-91
Amended	732	11-8-91
109 KAR 13:010	1723	
200 KAR 3:010		
Amended	325	9-11-91
200 KAR 3:045		
Amended	1352	
200 KAR 4:005		
Recodified as 109 KAR 10:010		7-8-91
200 KAR 5:050		
Amended	1352	
200 KAR 5:076	1724	
200 KAR 5:301		
Amended	1354	
200 KAR 5:304		
Amended	1355	
200 KAR 5:305		
Amended	1356	
200 KAR 5:306		
Amended	1357	
200 KAR 5:307		
Amended	1359	
200 KAR 5:309		
Amended	1362	
200 KAR 5:310		
Amended	1363	
200 KAR 5:311		
Amended	1364	
200 KAR 5:312		
Amended	1365	
200 KAR 5:313		
Amended	1366	
200 KAR 5:315		
Amended	1367	
200 KAR 5:317		
Amended	1369	
200 KAR 5:330	1255	
Amended	1894	
200 KAR 6:011	1725	
200 KAR 6:015		
Amended	1370	
200 KAR 6:040		
Amended	1371	
200 KAR 7:010		
Amended	1375	
200 KAR 8:010		
Recodified as 109 KAR 11:010		7-8-91
200 KAR 8:020		
Recodified as 109 KAR 11:020		7-8-91
200 KAR 8:030		
Recodified as 109 KAR 11:030		7-8-91
200 KAR 11:010		
Recodified as 109 KAR 12:010		7-8-91
200 KAR 11:020		
Recodified as 109 KAR 12:020		7-8-91
200 KAR 11:030		
Recodified as 109 KAR 12:030		7-8-91
200 KAR 11:040		
Recodified as 109 KAR 12:040		7-8-91
200 KAR 11:050		
Recodified as 109 KAR 12:050		7-8-91
200 KAR 12:020		
Amended	1378	
200 KAR 14:010		
As Amended	277	7-29-91
200 KAR 14:080		
As Amended	278	7-29-91
200 KAR 14:090		
As Amended	279	7-29-91
200 KAR 17:020		
As Amended	671	8-22-91
200 KAR 17:030		
As Amended	674	8-22-91
200 KAR 17:040		
As Amended	677	8-22-91
200 KAR 17:050		
As Amended	679	8-22-91
201 KAR 2:010		
Amended	1159	
Died*		11-7-91
Amended	1911	
201 KAR 9:031		
Amended	88	
As Amended	991	9-24-91
201 KAR 9:041		
Amended	89	8-30-91
201 KAR 9:175		
Amended	327	
As Amended	992	9-24-91
201 KAR 9:300	210	
As Amended	996	10-11-91
201 KAR 9:305	211	
As Amended	996	9-24-91
201 KAR 10:080	1726	
201 KAR 20:056		
Amended	331	
As Amended	997	9-24-91
201 KAR 22:020		
Amended	334	9-24-91
201 KAR 22:040		
Amended	335	9-24-91
201 KAR 22:053		
Amended	1379	
201 KAR 22:070		
Amended	336	9-24-91
201 KAR 22:101		
Amended	338	9-24-91
201 KAR 22:110		
Amended	339	9-24-91
201 KAR 22:135		
Amended	340	9-24-91
201 KAR 23:070		
Amended	733	
As Amended	1838	
201 KAR 30:100	940	
201 KAR 30:110	945	
201 KAR 30:120	946	
201 KAR 30:130	947	
301 KAR 1:015		
Amended	735	10-22-91
301 KAR 1:075		
Amended	736	10-22-91
301 KAR 1:085		
Amended	74	7-31-91
Amended	1160	

Regulation	18 Ky.R. Page No.	Effective Date
301 KAR 1:200		
Amended	738	10-22-91
301 KAR 2:044		
Amended	740	
As Amended	1329	10-22-91
301 KAR 2:111		
Amended	309	
As Amended	682	8-28-91
301 KAR 2:140		
Amended	1161	
301 KAR 2:170		
As Amended	18	6-26-91
301 KAR 2:190		
Repealed	1331	10-22-91
301 KAR 2:195	948	
As Amended	1331	10-22-91
301 KAR 2:220		
Amended	1381	
301 KAR 3:021		
Amended	90	8-28-91
301 KAR 3:080		
Repealed	619	8-9-91
301 KAR 10:010	212	
Amended	704	9-25-91
302 KAR 20:230	2070	
302 KAR 45:010		
Amended	743	
As Amended	1840	
400 KAR 1:070	556	
Withdrawn		9-3-91
401 KAR 4:220		
As Amended	22	6-26-91
401 KAR 5:031		
Amended	1388	
401 KAR 6:310		
As Amended	34	5-22-91
401 KAR 8:010		
Amended	1165	
As Amended	1841	
401 KAR 8:020		
Amended	1170	
As Amended	1845	
401 KAR 8:070		
Amended	1175	
As Amended	1849	
401 KAR 8:150		
Amended	1180	
As Amended	1853	
401 KAR 8:200		
Amended	1186	
As Amended	1857	
401 KAR 31:010		
Amended	92	9-25-91
401 KAR 31:030		
Amended	103	9-25-91
401 KAR 31:040		
Amended	106	9-25-91
401 KAR 31:060		
Amended	118	
Amended	706	9-25-91
401 KAR 31:110		
Amended	122	
Amended	708	
As Amended	999	9-25-91
401 KAR 32:010		
Amended	125	
Amended	710	
As Amended	1001	9-25-91
401 KAR 32:100		
Amended	127	9-25-91
401 KAR 34:230		
Amended	132	
Amended	712	9-25-91
401 KAR 35:200		
Amended	136	
As Amended	1003	9-25-91
401 KAR 35:220		
Amended	139	9-25-91
401 KAR 35:240		
Amended	143	9-25-91
401 KAR 37:100		
Amended	145	9-25-91
401 KAR 48:050		
Amended	147	9-25-91
401 KAR 50:010		
Amended	744	
Died*		10-15-91
401 KAR 50:012		
Amended	749	
Died*		10-15-91
401 KAR 50:046	952	
Died*		10-15-91
401 KAR 51:017		
Amended	750	
Died*		10-15-91
401 KAR 59:214		
Amended	763	
Died*		10-15-91
401 KAR 59:225		
Amended	767	
Died*		10-15-91
401 KAR 59:230		
Amended	771	
Died*		10-15-91
401 KAR 59:240		
Amended	774	
Died*		10-15-91
401 KAR 61:124		
Amended	777	
Died*		10-15-91
401 KAR 61:132		
Amended	780	
Died*		10-15-91
401 KAR 61:137		
Amended	784	
Died*		10-15-91
401 KAR 61:150		
Amended	787	
Died*		10-15-91
401 KAR 61:160		
Amended	790	
Died*		10-15-91
401 KAR 61:175		
Amended	792	
Died*		10-15-91
405 KAR 7:015		
Amended	341	
405 KAR 7:020		
Amended	343	
Amended	1060	
405 KAR 7:030		
Amended	353	
405 KAR 7:035	560	
Amended	1069	
As Amended	1865	
405 KAR 7:080		
Amended	356	
405 KAR 8:010		
Amended	360	
Amended	1072	
Withdrawn		10-30-91
Amended	1912	

Regulation	18 Ky.R. Page No.	Effective Date
405 KAR 8:020		
Amended	375	
405 KAR 8:030		
Amended	379	
Amended	1087	
405 KAR 8:040		
Amended	394	
Amended	1100	
405 KAR 10:050		
Amended	409	
Withdrawn		8-15-91
405 KAR 10:200		
Amended	411	
As Amended	1868	
405 KAR 16:180		
Amended	416	
Amended	1114	
405 KAR 16:190		
Amended	420	
As Amended	1872	
405 KAR 16:200		
Amended	424	
Amended	1117	
405 KAR 16:210		
Amended	431	
As Amended	1875	
405 KAR 18:180		
Amended	434	
Amended	1123	
405 KAR 18:190		
Amended	438	
As Amended	1877	
405 KAR 18:200		
Amended	442	
Amended	1125	
405 KAR 18:220		
Amended	449	
As Amended	1880	
405 KAR 20:010		
Amended	452	
415 KAR 1:010		
Amended	311	9-25-91
415 KAR 1:020		
Amended	312	
As Amended	1005	9-25-91
415 KAR 1:030		
Amended	313	9-25-91
415 KAR 1:040	214	
Amended	715	9-25-91
500 KAR 8:010		
Amended	148	
Withdrawn		7-1-91
Amended	454	
Amended	1131	
As Amended	1333	11-8-91
500 KAR 8:020	564	
Amended	1132	
As Amended	1334	11-8-91
500 KAR 8:030	565	
Amended	1132	11-8-91
501 KAR 6:020		
Amended	150	9-6-91
Amended	795	11-8-91
Amended	1927	
501 KAR 6:030		
Amended	455	10-6-91
Amended	1929	
501 KAR 6:040		
Amended	797	11-8-91
501 KAR 6:050		
Amended	152	9-6-91
Amended	1403	

Regulation	18 Ky.R. Page No.	Effective Date
501 KAR 6:060		
Amended	1194	
501 KAR 6:070		
Amended	153	9-6-91
Amended	457	
As Amended	1006	10-6-91
Amended	1931	
501 KAR 6:080		
Amended	154	9-6-91
501 KAR 6:090		
Amended	459	10-6-91
Amended	1196	
501 KAR 6:130		
Amended	798	11-8-91
Amended	1404	
501 KAR 6:140		
Amended	155	9-6-91
Amended	800	11-8-91
Amended	1197	
501 KAR 6:150		
Amended	1405	
Amended	1933	
501 KAR 6:160		
Amended	1935	
601 KAR 1:116	1258	
Amended	1897	
601 KAR 1:180	2072	
601 KAR 12:060	567	
As Amended	1007	10-1-91
601 KAR 40:010	955	11-8-91
601 KAR 40:020	956	11-8-91
603 KAR 5:070		
Amended	460	
As Amended	1008	
As Amended	1335	10-1-91
603 KAR 5:071		
Amended	464	10-1-91
603 KAR 5:250		
As Amended	280	7-2-91
605 KAR 1:010		
Amended	466	10-1-91
605 KAR 1:030		
Amended	467	10-1-91
605 KAR 1:050		
Amended	469	10-1-91
605 KAR 1:090		
Amended	470	10-1-91
605 KAR 1:130		
Amended	471	10-1-91
605 KAR 1:160		
Amended	474	10-1-91
605 KAR 1:190		
As Amended	1338	11-8-91
701 KAR 5:020		
Amended	1199	
As Amended	1882	
701 KAR 5:090	217	9-6-91
701 KAR 5:100	219	
As Amended	685	9-6-91
701 KAR 7:010		
Repealed	568	10-6-91
701 KAR 7:011	568	10-6-91
702 KAR 1:001	569	10-6-91
702 KAR 1:010		
Repealed	259	7-11-91
702 KAR 3:220		
Amended	476	11-8-91
702 KAR 3:250	220	
As Amended	686	9-6-91
702 KAR 4:050		
Amended	1936	

Regulation	18 Ky.R. Page No.	Effective Date
702 KAR 4:110		
Repealed	259	7-11-91
702 KAR 4:120		
Repealed	259	7-11-91
702 KAR 4:130		
Repealed	259	7-11-91
702 KAR 5:030		
Amended	477	11-8-91
702 KAR 5:080		
Amended	157	
Withdrawn		7-24-91
Amended	478	
Amended	1133	11-8-91
702 KAR 5:140		
Repealed	570	10-6-91
702 KAR 5:141	570	10-6-91
702 KAR 5:150		
Amended	481	10-6-91
702 KAR 7:065		
Amended	1200	
704 KAR 3:005		
Repealed	260	7-11-91
704 KAR 3:006	571	
Amended	1136	
As Amended	1340	11-8-91
704 KAR 3:010		
Repealed	574	10-6-91
704 KAR 3:012	574	10-6-91
704 KAR 3:025		
Repealed	574	10-6-91
704 KAR 3:030		
Repealed	574	10-6-91
704 KAR 3:035		
As Amended	45	7-5-91
704 KAR 3:410		
Amended	160	
As Amended	687	9-6-91
704 KAR 4:020		
Amended	1202	
704 KAR 7:090		
Amended	482	
As Amended	1011	10-6-91
704 KAR 15:090		
Repealed	574	10-6-91
704 KAR 15:091	574	10-6-91
704 KAR 20:450		
Repealed	263	6-17-91
704 KAR 20:580		
Amended	75	8-2-91
704 KAR 20:590	221	9-6-91
704 KAR 20:600	223	9-6-91
705 KAR 3:011	575	10-6-91
705 KAR 3:050		
Repealed	575	10-6-91
705 KAR 3:090		
Repealed	575	10-6-91
705 KAR 5:050		
Repealed	575	10-6-91
707 KAR 1:040		
Amended	1939	
707 KAR 1:054		
Amended	486	
Amended	1140	11-8-91
707 KAR 1:150	228	
Amended	718	
As Amended	1014	10-6-91
770 KAR 1:010	2072	
770 KAR 1:020	2073	
770 KAR 1:030	2074	
770 KAR 1:040	2075	
770 KAR 1:050	2076	
770 KAR 1:060	2076	
780 KAR 2:130		
As Amended	47	7-5-91
780 KAR 3:020		
Amended	1407	
783 KAR 1:030	232	
Amended	721	10-6-91
784 KAR 1:010	576	
As Amended	1017	10-6-91
784 KAR 1:020	578	
As Amended	1019	10-6-91
801 KAR 2:010		
Amended	1940	
803 KAR 1:070		
Amended	1204	
803 KAR 2:015		
Amended	165	
As Amended	691	9-6-91
803 KAR 2:307		
Amended	1944	
803 KAR 2:318		
Amended	183	
803 KAR 2:320		
Amended	1946	
803 KAR 2:403		
Amended	184	9-6-91
Amended	1950	
803 KAR 2:423		
Amended	1952	
804 KAR 1:100		
Amended	186	8-30-91
805 KAR 1:020		
Amended	187	
As Amended	1020	9-25-91
805 KAR 1:050		
Amended	189	9-25-91
805 KAR 1:120	233	
As Amended	1021	9-25-91
805 KAR 1:130	234	
As Amended	1022	9-25-91
805 KAR 1:140	236	
As Amended	1023	9-25-91
805 KAR 4:010		
Amended	77	7-31-91
805 KAR 4:085		
As Amended	49	
805 KAR 4:100		
As Amended	49	
805 KAR 4:110		
As Amended	50	
806 KAR 3:150	239	
As Amended	700	9-6-91
806 KAR 3:160	958	11-8-91
806 KAR 3:170	959	11-8-91
806 KAR 4:010		
Amended	801	11-8-91
806 KAR 7:100	964	
Withdrawn		9-23-91
806 KAR 9:220		
Amended	803	11-8-91
806 KAR 19:030		
Amended	1208	
807 KAR 5:001		
Amended	191	
As Amended	1025	9-24-91
807 KAR 5:005	241	
Withdrawn		8-12-91
807 KAR 5:006		
Amended	1953	
807 KAR 5:023	1259	
Amended	1897	
807 KAR 5:066		
Amended	1968	

Regulation	18 Ky.R. Page No.	Effective Date
808 KAR 10:010		
Amended	199	
As Amended	701	9-6-91
808 KAR 10:220		
Amended	200	
Withdrawn		8-20-91
808 KAR 10:260	244	
As Amended	702	9-6-91
808 KAR 10:270	245	
As Amended	702	9-6-91
810 KAR 1:001		
Amended	1977	
810 KAR 1:002		
Amended	1980	
810 KAR 1:003		
Amended	1408	
Withdrawn		11-19-91
Amended	1982	
810 KAR 1:004		
Amended	1986	
810 KAR 1:005		
Amended	1989	
810 KAR 1:006		
Amended	1991	
810 KAR 1:007		
Amended	1995	
810 KAR 1:008		
Amended	1997	
810 KAR 1:009		
Amended	1999	
810 KAR 1:010		
Amended	2001	
810 KAR 1:011		
Amended	2003	
810 KAR 1:012		
Amended	1413	
Withdrawn		11-19-91
Amended	2005	
810 KAR 1:013		
Amended	2007	
810 KAR 1:014		
Amended	2010	
810 KAR 1:015		
Amended	2012	
810 KAR 1:016		
Amended	2013	
810 KAR 1:017		
Amended	2015	
810 KAR 1:018		
Amended	2017	
810 KAR 1:019		
Amended	2019	
810 KAR 1:020		
Amended	2020	
810 KAR 1:021		
Amended	2024	
810 KAR 1:050		
Amended	2024	
815 KAR 7:010		
Amended	1209	
815 KAR 7:025		
Amended	1218	
815 KAR 7:070		
Amended	1415	
815 KAR 7:080		
Amended	1226	
As Amended	1883	
815 KAR 10:020		
Repealed		8-22-90
815 KAR 15:020		
Amended	488	
As Amended	1033	9-24-91
815 KAR 20:020		
Amended	1228	
As Amended	1884	
815 KAR 20:030		
As Amended	283	7-30-91
815 KAR 20:050		
Amended	1231	
As Amended	1887	
815 KAR 25:010		
As Amended	284	7-30-91
Amended	1418	
815 KAR 25:020		
As Amended	290	7-30-91
815 KAR 30:060		
Amended	493	
As Amended	1038	
As Amended	1342	10-8-91
815 KAR 46:010		
Amended	497	
As Amended	1041	9-24-91
900 KAR 1:007	1263	
900 KAR 1:011		
Recodified to 906 KAR 1:090		8-30-91
900 KAR 1:040		
Amended	1425	
900 KAR 1:060		
Amended	1426	
900 KAR 2:050	1729	
900 KAR 2:060	1731	
900 KAR 4:010		
Amended	78	
As Amended	1043	10-6-91
902 KAR 4:010		
Amended	1428	
902 KAR 4:070		
Amended	2025	
902 KAR 4:080		
Amended	2026	
902 KAR 4:090		
Amended	1430	
902 KAR 10:010		
Amended	1431	
902 KAR 10:030		
As Amended	52	
902 KAR 10:110		
Amended	1433	
902 KAR 10:140	579	
As Amended	1888	
902 KAR 13:010		
Amended	1435	
902 KAR 13:020		
Amended	1436	
902 KAR 13:040		
Amended	1437	
902 KAR 13:070		
Amended	1438	
902 KAR 13:080		
Amended	499	10-16-91
As Amended	1345	
902 KAR 13:090		
Amended	1439	
902 KAR 13:101	1732	
902 KAR 13:110		
Amended	1440	
902 KAR 13:130	583	10-16-91
902 KAR 20:006		
Amended	806	
Amended	1347	
902 KAR 20:016		
Amended	2027	
902 KAR 20:018		
Amended	811	10-16-91

Regulation	18 Ky.R. Page No.	Effective Date
902 KAR 20:036		
Amended	815	10-16-91
902 KAR 20:041		
Amended	820	10-16-91
902 KAR 20:066		
Amended	1233	
902 KAR 20:072		
Amended	1236	
902 KAR 20:106		
Amended	824	10-16-91
902 KAR 20:111		
Amended	827	10-16-91
902 KAR 20:117	1264	
Amended	1900	
902 KAR 20:160		
Amended	828	10-16-91
902 KAR 20:200		
Amended	1443	
902 KAR 20:220		
Amended	833	10-16-91
902 KAR 20:230		
Amended	839	10-16-91
902 KAR 20:240		
Amended	852	10-16-91
902 KAR 20:250		
Amended	862	10-16-91
902 KAR 20:260		
Amended	866	10-16-91
902 KAR 20:270		
Amended	1238	
902 KAR 20:340	1733	
902 KAR 45:006	587	10-6-91
902 KAR 45:080		
Amended	869	10-16-91
902 KAR 45:100		
Amended	875	10-16-91
902 KAR 45:130		
Amended	881	10-16-91
902 KAR 45:140		
Amended	1445	
902 KAR 47:050		
Amended	1446	
902 KAR 47:060		
Amended	1449	
902 KAR 47:070		
Amended	1451	
902 KAR 50:010		
Amended	1453	
902 KAR 50:030		
Amended	1456	
902 KAR 50:050		
Amended	1463	
902 KAR 50:070		
Amended	1465	
902 KAR 50:090		
Amended	1466	
902 KAR 50:100		
Amended	1468	
902 KAR 50:110		
Amended	1469	
902 KAR 55:040		
Amended	1471	
902 KAR 55:045		
Amended	1472	
902 KAR 55:060		
Amended	1244	
As Amended	1890	
902 KAR 55:075		
As Amended	703	8-21-91
902 KAR 100:005		
Amended	1473	
902 KAR 100:010		
Amended	1474	
902 KAR 100:012		
Amended	1484	
902 KAR 100:015		
Amended	1485	
902 KAR 100:022		
Amended	1487	
902 KAR 100:025		
Amended	1496	
902 KAR 100:030		
Amended	1506	
902 KAR 100:035		
Amended	1508	
902 KAR 100:045		
Amended	1510	
902 KAR 100:052		
Amended	1513	
902 KAR 100:058		
Amended	1515	
902 KAR 100:060		
Amended	1522	
902 KAR 100:065		
Amended	1523	
902 KAR 100:070		
Amended	1525	
902 KAR 100:080		
Amended	1536	
902 KAR 100:085		
Amended	1537	
902 KAR 100:090		
Amended	1539	
902 KAR 100:105		
Amended	1542	
902 KAR 100:110		
Amended	1544	
902 KAR 100:115		
Amended	1546	
902 KAR 100:120		
Amended	1550	
902 KAR 100:125		
Amended	1554	
902 KAR 100:130		
Amended	1557	
902 KAR 100:136		
Amended	1559	
902 KAR 100:137		
Amended	1563	
902 KAR 100:140		
Amended	1569	
902 KAR 100:145		
Amended	1570	
902 KAR 100:150		
Amended	1572	
902 KAR 100:155		
Amended	1574	
902 KAR 100:160		
Amended	1577	
902 KAR 100:165		
Amended	1578	
902 KAR 100:170		
Amended	1581	
902 KAR 105:010		
Amended	1586	
902 KAR 105:020		
Amended	1588	
902 KAR 105:030		
Amended	1590	
902 KAR 105:040		
Amended	1591	
902 KAR 105:060		
Amended	1593	

Regulation	18 Ky.R. Page No.	Effective Date
902 KAR 105:070		
Amended	1594	
903 KAR 5:270		
Amended	201	
Reprinted	608	9-6-91
903 KAR 5:390	592	10-6-91
904 KAR 2:006		
Amended	500	
As Amended	1047	10-6-91
904 KAR 2:015		
Amended	881	10-16-91
904 KAR 2:016		
As Amended	297	7-17-91
Amended	1245	
904 KAR 2:110		
Amended	1595	
904 KAR 2:116		
Amended	2039	
904 KAR 2:360	1272	
As Amended	1891	
904 KAR 3:010		
Amended	886	10-16-91
Amended	2043	
904 KAR 3:020		
Amended	202	8-21-91
904 KAR 3:025	246	8-21-91
904 KAR 3:030		
Amended	891	10-16-91
904 KAR 3:035		
Amended	893	10-16-91
Amended	2047	
904 KAR 3:045		
Amended	897	10-16-91
904 KAR 3:050		
Amended	900	10-16-91
904 KAR 3:060		
Amended	902	10-16-91
904 KAR 3:070		
Amended	906	10-16-91
905 KAR 1:010		
Amended	1598	
905 KAR 1:150		
Amended	1601	
905 KAR 1:170		
Amended	1602	
905 KAR 1:210		
Amended	1603	
905 KAR 1:320		
Amended	316	8-21-91
905 KAR 2:080	1734	
905 KAR 3:020		
Amended	1609	
905 KAR 5:060		
As Amended	52	
905 KAR 7:060		
Amended	1611	
905 KAR 7:091	1740	
905 KAR 7:100		
Amended	1612	
905 KAR 8:090		
Amended	2051	
905 KAR 8:150	593	10-6-91
905 KAR 8:160	1740	
905 KAR 8:170	1745	
905 KAR 8:180	1748	
905 KAR 8:190	1752	
905 KAR 8:200	1758	
905 KAR 8:210	2077	
905 KAR 8:220	1763	
906 KAR 1:010		
Amended	1613	
906 KAR 1:021	1782	
906 KAR 1:030		
Amended	1615	
906 KAR 1:090		
Recodified from 900 KAR 1:011		8-30-91
Amended	1616	
906 KAR 1:100	2083	
907 KAR 1:002		
Amended	1618	
907 KAR 1:004		
Amended	507	10-6-91
907 KAR 1:007		
Amended	1620	
907 KAR 1:010		
Amended	519	10-6-91
907 KAR 1:011		
Amended	520	10-6-91
907 KAR 1:012		
Amended	525	10-6-91
907 KAR 1:013		
Amended	911	10-16-91
907 KAR 1:017		
As Amended	306	7-17-91
907 KAR 1:020		
Repealed	267	7-1-91
907 KAR 1:021	594	10-6-91
907 KAR 1:022		
Amended	526	10-16-91
907 KAR 1:025		
Amended	531	
Amended	1142	10-16-91
907 KAR 1:027		
Amended	538	10-6-91
907 KAR 1:031		
Amended	539	10-6-91
907 KAR 1:032		
Amended	1621	
907 KAR 1:033		
Amended	1622	
907 KAR 1:035		
Amended	1623	
907 KAR 1:037		
Amended	1624	
907 KAR 1:038		
Amended	1625	
907 KAR 1:040		
Amended	541	10-6-91
907 KAR 1:044		
Amended	915	10-16-91
907 KAR 1:045		
Amended	207	
Withdrawn		7-29-91
Amended	916	10-16-91
907 KAR 1:048		
Amended	1626	
907 KAR 1:049		
Amended	1627	
907 KAR 1:055		
Amended	543	10-6-91
907 KAR 1:061		
Amended	544	
Amended	1148	10-16-91
907 KAR 1:074		
Amended	1628	
907 KAR 1:075		
Amended	1629	
907 KAR 1:084		
Amended	1632	
907 KAR 1:100		
Amended	1633	
907 KAR 1:110		
Amended	1634	

Regulation	18 Ky.R. Page No.	Effective Date
907 KAR 1:120		
Amended	1635	
907 KAR 1:130		
Amended	1637	
907 KAR 1:140		
Amended	1638	
Withdrawn		11-7-91
Amended	2056	
907 KAR 1:150		
Amended	2058	
907 KAR 1:160		
Amended	1640	
907 KAR 1:180		
Amended	1642	
907 KAR 1:190		
Amended	1643	
907 KAR 1:200		
Amended	1644	
907 KAR 1:220		
Amended	1644	
907 KAR 1:260		
Amended	1646	
907 KAR 1:270		
Amended	1647	
907 KAR 1:300		
Amended	1649	
907 KAR 1:320		
Amended	1650	
907 KAR 1:340		
Amended	547	10-6-91
907 KAR 1:410		
Amended	208	8-21-91
907 KAR 1:480	595	10-6-91
907 KAR 1:485	596	10-6-91
907 KAR 1:490	598	10-6-91
907 KAR 1:495	599	10-6-91
907 KAR 1:505	600	10-6-91
907 KAR 1:510	601	10-6-91
907 KAR 1:515	602	
As Amended	1053	10-6-91
907 KAR 1:520	603	10-6-91
907 KAR 1:525	604	
As Amended	1054	10-6-91
907 KAR 1:530	606	10-6-91
907 KAR 1:535	966	10-16-91
907 KAR 1:540	1275	
Amended	1907	
907 KAR 1:545	2085	
908 KAR 1:010		
Amended	2060	
908 KAR 1:020		
Amended	1652	
908 KAR 1:030		
Amended	1654	
908 KAR 1:040		
Amended	1655	
908 KAR 1:050		
Amended	1656	
908 KAR 1:060		
Amended	1658	
908 KAR 1:080		
Amended	1660	
908 KAR 1:090		
Amended	1661	
908 KAR 1:100		
Amended	1663	
908 KAR 1:110		
Amended	1664	
908 KAR 1:120		
Amended	1665	
908 KAR 1:130		
Amended	1666	
908 KAR 1:140		
Amended	1667	
908 KAR 1:150		
Amended	1668	
908 KAR 1:160		
Amended	1671	
908 KAR 1:170		
Amended	1672	
908 KAR 1:180		
Amended	1673	
908 KAR 1:190		
Amended	1674	
908 KAR 1:200		
Amended	1676	
908 KAR 1:220		
Amended	1678	
908 KAR 1:230		
Amended	1679	
908 KAR 1:240		
Amended	1682	
908 KAR 1:250		
Amended	1684	
908 KAR 1:260		
Amended	1684	
908 KAR 1:300	1782	
908 KAR 1:310	2086	
908 KAR 3:010		
Amended	1685	
908 KAR 3:020		
Amended	2062	
908 KAR 3:030		
Amended	1689	
908 KAR 3:050		
Amended	2063	
908 KAR 3:060		
Amended	1690	
908 KAR 3:080		
Amended	548	10-6-91
908 KAR 3:090		
Amended	549	10-6-91
908 KAR 3:100		
Amended	550	10-6-91
Amended	2064	
908 KAR 3:110		
Amended	551	10-6-91
Amended	2065	
908 KAR 3:120		
Amended	552	10-6-91
Amended	2066	
908 KAR 3:160		
Amended	553	10-6-91
908 KAR 3:180		
Amended	554	10-6-91
Amended	2067	

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KRS INDEX

KRS Section	Regulation
Chapter 13A	906 KAR 1:021
15.070	500 KAR 8:010
16.245	105 KAR 1:070
	105 KAR 1:150
16.505–16.652	105 KAR 1:140
	105 KAR 1:160
	105 KAR 1:170
	105 KAR 1:180
	105 KAR 1:190
	105 KAR 1:200
	105 KAR 1:210
	105 KAR 1:215
	105 KAR 1:240
16.596	105 KAR 1:220
17.210	815 KAR 46:010
18A.030	101 KAR 2:035
	101 KAR 2:045
18A.075	101 KAR 1:325
18A.0751	101 KAR 1:325
18A.110	101 KAR 2:035
	101 KAR 2:045
18A.111	101 KAR 1:325
18A.120	101 KAR 2:045
18A.165	101 KAR 2:035
24A.190–24A.193	109 KAR 11:010
29A.180	109 KAR 11:020
39.800–39.990	106 KAR 1:081
	106 KAR 1:091
	106 KAR 1:101
	106 KAR 1:111
	106 KAR 1:121
	106 KAR 1:131
42.035	200 KAR 3:045
42.037	200 KAR 3:045
42.450–42.495	109 KAR 10:010
43.070	45 KAR 1:030
	45 KAR 1:040
	45 KAR 1:050
43.075	45 KAR 1:030
	45 KAR 1:040
	45 KAR 1:050
44.080	108 KAR 1:030
44.086	108 KAR 1:030
44.090	108 KAR 1:030
Chapter 45	200 KAR 6:040
Chapter 45A	200 KAR 5:050
	200 KAR 5:076
	200 KAR 5:301
	200 KAR 5:304
	200 KAR 5:307
	200 KAR 5:310
	200 KAR 5:311
	200 KAR 5:312
	200 KAR 5:313
	200 KAR 5:315
	200 KAR 5:317
	200 KAR 5:330
	200 KAR 6:011
	200 KAR 7:010
45A.045	200 KAR 6:015
45A.080	200 KAR 5:306
45A.095	200 KAR 5:309
45A.190	200 KAR 5:305
45A.195	200 KAR 5:305
Chapter 47A	908 KAR 1:020
	908 KAR 1:160
Chapter 56	200 KAR 3:010
	200 KAR 6:040
	200 KAR 7:010
Chapter 61	200 KAR 6:011

KRS Section	Regulation
61.510–61.705	105 KAR 1:140
	105 KAR 1:160
	105 KAR 1:170
	105 KAR 1:180
	105 KAR 1:190
	105 KAR 1:200
	105 KAR 1:210
	105 KAR 1:215
	105 KAR 1:240
61.552	105 KAR 1:150
61.555	105 KAR 1:070
61.592	105 KAR 1:130
61.610	105 KAR 1:220
61.637	105 KAR 1:230
Chapter 64	109 KAR 12:020
	109 KAR 12:030
	109 KAR 12:040
	109 KAR 12:050
64.810	45 KAR 1:030
	45 KAR 1:040
	45 KAR 1:050
65.900–65.925	109 KAR 13:010
78.510–78.852	105 KAR 1:140
	105 KAR 1:160
	105 KAR 1:170
	105 KAR 1:180
	105 KAR 1:190
	105 KAR 1:200
	105 KAR 1:210
	105 KAR 1:215
	105 KAR 1:240
78.530–78.532	105 KAR 1:120
78.535	105 KAR 1:120
78.545	105 KAR 1:070
	105 KAR 1:130
	105 KAR 1:150
	105 KAR 1:220
117.305	31 KAR 4:070
118.425	31 KAR 4:070
Chapter 121	801 KAR 2:010
136.392	815 KAR 46:010
146.550	301 KAR 10:010
146.555	301 KAR 10:010
146.560	301 KAR 10:010
146.565	301 KAR 10:010
146.570	301 KAR 10:010
150.010	301 KAR 1:085
	301 KAR 2:044
	301 KAR 2:140
	301 KAR 2:220
150.015	301 KAR 1:015
	301 KAR 1:075
	301 KAR 1:200
	301 KAR 2:044
	301 KAR 2:195
	301 KAR 2:220
	301 KAR 10:010
150.025	301 KAR 1:015
	301 KAR 1:075
	301 KAR 1:085
	301 KAR 1:200
	301 KAR 2:044
	301 KAR 2:140
	301 KAR 2:195
	301 KAR 2:220
	301 KAR 3:021
	301 KAR 10:010
150.092	301 KAR 2:140
150.110	301 KAR 1:085

KRS Section	Regulation
205.520 (cont'd)	907 KAR 1:074
	907 KAR 1:084
	907 KAR 1:100
	907 KAR 1:110
	907 KAR 1:120
	907 KAR 1:130
	907 KAR 1:140
	907 KAR 1:150
	907 KAR 1:160
	907 KAR 1:180
	907 KAR 1:190
	907 KAR 1:200
	907 KAR 1:260
	907 KAR 1:270
	907 KAR 1:300
	907 KAR 1:320
	907 KAR 1:340
	907 KAR 1:410
	907 KAR 1:480
	907 KAR 1:485
	907 KAR 1:490
	907 KAR 1:495
	907 KAR 1:505
	907 KAR 1:510
	907 KAR 1:515
	907 KAR 1:520
	907 KAR 1:525
	907 KAR 1:530
	907 KAR 1:535
	907 KAR 1:540
	907 KAR 1:545
205.560	907 KAR 1:021
	907 KAR 1:074
	907 KAR 1:120
	907 KAR 1:130
205.575	907 KAR 1:013
205.900–205.920	905 KAR 8:090
209.030	905 KAR 3:030
	905 KAR 8:210
Chapter 210	908 KAR 3:080
	908 KAR 3:090
	908 KAR 3:100
	908 KAR 3:110
	908 KAR 3:120
	908 KAR 3:160
	908 KAR 3:180
210.270	907 KAR 1:075
210.290	900 KAR 1:040
210.610–210.680	908 KAR 1:150
	908 KAR 1:160
	908 KAR 1:170
	908 KAR 1:180
	908 KAR 1:190
	908 KAR 1:200
	908 KAR 1:220
	908 KAR 1:230
	908 KAR 1:240
	908 KAR 1:250
	908 KAR 1:260
210.700–210.760	905 KAR 7:091
	908 KAR 3:050
	908 KAR 3:060
210.990	908 KAR 1:150
	908 KAR 1:160
	908 KAR 1:170
	908 KAR 1:180
	908 KAR 1:190
	908 KAR 1:200
	908 KAR 1:220
	908 KAR 1:230
	908 KAR 1:240
	908 KAR 1:250
211.090	902 KAR 4:010
211.180	902 KAR 4:010
	902 KAR 47:060
	902 KAR 47:070
211.350–211.380	902 KAR 10:110
	902 KAR 10:140
211.842–211.852	902 KAR 100:005
	902 KAR 100:010
	902 KAR 100:012
	902 KAR 100:015
	902 KAR 100:022
	902 KAR 100:025
	902 KAR 100:030
	902 KAR 100:035
	902 KAR 100:045
	902 KAR 100:052
	902 KAR 100:058
	902 KAR 100:060
	902 KAR 100:070
	902 KAR 100:080
	902 KAR 100:085
	902 KAR 100:090
	902 KAR 100:105
	902 KAR 100:110
	902 KAR 100:115
	902 KAR 100:120
	902 KAR 100:125
	902 KAR 100:130
	902 KAR 100:136
	902 KAR 100:137
	902 KAR 100:140
	902 KAR 100:145
	902 KAR 100:150
	902 KAR 100:155
	902 KAR 100:160
	902 KAR 100:165
	902 KAR 100:170
211.844–211.852	902 KAR 100:065
211.870	902 KAR 105:010
	902 KAR 105:020
	902 KAR 105:030
	902 KAR 105:040
	902 KAR 105:070
211.890	902 KAR 105:010
	902 KAR 105:020
	902 KAR 105:030
	902 KAR 105:040
	902 KAR 105:060
	902 KAR 105:070
211.900	902 KAR 4:090
211.901–211.905	902 KAR 45:050
211.905	902 KAR 4:090
211.950–211.958	601 KAR 1:116
211.960–211.968	902 KAR 13:010
	902 KAR 13:020
	902 KAR 13:040
	902 KAR 13:070
	902 KAR 13:080
	902 KAR 13:090
	902 KAR 13:110
	902 KAR 13:130
211.964	902 KAR 13:101
211.990	902 KAR 10:110
	902 KAR 10:140
	902 KAR 13:010
	902 KAR 13:020
	902 KAR 13:040
	902 KAR 13:070
	902 KAR 13:080
	902 KAR 13:090
	902 KAR 13:110
	902 KAR 13:130
	902 KAR 100:005
	902 KAR 100:010

KRS Section	Regulation
211.990 (cont'd)	902 KAR 100:012
	902 KAR 100:015
	902 KAR 100:022
	902 KAR 100:025
	902 KAR 100:030
	902 KAR 100:035
	902 KAR 100:045
	902 KAR 100:052
	902 KAR 100:058
	902 KAR 100:060
	902 KAR 100:065
	902 KAR 100:070
	902 KAR 100:080
	902 KAR 100:085
	902 KAR 100:090
	902 KAR 100:105
	902 KAR 100:110
	902 KAR 100:115
	902 KAR 100:120
	902 KAR 100:125
	902 KAR 100:130
	902 KAR 100:136
	902 KAR 100:137
	902 KAR 100:140
	902 KAR 100:145
	902 KAR 100:150
	902 KAR 100:155
	902 KAR 100:160
	902 KAR 100:165
	902 KAR 100:170
211.993	902 KAR 105:010
	902 KAR 105:020
	902 KAR 105:030
	902 KAR 105:040
	902 KAR 105:070
211.994	902 KAR 4:090
	902 KAR 47:050
213.141	905 KAR 1:170
215.520–215.600	902 KAR 20:200
216.535	905 KAR 8:210
216.540–216.543	905 KAR 8:210
216.860	906 KAR 1:100
216.865	906 KAR 1:100
216B.010–216B.130	902 KAR 20:006
	902 KAR 20:016
	902 KAR 20:036
	902 KAR 20:066
	902 KAR 20:117
	902 KAR 20:340
216B.010–216B.131	902 KAR 20:018
	902 KAR 20:041
	902 KAR 20:072
	902 KAR 20:106
	902 KAR 20:111
	902 KAR 20:160
	902 KAR 20:200
	902 KAR 20:220
	902 KAR 20:230
	902 KAR 20:240
	902 KAR 20:250
	902 KAR 20:260
	902 KAR 20:270
216B.107	902 KAR 20:016
216B.300–216B.320	905 KAR 8:150
216B.990	902 KAR 20:006
	902 KAR 20:016
	902 KAR 20:018
	902 KAR 20:036
	902 KAR 20:041
	902 KAR 20:066
	902 KAR 20:072
	902 KAR 20:106
	902 KAR 20:111

KRS Section	Regulation
216B.990 (cont'd)	902 KAR 20:117
	902 KAR 20:160
	902 KAR 20:200
	902 KAR 20:220
	902 KAR 20:230
	902 KAR 20:240
	902 KAR 20:250
	902 KAR 20:260
	902 KAR 20:270
	902 KAR 20:340
	905 KAR 8:150
217.005–217.215	902 KAR 45:006
	902 KAR 45:080
	902 KAR 45:130
	902 KAR 50:090
217.005–217.285	902 KAR 45:140
217.025	902 KAR 50:010
217.801	902 KAR 45:050
217.808–217.812	902 KAR 45:100
217.990	902 KAR 45:050
	902 KAR 45:100
217.992	902 KAR 45:006
	902 KAR 45:080
	902 KAR 45:130
	902 KAR 45:140
	902 KAR 50:090
217C.010	902 KAR 50:050
	902 KAR 50:070
217C.010–217C.990	902 KAR 50:010
	902 KAR 50:030
	902 KAR 50:090
	902 KAR 50:100
	902 KAR 50:110
217C.040	902 KAR 50:070
217C.070	902 KAR 50:050
Chapter 218A	902 KAR 55:040
	902 KAR 55:045
	902 KAR 55:060
222.011–222.310	908 KAR 1:010
222.210–222.310	908 KAR 1:020
	908 KAR 1:030
	908 KAR 1:040
	908 KAR 1:050
	908 KAR 1:060
	908 KAR 1:080
	908 KAR 1:090
	908 KAR 1:100
	908 KAR 1:110
	908 KAR 1:120
	908 KAR 1:130
	908 KAR 1:140
222.460–222.475	908 KAR 1:300
222.990	908 KAR 1:010
	908 KAR 1:030
	908 KAR 1:040
	908 KAR 1:050
	908 KAR 1:060
	908 KAR 1:080
	908 KAR 1:090
	908 KAR 1:100
	908 KAR 1:110
	908 KAR 1:120
	908 KAR 1:130
	908 KAR 1:140
Chapter 223	401 KAR 8:010
	401 KAR 8:020
Chapter 224	401 KAR 5:031
	401 KAR 8:010
	401 KAR 8:020
	401 KAR 8:070
	401 KAR 8:150
	401 KAR 8:200
	401 KAR 50:012

KRS Section	Regulation
150.170	301 KAR 1:075
	301 KAR 1:085
	301 KAR 1:200
	301 KAR 2:044
	301 KAR 2:140
	301 KAR 2:220
150.175	301 KAR 1:075
	301 KAR 1:085
	301 KAR 2:140
	301 KAR 2:220
	301 KAR 3:021
150.180	301 KAR 1:085
	301 KAR 2:195
150.183	301 KAR 2:195
150.190	301 KAR 1:085
150.225	301 KAR 3:021
150.235	301 KAR 1:075
	301 KAR 2:220
150.237	301 KAR 3:021
150.240	301 KAR 2:220
	301 KAR 3:021
150.250	301 KAR 10:010
150.280	301 KAR 3:021
150.290	301 KAR 2:195
	301 KAR 3:021
150.300	301 KAR 2:044
150.305	301 KAR 2:044
	301 KAR 2:140
	301 KAR 2:195
	301 KAR 2:220
150.320	301 KAR 2:044
	301 KAR 2:140
	301 KAR 2:195
150.330	301 KAR 2:044
	301 KAR 2:140
	301 KAR 2:195
	301 KAR 2:220
150.340	301 KAR 2:044
	301 KAR 2:220
150.360	301 KAR 1:075
	301 KAR 2:044
	301 KAR 2:140
	301 KAR 2:195
	301 KAR 2:220
150.365	301 KAR 2:140
150.390	301 KAR 2:140
150.440	301 KAR 1:075
150.445	301 KAR 1:075
150.470	301 KAR 1:075
	301 KAR 1:200
150.510	301 KAR 1:085
150.520	301 KAR 1:085
150.525	301 KAR 1:085
	301 KAR 3:021
150.600	301 KAR 2:220
150.603	301 KAR 2:044
	301 KAR 2:220
150.620	301 KAR 1:015
	301 KAR 10:010
150.625	301 KAR 1:015
150.630	301 KAR 2:220
150.660	301 KAR 3:021
150.990	301 KAR 1:015
	301 KAR 1:075
	301 KAR 1:085
	301 KAR 1:200
	301 KAR 2:140
	301 KAR 2:220
	301 KAR 3:021
151B.135	780 KAR 3:020
	784 KAR 1:020
151B.140	784 KAR 1:010
	784 KAR 1:020

KRS Section	Regulation
156.016	101 KAR 2:035
156.031	702 KAR 5:080
	704 KAR 7:090
	705 KAR 3:011
156.033	705 KAR 3:011
156.035	704 KAR 7:090
156.070	701 KAR 5:020
	702 KAR 7:065
156.160	702 KAR 3:250
	702 KAR 4:050
	702 KAR 5:030
	702 KAR 5:080
	704 KAR 3:410
	704 KAR 4:020
	707 KAR 1:150
156.611	704 KAR 15:091
157.200	707 KAR 1:054
157.220	707 KAR 1:054
157.224	707 KAR 1:054
157.226	702 KAR 3:250
	702 KAR 5:150
	707 KAR 1:150
157.230	707 KAR 1:054
157.3175	702 KAR 3:250
	702 KAR 5:150
	704 KAR 3:410
157.360	704 KAR 3:012
157.370	702 KAR 5:141
157.420	702 KAR 1:001
157.622	702 KAR 1:001
158.650–158.710	704 KAR 3:006
158.805	701 KAR 7:011
160.330	702 KAR 3:220
160.345	701 KAR 5:100
161.028	704 KAR 20:590
	704 KAR 20:600
161.030	704 KAR 20:590
	704 KAR 20:600
161.048	704 KAR 20:590
	704 KAR 20:600
161.049	704 KAR 20:590
	704 KAR 20:600
161.770	701 KAR 5:090
161.790	701 KAR 5:090
162.010	702 KAR 4:050
162.060	702 KAR 4:050
164.410	770 KAR 1:060
164.740	11 KAR 4:040
164.744	11 KAR 8:030
164.748	11 KAR 4:040
164.753	11 KAR 8:030
164.768	704 KAR 15:091
164A.300–164A.380	11 KAR 12:001
164A.560	770 KAR 1:010
	770 KAR 1:020
164A.565	770 KAR 1:010
	770 KAR 1:020
164A.570	770 KAR 1:030
164A.575	770 KAR 1:020
	770 KAR 1:040
164A.605	770 KAR 1:050
164A.620	770 KAR 1:020
	770 KAR 1:060
165A.450	783 KAR 1:030
167.210	707 KAR 1:040
167.220	707 KAR 1:040
174.450	601 KAR 40:010
	601 KAR 40:020
186.070	605 KAR 1:160
186.565	500 KAR 8:010
189.221	603 KAR 5:071
189.222	603 KAR 5:070
	603 KAR 5:071

KRS Section	Regulation
189.265	603 KAR 5:071
189.540	702 KAR 5:030
	702 KAR 5:080
Chapter 189A	908 KAR 1:310
189A.050	109 KAR 11:030
189A.103	500 KAR 8:010
	500 KAR 8:030
189A.300	500 KAR 8:020
189A.400–189A.460	601 KAR 12:060
190.010	605 KAR 1:050
190.010–190.080	605 KAR 1:030
190.010–190.990	605 KAR 1:160
190.030	605 KAR 1:050
190.035	605 KAR 1:050
190.040	605 KAR 1:090
190.058	605 KAR 1:010
	605 KAR 1:130
190.062	605 KAR 1:130
194.025	906 KAR 1:090
194.030	900 KAR 2:050
	900 KAR 2:060
	906 KAR 1:010
	906 KAR 1:090
194.040	906 KAR 1:090
194.050	902 KAR 105:060
	904 KAR 2:110
	904 KAR 2:116
	904 KAR 3:010
	904 KAR 3:020
	904 KAR 3:025
	904 KAR 3:030
	904 KAR 3:035
	904 KAR 3:045
	904 KAR 3:050
	904 KAR 3:060
	904 KAR 3:070
	906 KAR 1:020
	906 KAR 1:090
Chapter 196	501 KAR 6:020
	501 KAR 6:030
	501 KAR 6:040
	501 KAR 6:050
	501 KAR 6:060
	501 KAR 6:070
	501 KAR 6:080
	501 KAR 6:090
	501 KAR 6:130
	501 KAR 6:140
	501 KAR 6:150
	501 KAR 6:160
Chapter 197	501 KAR 6:020
	501 KAR 6:030
	501 KAR 6:040
	501 KAR 6:050
	501 KAR 6:060
	501 KAR 6:070
	501 KAR 6:080
	501 KAR 6:090
	501 KAR 6:130
	501 KAR 6:140
	501 KAR 6:150
	501 KAR 6:160
Chapter 198B	815 KAR 7:010
	815 KAR 7:025
	815 KAR 7:080
198B.040	815 KAR 7:070
198B.050	815 KAR 7:070
198B.090	815 KAR 7:070
199.420	905 KAR 3:030
199.470	905 KAR 1:010
199.471	905 KAR 1:010
199.472	905 KAR 1:010
199.473	905 KAR 1:010
199.480	905 KAR 1:010
199.520	905 KAR 1:010
199.572	905 KAR 1:010
199.645	905 KAR 1:210
199.892–199.896	905 KAR 2:080
200.460	902 KAR 4:080
200.460–200.490	902 KAR 4:070
Chapter 202A	905 KAR 7:100
	908 KAR 3:010
	908 KAR 3:080
	908 KAR 3:090
	908 KAR 3:100
	908 KAR 3:110
	908 KAR 3:120
	908 KAR 3:160
	908 KAR 3:180
202A.181	908 KAR 3:030
202A.201	908 KAR 3:020
Chapter 202B	908 KAR 3:010
	908 KAR 3:080
	908 KAR 3:090
	908 KAR 3:100
	908 KAR 3:110
	908 KAR 3:120
	908 KAR 3:160
	908 KAR 3:180
205.010	904 KAR 2:006
205.175	907 KAR 1:075
205.200	904 KAR 2:006
	904 KAR 2:016
205.201	905 KAR 8:160
	905 KAR 8:170
	905 KAR 8:180
	905 KAR 8:190
	905 KAR 8:200
	905 KAR 8:210
	905 KAR 8:220
205.203	905 KAR 8:160
	905 KAR 8:170
	905 KAR 8:190
	905 KAR 8:220
205.204	905 KAR 3:030
205.210	904 KAR 2:016
205.231	907 KAR 1:075
205.237	907 KAR 1:075
205.245	904 KAR 2:015
205.455–205.465	905 KAR 8:160
	905 KAR 8:170
	905 KAR 8:180
	905 KAR 8:190
	905 KAR 8:220
205.510–205.990	907 KAR 1:220
205.520	907 KAR 1:002
	907 KAR 1:004
	907 KAR 1:007
	907 KAR 1:010
	907 KAR 1:011
	907 KAR 1:012
	907 KAR 1:013
	907 KAR 1:022
	907 KAR 1:025
	907 KAR 1:027
	907 KAR 1:032
	907 KAR 1:033
	907 KAR 1:035
	907 KAR 1:037
	907 KAR 1:040
	907 KAR 1:044
	907 KAR 1:045
	907 KAR 1:048
	907 KAR 1:049
	907 KAR 1:055
	907 KAR 1:061

KRS Section	Regulation
350.151 (cont'd)	405 KAR 10:200
	405 KAR 18:180
	405 KAR 18:190
	405 KAR 18:200
	405 KAR 18:220
350.260	405 KAR 10:200
350.405	405 KAR 16:180
	405 KAR 16:190
	405 KAR 16:200
	405 KAR 16:210
	405 KAR 18:180
	405 KAR 18:190
	405 KAR 18:200
350.410	405 KAR 16:190
	405 KAR 16:200
	405 KAR 16:210
	405 KAR 18:190
	405 KAR 18:200
	405 KAR 18:220
350.420	405 KAR 16:200
	405 KAR 18:200
350.435	405 KAR 16:180
	405 KAR 16:200
	405 KAR 18:180
	405 KAR 18:200
350.450	405 KAR 8:010
	405 KAR 16:190
	405 KAR 16:210
	405 KAR 18:190
	405 KAR 18:220
350.465	405 KAR 7:030
	405 KAR 7:035
	405 KAR 7:080
	405 KAR 8:010
	405 KAR 8:030
	405 KAR 10:050
	405 KAR 10:200
	405 KAR 16:180
	405 KAR 16:190
	405 KAR 16:200
	405 KAR 16:210
	405 KAR 18:180
	405 KAR 18:190
	405 KAR 18:200
	405 KAR 18:220
	405 KAR 20:010
350.610	405 KAR 8:020
350.700	405 KAR 10:200
350.705	405 KAR 10:200
350.710	405 KAR 10:200
350.715	405 KAR 10:200
350.720	405 KAR 10:200
350.725	405 KAR 10:200
350.730	405 KAR 10:200
350.735	405 KAR 10:200
350.740	405 KAR 10:200
350.745	405 KAR 10:200
350.750	405 KAR 10:200
350.755	405 KAR 10:200
350.990	405 KAR 10:200
353.520	805 KAR 1:020
	805 KAR 1:120
	805 KAR 1:130
	805 KAR 1:140
353.590	805 KAR 1:050
Chapter 439	501 KAR 6:020
	501 KAR 6:030
	501 KAR 6:040
	501 KAR 6:050
	501 KAR 6:060
	501 KAR 6:070
	501 KAR 6:080
	501 KAR 6:090

KRS Section	Regulation
Chapter 439 (cont'd)	501 KAR 6:130
	501 KAR 6:140
	501 KAR 6:150
	501 KAR 6:160
600.020	905 KAR 1:150
605.080–605.110	905 KAR 7:060
	905 KAR 7:100
605.150	905 KAR 7:060
	905 KAR 7:100
615.030	905 KAR 1:010
620.030–620.040	905 KAR 1:150
620.180	905 KAR 1:150
1986 GA, HB 398	900 KAR 1:007
1990 GA, HJR 124	704 KAR 4:020
7 CFR 271	904 KAR 3:010
7 CFR 272	904 KAR 3:050
7 CFR 273	904 KAR 3:010
	904 KAR 3:020
	904 KAR 3:025
	904 KAR 3:030
	904 KAR 3:035
	904 KAR 3:050
	904 KAR 3:060
	904 KAR 3:070
7 CFR 274	904 KAR 3:045
8 CFR	904 KAR 2:110
20 CFR 416	904 KAR 2:015
21 CFR 113B	902 KAR 50:010
21 CFR 131,133,135,166	902 KAR 50:070
23 CFR 658	603 KAR 5:070
	603 KAR 5:071
27 CFR 55	405 KAR 8:010
29 CFR 1910	803 KAR 2:307
	803 KAR 2:318
	807 KAR 2:320
30 CFR	405 KAR 7:020
	405 KAR 7:030
	405 KAR 7:035
	405 KAR 7:080
	405 KAR 8:010
	405 KAR 8:020
	405 KAR 8:030
	405 KAR 8:040
	405 KAR 10:200
	405 KAR 16:180
	405 KAR 16:190
	405 KAR 16:200
	405 KAR 16:210
	405 KAR 18:180
	405 KAR 18:190
	405 KAR 18:200
	405 KAR 18:220
	405 KAR 20:010
34 CFR	904 KAR 2:110
40 CFR 51,52,60,61,81	401 KAR 51:017
40 CFR 81.318	401 KAR 51:017
	401 KAR 59:214
	401 KAR 59:225
	401 KAR 59:230
	401 KAR 59:240
	401 KAR 61:124
	401 KAR 61:132
	401 KAR 61:137
	401 KAR 61:150
	401 KAR 61:160
	401 KAR 61:175
40 CFR 141	401 KAR 8:010
	401 KAR 8:020
	401 KAR 8:070
	401 KAR 8:150
	401 KAR 8:200
40 CFR 142	401 KAR 8:020
	401 KAR 8:070
	401 KAR 8:150

KRS Section	Regulation
40 CFR 143	401 KAR 8:070
40 CFR 261	401 KAR 31:060
	401 KAR 31:110
	401 KAR 37:100
45 CFR	904 KAR 2:006
	904 KAR 2:016
	904 KAR 2:360
	905 KAR 1:150
	905 KAR 2:080
	905 KAR 8:220
45 CFR 46.101–46.409	900 KAR 1:060
45 CFR 400	904 KAR 2:110
49 CFR Part 192	807 KAR 5:006
49 CFR 199	807 KAR 5:023
50 CFR	301 KAR 2:195
5 USC	905 KAR 8:220
12 USC 3331–3351	201 KAR 30:100
	201 KAR 30:110
	201 KAR 30:120
	201 KAR 30:130
16 USC	405 KAR 8:010
30 USC	405 KAR 7:020
	405 KAR 7:030
	405 KAR 7:035
	405 KAR 7:080
	405 KAR 8:010
	405 KAR 8:020
	405 KAR 8:030
	405 KAR 8:040
	405 KAR 10:200
	405 KAR 16:180
	405 KAR 16:190
	405 KAR 16:200
	405 KAR 16:210
	405 KAR 18:180
	405 KAR 18:190
	405 KAR 18:200
	405 KAR 18:220
	405 KAR 20:010
31 USC 7501–7507	45 KAR 1:050
42 USC	905 KAR 1:150
	905 KAR 8:160
	905 KAR 8:170
	905 KAR 8:180
	905 KAR 8:190
	905 KAR 8:200
	905 KAR 8:210
	905 KAR 8:220
42 USC 4321	401 KAR 51:017
42 USC 7411	401 KAR 51:017
42 USC 8621	904 KAR 2:116
42 USC 11001–11050	106 KAR 1:081
	106 KAR 1:091
42 USC 11432	704 KAR 7:090
49 USC 1674	807 KAR 5:023

KRS Section	Regulation
224.005–224.110	401 KAR 48:050
224.033	401 KAR 31:060
	401 KAR 32:100
	401 KAR 34:230
	401 KAR 35:200
	401 KAR 35:220
	401 KAR 35:240
	401 KAR 37:100
224.060	401 KAR 34:230
	401 KAR 37:100
224.071	401 KAR 32:010
	401 KAR 34:230
	401 KAR 37:100
224.320	401 KAR 50:010
	401 KAR 50:046
	401 KAR 51:017
	401 KAR 59:214
	401 KAR 59:225
	401 KAR 59:230
	401 KAR 59:240
	401 KAR 61:124
	401 KAR 61:132
	401 KAR 61:137
	401 KAR 61:150
	401 KAR 61:160
	401 KAR 61:175
224.330	401 KAR 50:010
	401 KAR 50:046
	401 KAR 51:017
	401 KAR 59:214
	401 KAR 59:225
	401 KAR 59:230
	401 KAR 59:240
	401 KAR 61:124
	401 KAR 61:132
	401 KAR 61:137
	401 KAR 61:150
	401 KAR 61:160
	401 KAR 61:175
224.340	401 KAR 50:010
	401 KAR 50:046
	401 KAR 51:017
	401 KAR 59:214
	401 KAR 59:225
	401 KAR 59:230
	401 KAR 59:240
	401 KAR 61:124
	401 KAR 61:132
	401 KAR 61:137
	401 KAR 61:150
	401 KAR 61:160
	401 KAR 61:175
224.810	415 KAR 1:040
224.814	815 KAR 30:060
224.814–224.825	415 KAR 1:040
224.820	815 KAR 30:060
224.830–224.877	401 KAR 31:010
	401 KAR 31:030
	401 KAR 31:040
	401 KAR 31:060
	401 KAR 31:110
	401 KAR 32:010
	401 KAR 32:100
	401 KAR 34:230
	401 KAR 35:200
	401 KAR 35:220
	401 KAR 35:240
	401 KAR 37:100
	401 KAR 48:050
224.994	401 KAR 31:010
	401 KAR 31:030
	401 KAR 31:040
	401 KAR 31:060

KRS Section	Regulation
224.994 (cont'd)	401 KAR 31:110
	401 KAR 32:010
	401 KAR 32:100
	401 KAR 34:230
	401 KAR 35:200
	401 KAR 35:220
	401 KAR 35:240
	401 KAR 37:100
	401 KAR 48:050
227.550–227.660	815 KAR 25:010
227.990	815 KAR 25:010
230.210–230.360	810 KAR 1:001
	810 KAR 1:002
	810 KAR 1:003
	810 KAR 1:004
	810 KAR 1:005
	810 KAR 1:006
	810 KAR 1:007
	810 KAR 1:008
	810 KAR 1:009
	810 KAR 1:010
	810 KAR 1:011
	810 KAR 1:012
	810 KAR 1:013
	810 KAR 1:014
	810 KAR 1:015
	810 KAR 1:016
	810 KAR 1:017
	810 KAR 1:018
	810 KAR 1:019
	810 KAR 1:020
230.218	810 KAR 1:021
230.361	810 KAR 1:050
Chapter 236	815 KAR 15:020
244.130	804 KAR 1:100
246.650	302 KAR 45:010
246.660	302 KAR 45:010
Chapter 257	302 KAR 20:230
Chapter 278	807 KAR 5:001
	807 KAR 5:005
	807 KAR 5:006
	807 KAR 5:023
	807 KAR 5:066
Chapter 281	601 KAR 1:116
	601 KAR 1:180
281.735	603 KAR 5:071
Chapter 292	808 KAR 10:010
	808 KAR 10:220
	808 KAR 10:260
	808 KAR 10:270
292.310	808 KAR 10:260
292.330	808 KAR 10:010
	808 KAR 10:260
292.340–292.390	808 KAR 10:220
	808 KAR 10:270
292.400	808 KAR 10:270
292.410	808 KAR 10:220
Chapter 304	405 KAR 10:200
304.2–110	806 KAR 3:150
304.3–200	806 KAR 3:160
304.3–240	806 KAR 3:160
	806 KAR 3:170
304.4–010	806 KAR 4:010
304.5–120	806 KAR 3:160
304.9–295	806 KAR 9:220
304.19–090	806 KAR 19:030
304.33–140	806 KAR 3:160
311.241–311.247	902 KAR 20:016
	902 KAR 20:250
311.530–311.620	201 KAR 9:031
	201 KAR 9:041
	201 KAR 9:175
311.622–311.644	902 KAR 20:340

KRS Section	Regulation
311.900	201 KAR 9:300
311.900–311.928	201 KAR 9:305
311.970–311.978	902 KAR 20:340
311.990	201 KAR 9:031
	201 KAR 9:041
	201 KAR 9:175
	902 KAR 20:016
	902 KAR 20:250
	902 KAR 20:340
314.011	201 KAR 20:056
314.042	201 KAR 20:056
314.161	201 KAR 20:056
315.050	201 KAR 2:010
Chapter 318	815 KAR 20:020
	815 KAR 20:050
323A.210	201 KAR 10:080
324A.010	201 KAR 30:100
324A.015	201 KAR 30:110
	201 KAR 30:120
	201 KAR 30:130
324A.020	201 KAR 30:100
	201 KAR 30:110
	201 KAR 30:120
	201 KAR 30:130
324A.030	201 KAR 30:100
	201 KAR 30:110
	201 KAR 30:120
	201 KAR 30:130
324A.035	201 KAR 30:100
	201 KAR 30:110
	201 KAR 30:120
	201 KAR 30:130
324A.040	201 KAR 30:100
	201 KAR 30:110
	201 KAR 30:120
	201 KAR 30:130
324A.045	201 KAR 30:100
	201 KAR 30:110
	201 KAR 30:120
	201 KAR 30:130
324A.050	201 KAR 30:100
	201 KAR 30:110
	201 KAR 30:120
	201 KAR 30:130
324A.070	201 KAR 30:100
	201 KAR 30:110
	201 KAR 30:120
	201 KAR 30:130
324A.075	201 KAR 30:100
	201 KAR 30:110
	201 KAR 30:120
	201 KAR 30:130
327.040	201 KAR 22:053
	201 KAR 22:101
	201 KAR 22:110
	201 KAR 22:135
327.050	201 KAR 22:020
	201 KAR 22:040
	201 KAR 22:135
327.060	201 KAR 22:070
327.070	201 KAR 22:053
335.080	201 KAR 23:070
335.090	201 KAR 23:070
335.100	201 KAR 23:070
337.275	803 KAR 1:070
337.285	803 KAR 1:070
Chapter 338	803 KAR 2:015
	803 KAR 2:307
	803 KAR 2:318
	803 KAR 2:320
	803 KAR 2:403
	803 KAR 2:423
Chapter 340	906 KAR 1:030
Chapter 341	200 KAR 12:020
341.370	903 KAR 5:390
341.380	903 KAR 5:270
346.040	107 KAR 1:025
346.110	107 KAR 1:025
346.185	107 KAR 1:050
Chapter 350	405 KAR 7:015
	405 KAR 7:020
350.010	405 KAR 7:030
	405 KAR 7:035
350.020	405 KAR 8:010
	405 KAR 10:050
	405 KAR 10:200
	405 KAR 16:180
	405 KAR 16:190
	405 KAR 18:180
	405 KAR 18:190
350.028	405 KAR 7:030
	405 KAR 7:035
	405 KAR 10:200
	405 KAR 16:180
	405 KAR 18:180
350.055	405 KAR 8:010
350.057	405 KAR 7:030
	405 KAR 8:020
	405 KAR 20:010
350.060	405 KAR 7:030
	405 KAR 7:035
	405 KAR 8:010
	405 KAR 8:030
	405 KAR 8:040
	405 KAR 10:050
	405 KAR 10:200
350.062	405 KAR 10:200
350.064	405 KAR 10:050
	405 KAR 10:200
350.068	405 KAR 10:200
350.070	405 KAR 8:010
350.085	405 KAR 8:010
	405 KAR 10:200
350.090	405 KAR 8:010
350.093	405 KAR 10:050
	405 KAR 10:200
	405 KAR 16:190
	405 KAR 16:200
	405 KAR 16:210
	405 KAR 18:190
	405 KAR 18:200
	405 KAR 18:220
350.095	405 KAR 10:050
	405 KAR 10:200
	405 KAR 16:200
	405 KAR 16:210
	405 KAR 18:200
	405 KAR 18:220
350.100	405 KAR 10:200
	405 KAR 16:190
	405 KAR 16:200
	405 KAR 16:210
	405 KAR 18:190
	405 KAR 18:200
	405 KAR 18:220
350.110	405 KAR 10:050
350.113	405 KAR 10:200
350.130	405 KAR 8:010
	405 KAR 10:050
	405 KAR 10:200
350.135	405 KAR 8:010
	405 KAR 10:200
350.151	405 KAR 7:030
	405 KAR 7:035
	405 KAR 8:040
	405 KAR 10:050

SUBJECT INDEX

ADULT, TECHNICAL EDUCATION
Certified, Equivalent Personnel
Compensation plan; 780 KAR 3:020

AGRICULTURE
Ginseng
General provisions; 302 KAR 45:010
Livestock Sanitation
Fee basis schedule; 302 KAR 20:230

AIR QUALITY
Existing Source Standards
Dry cleaning systems; 401 KAR 61:160
Metal parts coating operations; 401 KAR 61:132
Paneling coating operations; 401 KAR 61:124
Petroleum refinery leaks; 401 KAR 61:137
Pharmaceutical product operations; 401 KAR 61:150
Synthetic organic chemical, polymer manufacturing equipment; 401 KAR 61:175
General Procedures
Capture efficiency tests; 401 KAR 50:046
Definitions, abbreviations; 401 KAR 50:010
General application; 401 KAR 50:012
New Source Requirements; Nonattainment Areas
Significant deterioration; 401 KAR 51:017
New Source Standards
Dry cleaning systems; 401 KAR 59:240
Metal parts coating operations; 401 KAR 59:225
Paneling coating operations; 401 KAR 59:214
Pharmaceutical product operations; 401 KAR 59:230

ALCOHOLIC BEVERAGE CONTROL
Advertising Distilled Spirits, Wine
General advertising practices; 804 KAR 1:100

AUDITOR OF PUBLIC ACCOUNTS
Sheriff's tax settlements audits; 45 KAR 1:030
County fee officials audits; 45 KAR 1:040
Fiscal courts audits; 45 KAR 1:050

BREATH ANALYSIS OPERATORS
Certification; 500 KAR 8:010 & E
Chemical analysis tests; 500 KAR 8:030 & E
Instruments; 500 KAR 8:010 & E

BUILDING CODE
(See Housing, Buildings and Construction)

CLAIMS BOARD
Claims filing, original signature; 108 KAR 1:030

COLLEGES, UNIVERSITIES
(See Individual University or Higher Education Assistance Authority)

CONTROLLED SUBSTANCES
(See Health Services)

CORRECTIONS
Facility Standards
Bell County Forestry Camp; 501 KAR 6:140
Cabinet manuals; 501 KAR 6:080
Cabinet policies; 501 KAR 6:020 & E
Correctional industries; 501 KAR 6:160
Correctional Institute for Women; 501 KAR 6:070
Eastern Kentucky Correctional Complex; 501 KAR 6:150 & E
Frankfort Career Development; 501 KAR 6:090
Kentucky State Penitentiary; 501 KAR 6:040
Kentucky State Reformatory; 501 KAR 6:030

CORRECTIONS (cont'd)
Luther Luckett Complex; 501 KAR 6:050
Northpoint Training Center; 501 KAR 6:060
Western Kentucky Correctional Complex; 501 KAR 6:130

CRIME VICTIMS COMPENSATION BOARD
Attorneys fees prohibited; 107 KAR 1:025
Prorating awards; 107 KAR 1:050

DISASTER, EMERGENCY SERVICES
(See Military Affairs)

DISTRICT SUPPORT SERVICES (EDUCATION)
Facilities Management
Building sites; 702 KAR 4:050
General Administration
School facilities manual; 702 KAR 1:001 & E
Pupil Transportation
Bus driver qualifications; 702 KAR 5:080
Preschool children; 702 KAR 5:150
Repealer; 702 KAR 5:141
Superintendent responsibilities; 702 KAR 5:030
School District Finance
Preschool grant allocation; 702 KAR 3:250
School fees waiver; 702 KAR 3:220 & E
Terms, Attendance, Operation
High school interscholastic athletics, agent; 702 KAR 7:065

EDUCATION AND HUMANITIES CABINET
Chief State School Officer's Office
Hearing officer; 701 KAR 5:020
School-based decision making; 701 KAR 5:100
Teacher disciplinary hearing; 701 KAR 5:090 & E
District Support Services
Facilities management; 702 KAR Chapter 4
General administration; 702 KAR Chapter 1
Pupil transportation; 702 KAR Chapter 5
School district finance; 702 KAR Chapter 3
Terms, attendance, operation; 702 KAR Chapter 7
Educational Innovation Incentive Committee
Repealer; 701 KAR 7:011
Exceptional children; 707 KAR Chapter 1
Learning Programs Development
Education professional standards; 704 KAR Chapter 20
Health, P.E. programs; 704 KAR Chapter 4
Instructional services; 704 KAR Chapter 3
Student services; 704 KAR Chapter 7
Teacher education; 704 KAR Chapter 15
Special Instructional Services
Facilities, equipment; 705 KAR Chapter 3

ELECTIONS BOARD
Forms, Procedures
Recanvass; 31 KAR 4:070

ELECTION FINANCE
(See Registry of Election Finance)

EMERGENCY MEDICAL TECHNICIANS
(See Health Services)

EMPLOYEES, STATE
(See also Personnel)
Personnel Rules
Board; 101 KAR Chapter 1
Classified; 101 KAR Chapter 2
Retirement; 105 KAR Chapter 1

EMPLOYMENT SERVICES
Unemployment Insurance
Maximum weekly benefit rate; 903 KAR 5:270
Workforce reduction; 903 KAR 5:390

ENVIRONMENTAL PROTECTION
(See Natural Resources & Environmental Protection)

EXCEPTIONAL CHILDREN PROGRAMS
Deaf-blind; tuition, support; 707 KAR 1:040
Disabled children preschool; 707 KAR 1:150
Emotional-behavioral disability; 707 KAR 1:054

FINANCE, ADMINISTRATION CABINET
Buildings and Grounds
Mansions monthly meal charges; 200 KAR 3:045
Vehicle parking, traffic control; 200 KAR 3:010
Engineering
Securities substitution for retainage; 200 KAR 7:010
Personnel
Unemployment insurance payments; 200 KAR 12:020
Property
Flood plain management; 200 KAR 6:040
Real property inventories; 200 KAR 6:015
Repealer; 200 KAR 6:011
Purchasing
Competitive sealed bidding; 200 KAR 5:306
Competitively negotiated contracts; 200 KAR 5:307
Conditions for bidding; 200 KAR 5:313
Contract modifications; 200 KAR 5:311
Contract termination; 200 KAR 5:312
Cost principles; 200 KAR 5:317
Minimum recycled content; 200 KAR 5:330 & E
Multiple contracts; 200 KAR 5:310
Noncompetitive negotiations; 200 KAR 5:309
Performance bonds, forms, payments; 200 KAR 5:305
Political subdivision central purchasing; 200 KAR 5:050
Purchasing authority delegation; 200 KAR 5:301
Small, small minority business set asides; 200 KAR 5:076
Source list application; 200 KAR 5:304

FINANCIAL INSTITUTIONS
Securities
Application, registration; 808 KAR 10:010
CBOE; 808 KAR 10:270
NASDAQ/NMS exemption; 808 KAR 10:220
Public security adviser; 808 KAR 10:260

FISH AND WILDLIFE RESOURCES
Fish
Angling, seasons, limits; 301 KAR 1:200
Boats, outboard motors; 301 KAR 1:015
Gigging, grabbling, snagging, tickling, noodling; 301 KAR 1:075
Mussel shell harvesting; 301 KAR 1:085
Game
Migratory bird hunting; 301 KAR 2:220 & E
Migratory wildlife; 301 KAR 2:044 & E
Raptor propagation, falconry; 301 KAR 2:195
Wild turkey seasons; 301 KAR 2:140
Heritage Land Conservation Fund
Board; 301 KAR 10:010
Hunting, Fishing
License fees; 301 KAR 3:021

FOOD, COSMETICS
(See Health Services)

HANDICAPPED CHILDREN COMMISSION
Handicapped children's services; 902 KAR 4:070
Disabled children's program; 902 KAR 4:080

HAZARDOUS SUBSTANCES
(See Health Services)

HEALTH SERVICES
Controlled Substances
Distribution without licenses; 902 KAR 55:060
Over-the-counter exemptions; 902 KAR 55:040
Prescription preparation exempt; 902 KAR 55:045
EMTs
Applicants training; 902 KAR 13:020
Authorized procedures; 902 KAR 13:080
Definitions; 902 KAR 13:010
Disciplinary actions; 902 KAR 13:090
EMT-first responder; 902 KAR 13:110
Exemptions; 902 KAR 13:040
Instructors, trainers; 902 KAR 13:070
Peripheral I.V. infusion; 902 KAR 13:130
Repealer; 902 KAR 13:101
Food, Cosmetics
Bed and breakfast; 902 KAR 45:006
Inspector's manual; 902 KAR 45:130
Retail food programs; 902 KAR 45:140
Salvage; 902 KAR 45:080
Vending machines; 902 KAR 45:100
Hazardous Substances
Flammable fabrics; 902 KAR 47:070
Lead-containing products ban; 902 KAR 47:050
Toy, children's products safety; 902 KAR 47:060
Health Services and Facilities
Ambulatory care clinics; 902 KAR 20:072
Ambulatory surgical center; 902 KAR 20:106
Certificate of need process; 902 KAR 20:006
Chemical dependency treatment; 902 KAR 20:160
Comprehensive physical rehabilitation hospital; 902 KAR 20:230; 902 KAR 20:240
Day health care; 902 KAR 20:066
Dual licensure hospitals; 902 KAR 20:220
Family care homes; 902 KAR 20:041
Ground transportation services; 902 KAR 20:117
Hospitals; 902 KAR 20:016
Life-prolonging treatment, withholding, withdrawal; 902 KAR 20:340
Medical detoxification services; 902 KAR 20:111
Mobile health services; 902 KAR 20:270
Personal care homes; 902 KAR 20:036
Renal dialysis facilities; 902 KAR 20:018
Special health clinics; 902 KAR 20:260
Specialized medical technology; 902 KAR 20:250
Tuberculosis testing, long-term care; 902 KAR 20:200
Maternal and Child Health
Lay-midwifery; 902 KAR 4:010
Lead poisoning prevention; 902 KAR 4:090
Milk and Milk Products
Definitions; 902 KAR 50:010
Farm manufacturing; 902 KAR 50:030
Grade A milk sanitation; 902 KAR 50:100
Grade A milk standards; 902 KAR 50:110
Manufacturing plants; 902 KAR 50:050
Milk adulteration; 902 KAR 50:090
Standards of identity; 902 KAR 50:070
Radiation Operators Certification
Curricula; 902 KAR 105:030
Definitions; 902 KAR 105:010
General requirements; 902 KAR 105:020
Medical, osteopathic, chiropractic supervision; 902 KAR 105:040
Podiatrist supervision; 902 KAR 105:060
Violations, enforcements; 902 KAR 105:070
Radiology
Air, water concentrations; 902 KAR 100:025

MENTAL HEALTH, MENTAL RETARDATION SERVICES (cont'd)
DUI facilities, programs; 908 KAR 1:310 & E
Nonmedical Alcohol Treatment and Education
Administration, organization; 908 KAR 1:030
Client's rights; 908 KAR 1:060
Definitions; 908 KAR 1:010
Detoxification; 908 KAR 1:090
Education; 908 KAR 1:140
General program operations; 908 KAR 1:080
Intensive outpatient treatment; 908 KAR 1:130
Licensing procedures; 908 KAR 1:020
Outpatient treatment; 908 KAR 1:120
Personnel policies; 908 KAR 1:040
Quality assurance; 908 KAR 1:050
Residential transition; 908 KAR 1:110
Residential treatment; 908 KAR 1:100

MILITARY AFFAIRS
Disaster, Emergency Services
Emergency Response Commission
Fee system requirements; 106 KAR 1:081
Grant distribution formula; 106 KAR 1:121
Grant review committee; 106 KAR 1:111
Grant penalty assessment, hearings; 106 KAR 1:131
Local emergency planning committees; 106 KAR 1:092
State agencies; 106 KAR 1:101

MILK AND MILK PRODUCTS
(See Health Services)

MINES AND MINERALS
Oil and Gas
Deep wells; 805 KAR 1:130
Directional, horizontal wells; 805 KAR 1:140
Freshwater zone protection; 805 KAR 1:020
Surety bond requirements, cancellation; 805 KAR 1:050

MOBILE HOMES
(See Housing, Buildings and Construction)

MOTOR VEHICLE COMMISSION
Applications; 605 KAR 1:030
Business names; 605 KAR 1:090
Component manufacturers; 605 KAR 1:160
Dealer, salesman; 605 KAR 1:050
Meetings; 605 KAR 1:010
Procedures; 605 KAR 1:130

NATURAL RESOURCES, ENVIRONMENTAL PROTECTION
Environmental Protection
Air quality; 401 KAR Chapters 50-61
Hazardous substances; 400 KAR 1:070
Surface mining; 405 KAR Chapters 7-20
Waste management; 401 Chapters 31-48
Water; 401 KAR Chapters 5, 8

NURSING BOARD
Advanced registered nurse practitioner; 201 KAR 20:056

OCCUPATIONAL SAFETY, HEALTH
General industry standards; 803 KAR 2:015
29 CFR Part 1910; 803 KAR 2:307 to 803 KAR 2:320
29 CFR Part 1926; 803 KAR 2:403 to 803 KAR 2:423

OCCUPATIONS AND PROFESSIONS
Landscape architects; 201 KAR Chapter 10
Medical licensure; 201 KAR Chapter 9
Nursing; 201 KAR Chapter 20
Pharmacy; 201 KAR Chapter 2
Physical therapy; 201 KAR Chapter 22
Real estate appraisers; 201 KAR Chapter 30
Social work examiners; 201 KAR 23:070

PERSONNEL
Board
Probationary period; 101 KAR 1:325
Classified
Application, qualification, examination; 101 KAR 2:045
Compensation plan, pay incentive; 101 KAR 2:035 & E

PETROLEUM STORAGE TANK ENVIRONMENTAL ASSURANCE FUND COMMISSION
Reimbursement guidelines; 415 KAR 1:040 & E

PHARMACY
Schools approved by board; 201 KAR 2:010

PHYSICAL THERAPY
Assistant certification; 201 KAR 22:101
Assistant renewal; 201 KAR 22:110
Code of standards; 201 KAR 22:053
Fees; 201 KAR 22:135
Foreign trained; 201 KAR 22:070
License application; 201 KAR 22:020
License renewal; 201 KAR 22:040

PLUMBING
(See Housing, Buildings & Protection)

PROPERTY, STATE
(See Finance, Administration Cabinet)

PROPRIETARY EDUCATION BOARD
Student protection fund; 783 KAR 1:030

PUBLIC PROTECTION, REGULATION
Alcoholic Beverage Control
Advertising distilled spirits, wine; 804 KAR Chapter 1
Financial Institutions
Securities; 808 KAR Chapter 10
Housing, Buildings & Construction
Boilers, pressure vessels; 815 KAR Chapter 15
Hazardous materials; 815 KAR Chapter 30
Kentucky Building Code; 815 KAR Chapter 7
Plumbing; 815 KAR Chapter 20
Volunteer fire department; 815 KAR Chapter 46
Insurance
Agents, consultants, solicitors, adjusters; 806 KAR Chapter 9
Authorization of insurers; 806 KAR Chapter 3
Credit life insurance, health insurance; 806 KAR Chapter 19
Fees, taxes; 806 KAR Chapter 4
Investments; 806 KAR Chapter 7
Mines, Minerals
Oil and gas; 805 KAR Chapter 1
Public Service Commission; 807 KAR Chapter 5

PUBLIC SERVICE COMMISSION
Gas operations, drug use control; 807 KAR 5:023
General rules; 807 KAR 5:006
Settlements; 807 KAR 5:005
Rules of procedure; 807 KAR 5:001
Water; 807 KAR 5:066

PUPIL TRANSPORTATION
(See District Support Services)

PURCHASING
(See Finance, Administration)

RACING
Thoroughbred racing; 810 KAR Chapter 1

RADIOLOGY
(See Health Services)

RADIATION OPERATORS CERTIFICATION
(See Health Services)

REAL ESTATE APPRAISERS
Classification, fees, education, experience, testing, application, renewal, reports, practices; 201 KAR 30:100
Education approval, fees; 201 KAR 30:130
Roster, transmission, fees, deletions, notification, hearing; 201 KAR 30:110
Temporary appraisal permits; 201 KAR 30:120

RECREATIONAL VEHICLES
(See Housing, Buildings and Construction)

REGISTRY OF ELECTION FINANCE
Practice and Procedure
Processing complaints, hearings; 801 KAR 2:010

RETIREMENT
KERS
Administrative hearing; 105 KAR 1:215
Agency participation; 105 KAR 1:120
Annual disability review; 105 KAR 1:220
Contribution reporting; 105 KAR 1:140
Death after retirement; 105 KAR 1:240
Death before retirement; 105 KAR 1:180
Disability procedures; 105 KAR 1:210
Hazardous duty coverage; 105 KAR 1:130
Installment purchase; 105 KAR 1:150
Membership form; 105 KAR 1:170
Military service credit; 105 KAR 1:070
Qualified domestic relations; 105 KAR 1:190
Reemployment after retirement; 105 KAR 1:230
Retirement procedures, forms; 105 KAR 1:200
Sick leave plans; 105 KAR 1:160

SANITATION
(See Health Services)

SOCIAL INSURANCE
Food Stamp Program
Additional provisions; 904 KAR 3:050
Application process; 904 KAR 3:030
Certification process; 904 KAR 3:035 & E
Coupon issuance; 904 KAR 3:045
Definitions; 904 KAR 3:010 & E
Fair hearings; 904 KAR 3:070
Financial requirements; 904 KAR 3:020 & E
Hearings, penalties; 904 KAR 3:060
Technical requirements; 904 KAR 3:025 & E
Public Assistance
AFDC standards; 904 KAR 2:016 & E
Aged, blind, disabled programs; 904 KAR 2:015&E
At-risk child program; 904 KAR 2:360
LIHEAP; 904 KAR 2:116
Refugee assistance; 904 KAR 2:110 & E
Technical requirements, AFDC; 904 KAR 2:006
Transitional child program; 904 KAR 2:360 & E

SOCIAL SERVICES
Aging Services
Adult day, Alzheimer's respite; 905 KAR 8:160
Boarding home registration; 905 KAR 8:150
General administration; 905 KAR 8:220
Homecare program; 905 KAR 8:180
Long-term care ombudsman program; 905 KAR 8:210
Nutrition program; 905 KAR 8:190
Personal care assistance; 905 KAR 8:090
Senior community service employment; 905 KAR 8:200
Supportive services; 905 KAR 8:170
Block Grants
Matching requirements; 905 KAR 3:030
Child Welfare
Application; 905 KAR 1:010
"Baby Doe" regulation; 905 KAR 1:150
Child abuse self-help; 905 KAR 1:170
Detention alternative; 905 KAR 1:210
Children's Residential Services
Facilities capacities; 905 KAR 7:060
Repealer; 905 KAR 7:091
Resident liaison; 905 KAR 7:100
Day Care
Services; 905 KAR 2:080 & E

SOCIAL WORK EXAMINERS
Specialty certification; 201 KAR 23:070

SOLID WASTE TRANSPORTATION
License application; 601 KAR 40:020
Vehicle identification; 601 KAR 40:010

SPECIAL INSTRUCTIONAL SERVICES (EDUCATION)
Facilities, Equipment
Repealer; 705 KAR 3:011

STEEPLECHASE RACING
(See Thoroughbred Racing)

SURFACE MINING RECLAMATION, ENFORCEMENT
Bond, Insurance Requirements
Bond forfeiture; 405 KAR 10:050
Bond pool; 405 KAR 10:200
General Provisions
Applicability; 405 KAR 7:030
Definitions; 405 KAR 7:020
Exemptions; 405 KAR 7:035
Incorporated documents; 405 KAR 7:015
Small operator assistance; 405 KAR 7:080
Performance Standards, Surface Mining
Backfilling, grading; 405 KAR 16:190
Environmental value protection; 405 KAR 16:180
Postmining land use; 405 KAR 16:210
Revegetation; 405 KAR 16:200
Performance Standards, Underground Mining
Backfilling, grading; 405 KAR 18:190
Environmental value protection; 405 KAR 18:180
Postmining land use; 405 KAR 18:220
Revegetation; 405 KAR 18:200
Permits
Coal exploration; 405 KAR 8:020
General provisions; 405 KAR 8:010 & E
Surface coal mining; 405 KAR 8:030
Underground coal mining; 405 KAR 8:040
Special Performance Standards
Coal exploration; 405 KAR 20:010

THOROUGHBRED RACING
Authorized agents; 810 KAR 1:010
Backside improvement commission; 810 KAR 1:021
Claiming races; 810 KAR 1:015
Definitions; 810 KAR 1:001
Disciplinary measures; 810 KAR 1:019

HEALTH SERVICES (cont'd)
Broad license limits; 902 KAR 100:090
Broad scope licenses; 902 KAR 100:052
Cabinet systems; 902 KAR 100:145
Definitions; 902 KAR 100:010
Dental; 902 KAR 100:130
Employees notices, reports, instructions; 902 KAR 100:165
Exempt concentrations; 902 KAR 100:085
Exempt quantities; 902 KAR 100:080
Exemptions; 902 KAR 100:045
Fee schedule; 902 KAR 100:012
General applicability; 902 KAR 100:005
General requirements; 902 KAR 100:015
Land disposal licensure; 902 KAR 100:022
Leak testing; 902 KAR 100:060
Particle accelerator; 902 KAR 100:155
Plan review; 902 KAR 100:160
Posting, disposal requirements; 902 KAR 100:030
Proceedings; 902 KAR 100:170
Radiography general diagnostic; 902 KAR 100:120
Receiving material, special form tests; 902 KAR 100:035
Reciprocal recognition; 902 KAR 100:065
Specific licenses; 902 KAR 100:058
Therapeutic system above 1 MeV; 902 KAR 100:137
Therapeutic system below 1 MeV; 902 KAR 100:136
Transportation; 902 KAR 100:070
Veterinarians; 902 KAR 100:140
X-rays, diagnostic; 902 KAR 100:115
X-rays, fluoroscopic; 902 KAR 100:125
X-rays, general; 902 KAR 100:105
X-ray, microscopic analytic; 902 KAR 100:150
X-ray registration; 902 KAR 100:110
Sanitation
On-site sewage disposal, program standards; 902 KAR 10:140
Permit issuance, on-site sewage disposal; 902 KAR 10:110
Public restrooms; 902 KAR 10:010

HERITAGE LAND CONSERVATION FUND
(See Fish and Wildlife)

HIGHER EDUCATION ASSISTANCE AUTHORITY
Authority
Institution participation requirements; 11 KAR 4:040
Educational Savings Plan Trust
Repealer; 11 KAR 12:001
Teacher Scholarship/Loan Program
Teacher scholarships; 11 KAR 8:030

HIGHWAYS
Traffic
Bus dimension limits; 603 KAR 5:071
Vehicle dimension limits; 603 KAR 5:070

HOSPITALS
(See Health Services)

HOUSING, BUILDINGS & CONSTRUCTION
Boilers, Pressure Vessels
Administrative procedures; 815 KAR 15:020
Hazardous Materials
Underground petroleum storage tank contractors; 815 KAR 30:060
Kentucky Building Code
Administration, enforcement; 815 KAR 7:010
Code; 815 KAR 7:025
Inspectors; 815 KAR 7:070
Sprinkler contractors; 815 KAR 7:080
Mobile Homes, Recreation Vehicles
Mobile homes; 815 KAR 25:010

HOUSING, BUILDINGS & CONSTRUCTION (cont'd)
Plumbing
Installation permits; 815 KAR 20:050
Parts or materials list; 815 KAR 20:020
Volunteer Fire Department Aid Fund
Aid; 815 KAR 46:010

HUMAN RESOURCES
Administration
Guardianship responsibilities; 900 KAR 1:040
Human subject protection; 900 KAR 1:060
Repealer; 900 KAR 1:007
Employment Services
Unemployment insurance; 903 KAR Chapter 5
Handicapped children commission; 902 KAR Chapter 4
Health Services
Controlled substances; 902 KAR Chapter 55
EMTs; 902 KAR Chapter 13
Food, cosmetics; 902 KAR Chapter 45
Hazardous substances; 902 KAR Chapter 47
Health services, facilities; 902 KAR Chapter 20
Maternal, child health; 902 KAR Chapter 4
Milk and milk products; 902 KAR Chapter 50
Radiation operators; 902 KAR Chapter 105
Radiology; 902 KAR Chapter 100
Sanitation; 902 KAR Chapter 10
Inspector General
Employment agency hearings; 906 KAR 1:030
Nurse aide, abuse registry, hearing procedure; 906 KAR 1:100
Policies, procedures; 906 KAR 1:010
Postaudit appeal; 906 KAR 1:090
Repealer; 906 KAR 1:021
Long-term care; 900 KAR Chapter 2
Medicaid services; 907 KAR Chapter 1
Mental Health, Mental Retardation
Institutional care; 908 KAR Chapter 3
Substance abuse; 908 KAR Chapter 1
Social Insurance
Food Stamp Program; 904 KAR Chapter 3
Public assistance; 904 KAR Chapter 2
Social Services
Aging services; 905 KAR Chapter 8
Block grants; 905 KAR Chapter 3
Child welfare; 905 KAR Chapter 1
Children residential service; 905 KAR Chapter 7
Day care; 905 KAR Chapter 2

INSPECTOR GENERAL (HUMAN RESOURCES)
(See Human Resources)

INSURANCE
Agents, Consultants, Solicitors, Adjusters
Agent continuing education; 806 KAR 9:220
Authorization of Insurers
Annual audited financial reports; 806 KAR 3:170
Hazardous financial condition insurer standards; 806 KAR 3:150
Life reinsurance agreements; 806 KAR 3:160
Credit Life Insurance, Health Insurance
Refunds, unearned premium; 806 KAR 19:030
Fees and Taxes
Department fees; 806 KAR 4:010
Investments
Medium grade, lower grade obligations; 806 KAR 7:100

JUSTICE
Breath analysis operators; 500 KAR Chapter 8

LABOR
Occupational safety, health; 803 KAR Chapter 2
Workplace standards, wages and hours; 803 KAR Chapter 1

LANDSCAPE ARCHITECTS
Continuing education; 201 KAR 10:080

LEARNING PROGRAMS DEVELOPMENT
Education Professional Standards Board
  Alternative Training Program
    Middle, secondary teachers; 704 KAR 20:590
    Teacher certification; 704 KAR 20:600
Health, P.E. Programs
  Comprehensive school health; 704 KAR 4:020
Instructional Services
  Annual performance reports; 704 KAR 3:006 & E
  Preschool education, 4-year olds; 704 KAR 3:410
  Repealer; 704 KAR 3:012
Student Services
  Homeless children education; 704 KAR 7:090
Teacher Education
  Repealer; 704 KAR 15:091

LITERACY COMMISSION
Adult program fund; 784 KAR 1:010
Adult program plan; 784 KAR 1:020

LIVESTOCK SANITATIONS
Fee basis schedule; 302 KAR 20:230

LOCAL GOVERNMENT
Accounts
  Driving under the influence service fee; 109 KAR 11:030
  Reimbursements
    Law enforcement officers; 109 KAR 11:020
    Local courts; 109 KAR 11:010
Advancements to Sheriffs
  Application form; 109 KAR 12:020
  Initial advancement; 109 KAR 12:030
  Refunding procedure; 109 KAR 12:050
  Subsequent advancements; 109 KAR 12:040
Policy and Management
  Economic assistance fund grants; 109 KAR 10:010
Uniform Financial Information Report
  Report; 109 KAR 13:010 & E

LONG-TERM CARE
Hearings; 900 KAR 2:060
Transfer, discharge rights; 900 KAR 2:050

MATERNAL AND CHILD HEALTH
(See Health Services)

MEDICAID SERVICES
AIS/MR; 907 KAR 1:140 & E
AIS/MR payments; 907 KAR 1:150 & E
Alternative birth centers; 907 KAR 1:180; 907 KAR 1:190
Benefit coordination; 907 KAR 1:260
Claims processing; 907 KAR 1:074
Definitions; 907 KAR 1:002
Dental; 907 KAR 1:027 & E
Drug payments; 907 KAR 1:021 & E
Family planning; 907 KAR 1:048; 907 KAR 1:049
Federally-qualified health center; 907 KAR 1:055
Health insuring organization; 907 KAR 1:120; 907 KAR 1:130
Hearing, vision services; 907 KAR 1:038
HICAP; 907 KAR 1:540 & E
Home, community based services; 907 KAR 1:160
Home health; 907 KAR 1:031
Hospice; 907 KAR 1:340
Hospital inpatient services; 907 KAR 1:013 & E
Inpatient hospitals; 907 KAR 1:012
KenPAC; 907 KAR 1:320
Medical assistance; 907 KAR 1:007
Medical assistance out-of-state; 907 KAR 1:084
Medical transportation; 907 KAR 1:061

MEDICAID SERVICES (cont'd)
Medically needy; 907 KAR 1:004
Mental health centers; 907 KAR 1:044 & E; 907 KAR 1:045 & E
Mentally retarded, hearing, appeal; 907 KAR 1:075
Mentally retarded services; 907 KAR 1:022; 907 KAR 1:025
Nurse anesthetists; 907 KAR 1:200
Nurse-midwife; 907 KAR 1:100
Nursing facility services, hospital-furnished; 907 KAR 1:037
Nursing facility services manual; 907 KAR 1:545
Overpayment recoupment; 907 KAR 1:110
Payment withholding; 907 KAR 1:300
Pediatric facility dual license; 907 KAR 1:032; 907 KAR 1:033
Physician services; 907 KAR 1:010 & E
Podiatry services; 907 KAR 1:270
Prepaid health plan; 907 KAR 1:120; 907 KAR 1:130
Primary care centers; 907 KAR 1:055
Provider participation, appeals; 907 KAR 1:220
Psychiatric residential treatment; 907 KAR 1:505 & E; 907 KAR 1:510 & E
Screening services; 907 KAR 1:035
Targeted case management services:
  Chronic mental illness, adult; 907 KAR 1:515 & E; 907 KAR 1:520 & E
  Severely emotionally disturbed children; 907 KAR 1:525 & E; 907 KAR 1:530 & E
Tax assessment:
  Dentists; 907 KAR 1:485 & E
  Mental health centers; 907 KAR 1:535 & E
  Optometrists; 907 KAR 1:490 & E
  Pharmacies; 907 KAR 1:495 & E
  Physicians; 907 KAR 1:480 & E
Technical eligibility; 907 KAR 1:011
Vision care; 907 KAR 1:040 & E
Vision services; 907 KAR 1:410

MEDICAL LICENSURE BOARD
Athletic trainer certification; 201 KAR 9:305
Examinations; 201 KAR 9:031
Fee schedule; 201 KAR 9:041
Interpretation of KRS 311.900; 201 KAR 9:300
Physician assistants; 201 KAR 9:175

MENTAL HEALTH, MENTAL RETARDATION SERVICES
Institutional Care
  Central State; 908 KAR 3:110
  Central State ICF-MR; 908 KAR 3:090
  Convalescent patient status; 908 KAR 3:030
  Correctional Psychiatric Center; 908 KAR 3:160
  Eastern State; 908 KAR 3:100
  Hazelwood; 908 KAR 3:080
  "Means test"; 908 KAR 3:060
  Oakwood; 908 KAR 3:180
  Patient Liability Act per diem rate; 908 KAR 3:050
  Patient's rights; 908 KAR 3:010
  Penal institution inmates; 908 KAR 3:020
  Western State; 908 KAR 3:120
Substance Abuse
  Drug Abuse Treatment and Education
    Administration, organization; 908 KAR 1:170
    Client's rights; 908 KAR 1:200
    Communication centers; 908 KAR 1:260
    Definitions; 908 KAR 1:150
    Educational information center; 908 KAR 1:250
    General program operations; 908 KAR 1:220
    Licensing procedures; 908 KAR 1:160
    Nonresidential day care; 908 KAR 1:240
    Personnel policies; 908 KAR 1:180
    Program evaluation; 908 KAR 1:300
    Quality assurance; 908 KAR 1:190
    Residential rehabilitation; 908 KAR 1:230

THOROUGHBRED RACING (cont'd)
Entries, subscriptions, declarations; 810 KAR 1:013
Hearings, reviews, appeals; 810 KAR 1:020
Horses; 810 KAR 1:012
Jockeys, apprentices; 810 KAR 1:009
Licensing; 810 KAR 1:003
Medication, testing; 810 KAR 1:018
Objections, complaints; 810 KAR 1:017
Owners; 810 KAR 1:007
Pari-mutuel wagering; 810 KAR 1:011
Racing associations; 810 KAR 1:006
Racing commission; 810 KAR 1:002
Racing officials; 810 KAR 1:005
Running of the race; 810 KAR 1:016
Steeplechase racing; 810 KAR 1:050
Stewards; 810 KAR 1:004
Trainers; 810 KAR 1:008
Weights; 810 KAR 1:014

TOURISM
Fish and Wildlife
Heritage land conservation fund; 301 KAR Chapter 10
Hunting, fishing; 301 KAR Chapter 3

TRANSPORTATION
Highways
Traffic; 603 KAR Chapter 5
Motor Vehicle Commission; 605 KAR Chapter 1
Solid waste transportation; 601 KAR Chapter 40
Vehicle Regulation
Driver's license; 601 KAR Chapter 12
Motor carriers; 601 KAR Chapter 1

VEHICLE REGULATION
Driver's License
Hardship license; 601 KAR 12:060
Motor Carriers
Repealer; 601 KAR 1:180
Restricted taxicab; 601 KAR 1:116

WASTE MANAGEMENT
Hazardous Waste; Generator Standards
General provisions; 401 KAR 32:010
Manifest, instructions; 401 KAR 32:100
Hazardous Waste; Identification, Listing
Characteristics; 401 KAR 31:030
General provisions; 401 KAR 31:010
Lists; 401 KAR 31:040
Rulemaking petitions; 401 KAR 31:060
Toxicity characteristic leaching procedure; 401 KAR 31:110
Hazardous Waste; Owners, Operators
Landfills; 401 KAR 34:230
Hazardous Waste Storage, Treatment, Disposal Facilities; Interim Status Standards
Incinerators; 401 KAR 35:240
Land treatment; 401 KAR 35:220
Surface impoundments; 401 KAR 35:200
Land Disposal Restrictions
Treatment standards; 401 KAR 37:100
Solid Waste Facility Standards
Siting requirements; 401 KAR 48:050

WATER
Public Water Supply
Definitions; 401 KAR 8:010
Disinfection, filtration; 401 KAR 8:150
General provisions; 401 KAR 8:020
Microbiological, turbidity monitoring; 401 KAR 8:200
Public notification; 401 KAR 8:070
Water Quality
Surface water standards; 401 KAR 5:031

WESTERN KENTUCKY UNIVERSITY
Annual audit; 770 KAR 1:030
Bond issuance; 770 KAR 1:050
Financial management; 770 KAR 1:020
Fund for excellence; 770 KAR 1:060
Funds, accounting system, records, annual report; 770 KAR 1:010
Purchase, inventories, surplus property; 770 KAR 1:040

WORKFORCE DEVELOPMENT CABINET
Adult, Technical Education
Certified personnel; 780 KAR Chapter 3
Proprietary education; 783 KAR Chapter 1
Literacy commission; 784 KAR Chapter 1

WORKPLACE STANDARDS, WAGES AND HOURS
Executive, administrative, supervisory, professional employees, salesmen; 803 KAR 1:070