THIS IS A CONTINUATION OF THE JANUARY 1992 ADMINISTRATIVE REGISTER

Due to the size of the January Administrative Register, it could not be stapled in one publication. This is the second portion.

DO NOT THROW THIS AWAY!!!!!!!

DEPARTMENT FOR MILITARY AFFAIRS
Division of Disaster and Emergency Services
(Amended After Hearing)

106 KAR 1:091. Kentucky Emergency Response Commission fee account grant requirements for local emergency planning committees.

RELATES TO: KRS 39.800 to 39.990, 42 USC 11001 to 11050
STATUTORY AUTHORITY: KRS 39.817, 39.845, 39.850
NECESSITY AND FUNCTION: This regulation establishes criteria and procedures to be met by local emergency planning committees requesting funds generated by KRS 39.817.

Section 1. To be eligible for financial assistance, local emergency planning committees which have extremely hazardous substances as listed in 106 KAR 1:081, Section 6, in excess of the threshold planning quantity present in their community shall meet all the following criteria:
(1) The local emergency planning committee shall meet all requirements set forth in KRS 39.840.
(2) The local emergency planning committee shall have an emergency response plan pursuant to KRS 39.840(1)(a), (e), (f) and 39.860 that has been approved by the Kentucky Emergency Response Commission.
(a) The local emergency planning committee's emergency response plan shall contain an approved Tab Q-7 **or commission-approved equivalent** listed in Section 6 of 106 KAR 1:081 for each facility in the planning district that has an extremely hazardous substance listed in Section 6 of 106 KAR 1:081 in excess of the threshold planning quantity.
(b) The local emergency planning committee shall submit new Tab Q-7 **or commission-approved equivalent** plans to the State Disaster and Emergency Services Area Coordinator within sixty (60) days of notification **that** [from] the facility has an extremely hazardous substance in excess of the threshold planning quantity.
(c) After new Tab Q-7 **or commission-approved equivalent** plans are submitted, no later than April 1 each year, the local emergency planning committee shall review the Tab Q-7 plans and send certification to the state disaster and emergency services area coordinator stating that there were no changes and therefore the plan is correct as is; or the plan has been revised and the revisions are included with the certification.
(d) The State Disaster and Emergency Services Area Coordinator shall review new Tab Q-7 **or commission-approved equivalent** plans for completeness, note any recommendations and forward them to the Chairman of the Kentucky Emergency Response Commission, or designee, within thirty (30) days of receipt from the local emergency planning committee.
(e) The state disaster and emergency services area coordinator shall review Tab Q-7 **or commission-approved equivalent** revisions and certifications received from the local emergency planning committee for completeness, note any recommendations and forward them to the Chairman of the Kentucky Emergency Response Commission, or designee, no later than May 1 each year.
(3) The local emergency planning committee shall meet at least semiannually to conduct its business and a quorum shall be required.
(4) No later than December 1 each year, the local emergency planning committee shall submit an updated membership list to the Kentucky Emergency Response Commission.
(5) In accordance with KRS Chapter 424 (Legal Notice), the local emergency planning committee shall annually publish public information on committee activities entitled "Public (Legal) Notice Advertisement" on form DES/SARA-324 as set out in Section 7 of this regulation.

Section 2. To be eligible for financial assistance, local emergency planning committees which do not have any extremely hazardous substances as listed in 106 KAR 1:081, Section 6, in excess of the threshold planning quantity present in their community shall meet the following criteria:
(1) The local emergency planning committee shall meet criteria set forth in KRS 39.840 (1)(b), (c), (d), (2), (4), (5) and Section 1(4) and (5) of this regulation.
(2) The local emergency planning committee shall meet at least annually to conduct its business and a quorum shall be required.

Section 3. Local Emergency Planning Committee Procedures. (1) If a local emergency planning committee requests financial assistance, it shall use Grant Request Form DES/SARA-303 as set out in Section 7 of this regulation and shall include a detailed budget identifying how the requested funds are to be spent.
(2) The grant request form shall be submitted to the State Disaster and Emergency Services Area Coordinator no earlier than January 1 and no later than May 1.
(3) The State Disaster and Emergency Services Area Coordinator shall review the grant request form for completeness and conformance to statutes and regulations, note any recommendations and forward it to the Chairman of the Kentucky Emergency Response Commission or designee, no later than June 1.
(4) The Chairman of the Kentucky Emergency Response Commission, or designee, shall review the grant request form for completeness and conformance to statutes and regulations, note any recommendations and forward it to the Grant Review Committee no later than July 1.
(5) The Grant Review Committee, with a quorum present, shall review all grant requests and forward their recommendations no later than August 15 to the Kentucky Emergency Response Commission for final approval.
(6) The Kentucky Emergency Response Commission shall make the grant awards no later than September 15.
(7) The State Disaster and Emergency Services Area Coordinator, the Chairman of the Kentucky Emergency Response Commission, or designee, or the Grant Review Committee may request additional information which shall be provided by the local emergency planning committee. Failure to provide the requested information shall invalidate the local emergency planning committee's request for funding.

Section 4. Requests for Modifications. (1) A modification of a grant award is required if there is a change in the grant request or if a local emergency planning committee is unable to expend the funds **for the purpose** for which the grant was awarded. A request for modification shall be submitted by the LEPC for approval by the commission. Unexpended monies shall be

returned to the **Kentucky Emergency Response Commission fee account** fund.

(2) Requests for modifications of grant awards shall be submitted on Grant Request Form DES/SARA-303 as set out in Section 7 of this regulation and, except for due dates, shall be processed in accordance with Sections 3 and 6 of this regulation.

(3) Modifications may be submitted throughout the grant period.

Section 5. Supplemental Grant Awards. (1) In the event supplemental money is available, the Kentucky Emergency Response Commission shall determine the date of the supplemental allocation award and inform the local emergency planning committees of that date.

(2) Requests for supplemental money shall be submitted on Grant Request Form DES/SARA-303 as set out in Section 7 of this regulation and, except for due dates, shall be processed in accordance with this section and Sections 3 and 6 of this regulation.

(3) If a local emergency planning committee requests supplemental money the schedule of due dates is:

(a) Thirty (30) days from notification by the Kentucky Emergency Response Commission of the availability of supplemental money, the local emergency planning committee shall submit the supplemental grant request to the State Disaster and Emergency Services Area Coordinator.

(b) Thirty (30) days from receipt of the supplemental grant request, the State Disaster and Emergency Services Area Coordinator shall review the supplemental grant request in accordance with Sections 3 and 6 of this regulation and forward it to the Chairman of the Kentucky Emergency Response Commission, or designee.

(c) Thirty (30) days from receipt of the supplemental grant request, the Chairman of the Kentucky Emergency Response Commission, or designee, shall review the supplemental grant request in accordance with Sections 3 and 6 of this regulation and forward it to the Grant Review Committee.

(d) Forty-five (45) days from receipt of the supplemental grant request, the Grant Review Committee, with a quorum present, shall review the supplemental grant request in accordance with Sections 3 and 6 of this regulation and forward their recommendations to the Kentucky Emergency Response Commission.

(e) Thirty (30) days from receipt of the recommendation of the Grant Review Committee, the Kentucky Emergency Response Commission shall make the supplemental grant award.

Section 6. Requirements for Funding Accountability. (1) Funds provided by the Kentucky Emergency Response Commission shall be deposited in a separate "(Name of County) Emergency Planning Committee Fee Account" and fiscal accountability shall be prescribed by the state auditor of public accounts. All funds shall be subject to audit by the Kentucky Emergency Response Commission and the state auditor of public accounts.

(2) The bylaws of each local emergency planning committee shall identify the position or person who will be responsible for accountability for the funds and who will be listed as the authorized applicant as shown on DES/Sara-303 and shall be submitted simultaneously with the grant request.

(3) The local emergency planning committee shall provide documentation of expenditures for the preceding year on each grant request submitted except for the initial grant request.

(4) Grant awards approved by the Kentucky Emergency Response Commission may be withheld for noncompliance with KRS 39.800 to 39.990 and administrative regulations issued thereunder and for failure to provide required documentation.

(5) All funding allocation decisions shall be made by the Kentucky Emergency Response Commission and shall be dependent upon availability of fees collected.

Section 7. Form DES/SARA-324 and grant request form DES/SARA-303 are set out in this section.

PUBLIC (LEGAL) NOTICE ADVERTISEMENT
_____ COUNTY EMERGENCY PLANNING COMMITTEE

Pursuant to Section 324, Title III of the 1986 Federal Superfund Amendments and Reauthorization Act (SARA) of 1986 (PL 99-499), the following information is provided in compliance with the Community Right-to-Know requirements of the SARA Law, and the open meetings and open records provisions of Kentucky Revised Statutes. Members of the public may contact the (name of county) County Emergency Planning Committee by writing (name of chairman), Chairman of the (name of county) County Emergency Planning Committee, (working address of chairman or committee), (city), Kentucky (zip code), or contacted by telephone at (area code), (telephone number established by the committee). The (name of county) County Emergency Planning Committee conducts meetings at (name of building), (local address), or at other locations, in accordance with the Kentucky Open Meetings Law. Members of the public may request to be notified of regular or special meetings as provided in KRS 61.820 and KRS 61.825. Records of the Planning Committee, including the county emergency response plan, material safety data sheets, and inventory forms, or any follow-up emergency notices as may subsequently be issued, are open for inspection, and members of the public who wish to review these records may do so (normal hours of business), (Eastern or Central Time), (days of the week), at (location of the office or place where custodian keeps the committee files), as required by the Kentucky Open Records Law. The local 24-hour telephone number for purposes of emergency notification, as required by SARA, is (emergency number adopted by county planning committee).

KENTUCKY EMERGENCY RESPONSE COMMISSION FEE ACCOUNT FUND

Grant Application for Grant Period 09/01/9__ to 08/31/9__

DUE DATES			
LEPCs to ACs	05/01	Received by AC _____	Received by State _____
ACs to State	06/01	Reviewed by AC _____	Reviewed by State _____
Final Award	09/15	Initial & date	Initial & date

AUTHORIZED APPLICANT (INFORMATION)

Emergency Planning Committee
County Name — County Code-three digit number

(Applicant Name_____ County_____Date_____)

_____Enter total number of Tab Q-7's with Extremely Hazardous Substances in your county. This is the total number of facilities with extremely hazardous substances in your county.

GRANT INFORMATION

Grant Amount Requested $_____ Circle Type of Application: LEPC New Revised
State Agency New Revised

GRANT RECIPIENT

Checks shall be made payable to and mailed to the AUTHORIZED APPLICANT. The AUTHORIZED APPLICANT is the county emergency planning committee which is (person)authorized to apply for and manage the grant. The AUTHORIZED APPLICANT shall provide the name and phone number of (be) the designated contact person. The AUTHORIZED APPLICANT shall provide the name and address of the bank where the check shall be deposited. (For LEPCs, the AUTHORIZED APPLICANT and designated contact person will generally be the LEPC Chairperson.)

Emergency Planning Committee
County Name — County Code-three digit number

(_____)
(Name and Title of Authorized Applicant and Designated Contact Person)

_____
Street Address

_____
City, Zip and Phone Number

LEPCs shall submit grant request form DES/SARA-303 to their State Disaster and Emergency Services Area Coordinator. All required documentation shall accompany the form. Incomplete grant request forms may delay processing and may result in invalidating the request.

State agencies shall submit grant request form DES/SARA-303 to the Chairman, or designee, of the Kentucky Emergency Response Commission. All required documentation shall accompany the form. Incomplete grant request forms may delay processing and may result in invalidating the request.

CERTIFICATION

I, the undersigned, certify to the Kentucky Emergency Response Commission that all the information is true and accurate. I further represent that the money received under this grant program will be used for the administration, development and implementation of the Kentucky Emergency Planning and Community Right-to-Know program, known as SARA Title III, within the guidelines mandated by P.L. 99-499/Title III, KRS Chapter 39.800 to 39.990 and subsequent regulations.

_____
Name, Title and Date

DES/SARA-303
106 KAR 1:091

BUDGET FOR GRANT APPLICATION 09/01/9__ to 08/31/9___

ATTACHMENTS

Detailed budget sheet for each budget category you request
Documentation for preceeding year's award
Copy of published DES/SARA-324
Bylaws

INELIGIBLE ITEMS

Emergency response equipment
Reimbursement for emergency response and/or cleanup of a release
Requests for salaries by LEPCs

BUDGET CATEGORIES	GRANT REQUEST	GRANT AWARD
Right-to-Know responsibilities--includes legal notice DES/SARA-324		
Data Management--includes receiving and maintaining data under 302(c)/KRS 39.845; 304/KRS 39.840(b), 311/312/KRS 39.840(c)		
Telephone--includes 24-hour warning point for releases and cost of telephone for LEPC business		
Services--includes contracts* to support KRS 39.800 to KRS 39.990.		
Office Supplies--includes postage, printing, copying and paper		
File cabinets, desks, chairs		
Commission-approved training		
Commission-approved travel		
TOTAL GRANT REQUEST		
LESS CARRY-OVER MONIES		
ADJUSTED GRANT AWARD		

*Contracts for personal services and equipment shall be in conformance with state laws and regulations.

This is to certify that the Kentucky Emergency Response Commission has recommended that this administrative regulation be adopted.

JAMES H. MOLLOY, Chairman
Kentucky Emergency Response Commission

TEBBS S. MOORE, Brigadier General
APPROVED BY AGENCY: December 9, 1991
FILED WITH LRC: December 9, 1991 at 2 p.m.

DEPARTMENT FOR MILITARY AFFAIRS
Division of Disaster and Emergency Services
(Amended After Hearing)

106 KAR 1:121. Kentucky emergency response commission fee account grant distribution formula.

RELATES TO: KRS 39.800 to 39.990
STATUTORY AUTHORITY: KRS 39.817
NECESSITY AND FUNCTION: This regulation establishes administrative support and the grant distribution formula to be used in awarding grants for funds generated by KRS 39.817.

Section 1. Local Emergency Planning Committee Grant Distribution Formula. (1) At least fifty (50) percent of funds collected annually by KRS 39.817 shall be awarded to eligible local emergency planning committees which submit grant requests for administration, development and implementation of the Kentucky Emergency Planning and Community Right-to-Know program, known as SARA Title III, within the guidelines mandated by PL 99-499, Title III, KRS 39.800 to 39.990 and subsequent administrative regulations.
(2) The grant distribution formula to determine how much money will be available to each local emergency planning committee is:
(a) Ten (10) percent of the total amount (A) collected by April 1 divided by 120 local emergency planning committees.

$$\frac{.1(A)}{120 \text{ Local Emergency Planning Committees}}$$

Hypothetical example: $\frac{.1(200,000)}{120} = \$167$

(b) Plus twenty (20) percent of the total amount (A) collected statewide times the ratio of Kentucky Emergency Response Commission – required and approved Tab Q-7s **or commission-approved equivalent** (Qc) in the county to the total Kentucky Emergency Response Commission – approved Tab Q-7s **or commission-approved equivalent** (Qs) in the state.

$$.2(A)\ \frac{Qc}{Qs}$$

Hypothetical example: $.2(200,000)\ \frac{13}{1,000} = \$520$

(c) Plus twenty (20) percent of the total amount (A) collected statewide times the ratio of fee-generating Tiers (Tc) in the county to the total number of fee generating Tiers (Ts) in the state.

$$.2(A)\ \frac{Tc}{Ts}$$

Hypothetical example:
$.2(200,000)\ \frac{30}{1,000} = \$1200$

(d) Therefore the formula for local emergency planning committee grant (Ga) distribution to determine how much money will be available to each eligible local emergency planning committee is:

$$Ga = \frac{.1(A)}{120 \text{ LEPCs}} + .2(A)\ \frac{Qc}{Qs} + .2(A)\ \frac{Tc}{Ts}$$

(3) The grant (Gr) distribution formula to determine how much money an eligible local emergency planning committee which submits a grant request form may receive is:

$$Gr = \frac{.1(A)}{\text{Total eligible LEPCs}} + .2(A)\ Qc + .2(A)\ \frac{Tc}{Ts}$$

(4) All grant awards shall be based upon the amount of money requested by the eligible local emergency planning committee and the formula shown in this section.

Section 2. Notice of Amount of Availability of Funds to Each Local Emergency Planning Committee. (1) No later than April 1 each year the Kentucky Emergency Response Commission shall notify the local emergency planning committees how much money will be available to each eligible local emergency planning committee which submits a grant request form. This amount shall be based upon the total amount of funds available in the Kentucky Emergency Response Commission fee account divided pursuant to Section 1 of this regulation.
(2) Notification of money available shall not be construed as an automatic grant award to a local emergency planning committee. Each local emergency planning committee who wants an award shall submit a grant request form in accordance with 106 KAR 1:091.

Section 3. State Agency Grant Distribution. No more than fifty (50) percent of funds collected annually by KRS 39.817 shall be allocated by the Kentucky Emergency Response Commission to state agencies other than local emergency planning committees which submit grant requests for administration, development and implementation of the Kentucky Emergency Planning and Community Right-to-Know program, known as SARA Title III, within the guidelines mandated by PL 99-499, Title III, KRS 39.800 to 39.990 and subsequent administrative regulations.

Section 4. Availability of Additional Funds. The Kentucky Emergency Response Commission may set a date and notify all local emergency planning committees and state agencies of the availability of additional funds collected after April 1 or which were returned to the commission during the year. Any additional funds shall be distributed in accordance with Sections 1(1) and 3 of this regulation.

Section 5. Administrative support required by KRS 39.817 shall be provided by the Division of Disaster and Emergency Services.

This is to certify that the Kentucky Emergency Response Commission has recommended that this administrative regulation be adopted.

JAMES H. MOLLOY, Chairman
Kentucky Emergency Response Commission

TEBBS S. MOORE, Brigadier General
APPROVED BY AGENCY: December 9, 1991
FILED WITH LRC: December 9, 1991 at 2 p.m.

DEPARTMENT FOR MILITARY AFFAIRS
Division of Disaster and Emergency Services
(Amended After Hearing)

106 KAR 1:131. Kentucky emergency response commission civil penalty assessment and hearings procedure.

RELATES TO: KRS 39.800 to 39.990
STATUTORY AUTHORITY: KRS 39.990
NECESSITY AND FUNCTION: This regulation establishes procedures to be followed to assess civil penalties by the Kentucky Emergency Response Commission as provided for in KRS 39.990.

Section 1. General Provisions. (1) **The commission shall commence action to impose a penalty under KRS 39.990(3) against a facility when the commission has notice of the existence of a violation of any provision of KRS 39.800 to 39.990.** [Administrative action will be initiated when the commission has notice of a violation,] The commission chairman (or his designee) shall mail to the alleged violator a writing styled "NOTICE OF VIOLATION", which shall contain the specific date, time and place for the assessment hearing, the specific provisions of KRS 39.800 to 39.905 or the commission's administrative regulations that were allegedly violated, and shall advise the alleged violator that he may be represented by an attorney at the hearing.
(2) The hearing shall be held in Frankfort, Kentucky.
(3) All documents filed by any party shall be served by mail, upon all other parties.

Section 2. Assessment Hearing. When a notice of violation has been issued, an administrative hearing shall be held to determine if a violation of the provisions of KRS 39.800 to 39.905 or the commission's administrative regulations have been committed and to determine the amount of the civil fine to be imposed.

Section 3. Designation of a Hearing Officer. The full commission shall designate an **independent** hearing officer who shall be a person trained in the law who will serve for the duration of the hearing. **The hearing officer shall not be staff to or be a member of the Kentucky Emergency Response Commission.**

Section 4. Parties. The parties to the proceeding shall be [the hearing officer,] the commission chairman (or his designee) and the alleged violator who shall be designated respondent, and in any action under this section, any person may intervene when such person has a direct interest which is or may be adversely affected by the action and the disposition of the the action may, as a practical matter, impair or impede the person's ability to protect that interest unless the hearing officer [or commission chairman (or his designee)] determines the person's interest is adequately represented by existing parties in the action.

Section 5. Continuances. (1) Any party may request a continuance of a scheduled hearing for good cause. The request shall be in writing and include the reason for the request. The request shall be submitted to the commission chairman (or his designee) at least ten (10) days prior to the hearing date.
(2) Any party objecting to a requested continuance may file a written objection to the commission chairman (or his designee) at least five (5) days prior to the scheduled hearing.
(3) The hearing officer shall rule on all requests for a continuance. In the hearing officer's absence, the commission chairman (or his designee) shall rule on such requests. The commission chairman (or his designee) shall execute and transmit an order either granting or denying the continuance to all parties involved.

Section 6. Conduct of Hearing. (1) The designated hearing officer shall conduct the hearing at the date, time and place set out in the notice of violation.
(2) The hearing officer shall be empowered to rule on all questions of law and procedure as well as the appropriate weight to be given to specific testimony or evidence.
(3) The formal rules of civil procedure **shall** [do not] apply.
(4) The hearing officer shall require an orderly hearing with proper decorum and shall be empowered to issue orders compelling discovery, the attendance of witnesses and the production of documents for the purposes of conducting the hearing.
(5) The proceedings and evidence shall be recorded.

Section 7. Exemptions. Any party seeking an exemption or relief from the payment of a fine shall have the burden of persuasion to establish that he qualifies for the exemption. **Determination concerning exemptions shall be subject to Section 9 of this regulation.**

Section 8. Burden of Proof. The commission chairman (or his designee) shall have the burden of persuasion in establishing a prima facie case. When a prima facie case has been presented to the satisfaction of the hearing officer, the burden of persuasion shall shift to the respondent who shall have the burden of persuasion to rebut the prima facie case.

Section 9. Findings of Fact, Conclusions of Law, and Recommended Order. The hearing officer shall make findings of fact, conclusions of law and recommended order for review and approval by the full commission with service on all parties. Any party may take exception in writing within seven (7) days of receipt of the hearing officer's recommended order. Thereafter, the commission may elect to approve the findings of fact, conclusions of law and recommended order or it may modify the recommended order subject to the requirements of KRS Chapter 39 **provided that final action by the commission shall be supported by findings of fact from the record and shall be so designated by identifying this action as final action.**

Section 10. Service shall be made by certified mail to [mailing] the alleged violator the notice of violation to the address shown on the annual inventory reporting forms required to be filed by KRS Chapter 39.

This is to certify that the Kentucky Emergency Response Commission has recommended that this administrative regulation be adopted.

JAMES H. MOLLOY, Chairman
Kentucky Emergency Response Commission

TEBBS S. MOORE, Brigadier General
APPROVED BY AGENCY: December 9, 1991
FILED WITH LRC: December 9, 1991 at 2 p.m.

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

401 KAR 5:031. Surface water standards.

RELATES TO: KRS Chapter 224
STATUTORY AUTHORITY: KRS 224.10-100, 224.16-050, 224.16-060, 224.70-100, 224.70-110 [224.020, 224.033, 224.034, 224.037, 224.060], 33 USC 1313

NECESSITY AND FUNCTION: This regulation sets forth water quality standards which consist of designated legitimate uses of the surface waters of the Commonwealth and the associated water quality criteria necessary to protect those uses. These standards are minimum criteria which apply to all surface waters in order to maintain and protect them for designated uses. Criteria for nutrients are recognized and included. These water quality standards are established to protect public health and welfare, protect and enhance the quality of water, and fulfill federal and state requirements for the establishment of water quality standards. These water quality standards are subject to periodic review and revision in accordance with federal and state laws. Definitions for terms used in this regulation are found in 401 KAR 5:029. On May 31, 1990 the Interim Joint Committee on Agriculture and Natural Resources determined that this regulation did not comply with KRS Chapter 13A. This regulation is being amended to remove the portions that the Interim Joint Committee found deficient, so that the letter of attachment may be removed.

Section 1. Nutrient Limits. (1) In lakes, surface impoundments and their tributaries, and other surface waters where eutrophication problems may exist, nitrogen, phosphorus, carbon, and contributing trace element discharges will be limited as appropriate by the cabinet.

(2) The affected surface waters will be designated as nutrient limited.

Section 2. Minimum Criteria Applicable to All Surface Waters. (1) The following minimum water quality criteria are applicable to all surface waters including mixing zones, with the exception that toxicity to aquatic life in mixing zones shall be subject to the provisions of 401 KAR 5:029, Section 5. Surface waters shall not be aesthetically or otherwise degraded by substances that:

(a) Settle to form objectionable deposits;

(b) Float as debris, scum, oil, or other matter to form a nuisance;

(c) Produce objectionable color, odor, taste, or turbidity;

(d) Injure, are chronically or acutely toxic to or produce adverse physiological or behavioral responses in humans, animals, fish and other aquatic life;

(e) Produce undesirable aquatic life or result in the dominance of nuisance species;

(f) Cause fish flesh tainting (the concentration of all phenolic compounds which cause fish flesh tainting shall not exceed five (5) ug/l as an instream value);

(g) Cause the following changes in radionuclides:

1. The gross total alpha particle activity (including radium-226 but excluding radon and uranium) to exceed fifteen (15) pCi/l;

2. Combined radium-226 and radium-228 to exceed five (5) pCi/l (specific determinations of radium-226 and radium-228 are not necessary if dissolved gross alpha particle activity does not exceed five (5) pCi/l);

3. The concentration of total gross beta particle activity to exceed fifty (50) pCi/l;

4. The concentration of tritium to exceed 20,000 pCi/l;

5. The concentration of total Strontium-90 to exceed eight (8) pCi/l.

(2) The following criteria are applicable to all surface water outside designated mixing zones except for those points where water is withdrawn for domestic water supply use. They are established for the protection of human health from the consumption of fish tissue, and shall not be exceeded. For those substances associated with a cancer risk, an acceptable risk level of no more than one (1) additional cancer case in a population of 1,000,000 people (10^{-6}) will be utilized to establish the allowable concentration.

Table 1.
Water Quality Criteria for Protection of Human Health from the Consumption of Fish Tissue

Substances not Linked to Cancer	Concentration (ug/l)
Metals[1]	
Antimony	45,000
Chromium (III)	**670,000** [3,433,000]
Mercury	0.146
Nickel	**4,600** [100]
Thallium	48
Organics	
Acrolein	780
1,2,4,5-tetrachlorobenzene	48
Pentachlorobenzene	85
1,1,1-trichloroethane	1,030,000
bis(2-chloroisopropyl) ether	4,360
Dichlorobenzenes	2,600
Dichloropropenes	14,100
Endosulfan	159
Ethylbenzene	**29,000** [3,280]

Fluoranthene	54
Isophorone	520,000
2,4-dinitro-o-cresol	765
Dinitrophenol	14,300
Dibutyl phthalate	154,000
Diethyl Phthalate	1,800,000
Di-2-ethylhexyl phthalate	50,000
Dimethyl phthalate	2,900,000
Toluene	424,000
Substances Linked to Cancer	
Metals[1]	
Beryllium	0.117
Organics	
Acrylonitrile	0.65
Aldrin	.000079
Benzene	71 [40.0]
Benzidine	.00053
Carbon tetrachloride	6.94
Chlordane	.00048
Hexachlorobenzene	.00074
1,2-dichloroethane	243
1,1,2-trichloroethane	41.8
1,1,2,2,-tetrachloroethane	10.7
Hexachloroethane	8.74
2,4,6-trichlorophenol	3.6
bis(2-chloroethyl) ether	1.36
Chloroform	470 [15.7]
DDT	0.000024
Dichlorobenzidine	0.02
1,1-dichloroethylene	1.85
Dieldrin	0.000076
2,4-dinitrotoluene	9.1
[Dioxin (2,3,7,8-TCDD)	0.000000014]
Diphenylhydrazine	0.56
Halomethanes	15.7
Heptachlor	0.00029
Hexachlorobutadiene	50.0
alpha Hexachlorocyclohexane (HCH)	0.031
beta HCH	0.0547
gamma HCH (lindane)	0.0625
Technical HCH	0.0414
N-nitrosodiethylamine	1.24
N-nitrosodimethylamine	16.0
N-nitrosodibutylamine	0.587
N-nitrosodiphenylamine	16.1
N-nitrosopyrrolidine	91.9
Polychlorinated Biphenyls (PCBs)	0.000079
Polynuclear Aromatic Hydrocarbons (PAHs)	0.0311
Tetrachloroethylene	8.85
Toxaphene	0.00073
Trichlorethylene	80.7
Vinyl Chloride	525

[1]Total recoverable form measured in an unfiltered sample

Section 3. Use Classifications and Associated Criteria. (1) Surface waters may be designated as having one (1) or more of the following legitimate uses and associated use criteria. The classifications in Sections 4, 5, 6, and 7 of this regulation include the most common usage of surface waters within the Commonwealth. Nothing in this regulation shall be construed to prohibit or impair the legitimate beneficial uses of these waters. The criteria in Section 2 of this regulation and the following use criteria represent minimum conditions necessary to protect surface waters for the indicated use and to provide for the protection of human health from fish consumption or a combination of fish and water consumption.

(2) On occasion surface water quality may be outside of the limits established to protect designated uses because of natural conditions. When this condition occurs during periods when stream flows are below the flow which is used by the cabinet to establish effluent limits for wastewater treatment facilities, a discharger shall not be considered a contributor to in-stream violations of water quality standards, provided that treatment in compliance with permit requirements is maintained.

(3) Governing flows for water quality-based permits. The following stream flows are to be utilized when deriving KPDES permit limitations for the protection of surface waters for the listed uses and purposes.

(a) Aquatic life protection – $7Q_{10}$.

(b) Water-based recreation protection – $7Q_{10}$.

(c) Domestic water supply protection – harmonic mean for cancer-linked substances, $7Q_{10}$ for noncancer-linked substances, determined at points of withdrawal.

(d) Human health protection from fish consumption only – harmonic mean for cancer-linked substances, $7Q_{10}$ for noncancer-linked substances.

(e) Protection of aesthetics and for changes in radionuclides – $7Q_{10}$.

Section 4. Aquatic Life. (1) Warm water aquatic habitat. The following parameters and associated criteria shall apply for the protection of productive warm water aquatic communities, fowl, animal wildlife, arboreous growth, agricultural, and industrial uses:

(a) Natural alkalinity as $CaCO_3$ shall not be reduced by more than twenty-five (25) percent. Where natural alkalinity is below twenty (20) mg/l $CaCO_3$, no reduction below the natural level is allowed. Alkalinity shall not be reduced or increased to a degree which may adversely affect the aquatic community.

(b) pH shall not be less than six (6.0) nor more than nine (9.0) and shall not fluctuate more than one (1) unit over a period of twenty-four (24) hours.

(c) Flow shall not be altered to a degree which will adversely affect the aquatic community.

(d) Temperature shall not exceed thirty-one and seven-tenths (31.7) degrees Celsius (eighty-nine (89) degrees Fahrenheit).

1. The normal daily and seasonal temperature fluctuations that existed before the addition of heat due to other than natural causes shall be maintained.

2. The cabinet will determine allowable surface water temperatures on a site-specific basis utilizing available data which shall be based on the effects of temperature on the aquatic biota which utilize specific surface waters of the Commonwealth and which may be affected by person-induced temperature changes. Effects on downstream uses will also be considered in determining site-specific temperatures. As a guideline, the water temperature for all surface waters shall comply with the limits shown in the following table:

Month/Date	Period Average (°F)	Instantaneous Maximum (°F)
January 1-31	45	50
February 1-29	45	50
March 1-15	51	56
March 16-31	54	59
April 1-15	58	64
April 16-30	64	69
May 1-15	68	73
May 16-31	75	80
June 1-15	80	85
June 16-30	83	87
July 1-31	84	89
August 1-31	84	89
September 1-15	84	87
September 16-30	82	86
October 1-15	77	82
October 16-31	72	77
November 1-30	67	72
December 1-31	52	57

3. A successful demonstration concerning thermal discharge limits carried out under Section 316(a) of the Clean Water Act shall constitute compliance with the temperature requirements of this subsection. A successful demonstration assures the protection and propagation of a balanced indigenous population of shellfish, fish and wildlife in or on the water into which the discharge is made.

(e) Dissolved oxygen.

1. Dissolved oxygen shall be maintained at a minimum concentration of five (5) mg/l daily average; at no time shall the instantaneous minimum be less than four (4) mg/l.

2. The dissolved oxygen concentration shall be measured at middepth in waters having a total depth of ten (10) feet or less and at representative depths in other waters.

(f) Solids.

1. Total dissolved solids. Total dissolved solids shall not be changed to the extent that the indigenous aquatic community is adversely affected.

2. Total suspended solids. Total suspended solids shall not be changed to the extent that the indigenous aquatic community is adversely affected.

3. Settleable solids. The addition of settleable solids that may adversely alter the stream bottom is prohibited.

(g) Ammonia. The concentration of the un-ionized form shall not be greater than 0.05 mg/l at any time instream after mixing. Un-ionized ammonia shall be determined from values for total ammonia-N, in mg/l, pH and temperature, by means of the following equation:

$$Y = 1.2 \text{ (Total ammonia-N)}/(1 + 10^{pK_a - pH})$$

$$pK_a = 0.0902 + (2730/(273.2 + T_c))$$

Where:

T_c = temperature, degrees Celsius.

Y = un-ionized ammonia (mg/l).

(h) Toxics.

1. The allowable in-stream concentration of toxic substances or whole effluents containing toxic substances which are noncumulative or nonpersistent (half-life of less than ninety-six (96) hours) shall not exceed the no observed effect level (NOEL) or one-tenth (0.1) of the ninety-six (96) hour median lethal concentration (LC50) of a representative indigenous or indicator aquatic organism(s) or exceed a chronic toxicity unit of one (1), whichever is more appropriate.

2. The allowable in-stream concentration of toxic substances or whole effluents containing toxic substances which are bioaccumulative or persistent, including pesticides, when not specified elsewhere in this section, shall not exceed the NOEL or 0.01 of the ninety-six (96) hour median lethal concentration (LC50) of a representative indigenous or indicator aquatic organism(s) or exceed a chronic toxicity unit of one (1), whichever is more appropriate.

3. In the absence of acute criteria for substances listed in Table 2 or for other substances known to be toxic but not listed in this regulation, or for whole effluents which are acutely toxic, the allowable concentration shall not exceed the LC_1 or one-third (1/3) LC_{50} concentration derived from bioassay tests on a representative indigenous or indicator aquatic organism(s) or exceed 0.3 acute toxicity unit, whichever is more appropriate.

4. Where specific application factors have been determined for a toxic substance or whole effluent such as an acute/chronic ratio or water effect ratio, they may be used instead of the one-tenth (0.1) and 0.01 factors listed in this subsection upon approval by the cabinet.

5. Allowable in-stream concentrations for specific substances (acute and chronic criteria) are listed in Table 2. These concentrations are based on protecting aquatic life from acute and chronic toxicity, and shall not be exceeded.

Table 2
Warm water Aquatic Habitat Criteria[1]

Metals

Substance	Acute Criteria	Chronic Criteria
Arsenic		50 ug/l
Arsenic (III)	360 ug/l	190 ug/l
Beryllium		11 ug/l soft water[2] 1100 ug/l hard water[2]
Cadmium (ug/l)	e(1.128(In Hard*)-3.828)	e(0.7852(In Hard)-3.490)
Chromium (III) (ug/l)	e(0.8190(In Hard)+3.688)	e(0.8190(In Hard)+1.561)
Chromium (VI)	16 ug/l	11 ug/l
Copper (ug/l)	e(.9422(In Hard)-1.464)	e(.8545(In Hard)-1.465)
Iron	4.0 mg/l	1.0 mg/l[3]
Lead (ug/l)	e(1.273(In Hard)-1.460	e(1.273(In Hard)-4.705)
Mercury	2.4 ug/l	0.012 ug/l
Nickel (ug/l)	e(0.8460(In Hard)+3.3612)	e(0.8460(In Hard)+1.1645)
Selenium	20 ug/l	5 ug/l
Silver (ug/l)	e(1.72(In Hard)-6.52	
Zinc (ug/l	e(0.8473(In Hard)+0.8604	e(0.8473(In Hard)+0.7614

Organics

Aldrin	3.0 ug/l	
Chlordane	2.4 ug/l	0.0043 ug/l
Chloropyrifos	0.083 ug/l	0.041 ug/l
DDT	1.1 ug/l	0.001 ug/l

Dieldrin	2.5 ug/l	0.0019 ug/l
Endosulfan	0.22 ug/l	0.056 ug/l
Endrin	0.18 ug/l	0.0023 ug/l
Heptachlor	0.52 ug/l	0.0038 ug/l
Lindane	2.0 ug/l	0.080 ug/l
Parathion	0.065 ug/l	0.013 ug/l
Pentachloro-phenol (ug/l)	e(1.005(pH) -4.830)	e(1.005(pH)-5.290)
Phthalate esters		3 ug/l
Polychlorinated Biphenyls (PCBs)		0.0014 ug/l
Toxaphene	0.73 ug/l	0.0002 ug/l
	Others	
Chloride	1200 mg/l	600 mg/l
Chlorine, total residual	19 ug/l	10 ug/l
Cyanide, free	22 ug/l	5 ug/l
Hydrogen sulfide (undissociated)		2 ug/l

[1]Metal criteria, for purposes of this regulation, are total recoverable metals to be measured in an unfiltered sample, unless it can be demonstrated to the satisfaction of the cabinet that a more appropriate analytical technique is available which provides a measurement of that portion of the metal present which causes toxicity to aquatic life.

[2]Soft water has an equivalent concentration of calcium carbonate ($CaCO_3$) of zero to seventy-five (75) mg/l, and hard water has an equivalent concentration of calcium carbonate ($CaCO_3$) of over seventy-five (75) mg/l.

[3]The chronic criterion for [total recoverable] iron shall not exceed three and five-tenths (3.5) mg/l when it is established that there will be no damage to aquatic life.

*Hard = Hardness as mg/l $CaCO_3$.

(2) Cold water aquatic habitat. The following parameters and their associated criteria are for the protection of productive cold water aquatic communities and streams which support trout populations (whether self-sustaining or reproducing) on a year-round basis. All of the criteria adopted for the protection of warm water aquatic life also apply to the protection of cold water habitats with the following additions:

(a) Dissolved oxygen.

1. A minimum concentration of six (6) mg/l as a daily average and five (5) mg/l as an instantaneous minimum shall be maintained at all times.

2. In impoundments which support trout, the concentration of dissolved oxygen in waters below the epilimnion shall be kept consistent with natural water quality.

(b) Temperature. Water temperature shall not be increased through man's activities above the natural seasonal temperatures.

Section 5. Domestic Water Supply Use. Maximum allowable in-stream concentrations for specific substances, to be applicable at the point of withdrawal for use for domestic water supply from surface water sources are specified in Table 3 and shall not be exceeded.

Table 3
Domestic Water Supply Source Criteria[1]

Substances Not Linked to Cancer	Concentration
Metals[1]	
Antimony	0.146 mg/l
Barium	1 mg/l
Cadmium	0.010 mg/l
Chromium	0.05 mg/l
Chromium (III)	33 [170] mg/l
Copper	1 mg/l
Lead	0.05 mg/l
Manganese	0.05 mg/l
Mercury	0.144 ug/l
Nickel	610 [13.4] ug/l
Selenium	0.01 mg/l
Silver	0.05 mg/l
Thallium	0.013 mg/l
Organics	
Acrolein	0.320 mg/l
Monochlorobenzene	0.488 mg/l
1-2-4-5-tetrachlorobenzene	0.038 mg/l
Pentachlorobenzene	0.074 mg/l
1,1,1-trichloroethane	18.4 mg/l
2,4,5-trichlorophenol	2.6 mg/l
Bis(2-chloroisopropyl) ether	0.0347 mg/l
Dichlorobenzenes	0.400 mg/l
2,4-dichlorophenol	3.090 mg/l
Dichloropropenes	0.087 mg/l
Endosulfan	0.074 mg/l
Endrin	0.001 mg/l
Ethylbenzene	3.1 [1.4] mg/l
Fluoranthene	0.042 mg/l
Hexachlorocyclopentadiene	0.206 mg/l
Isophorone	5.2 mg/l
Nitrobenzene	19.8 mg/l
2-4-dinitro-o-cresol	0.0134 mg/l
Dinitrophenol	0.070 mg/l
Pentachlorophenol	1.0 mg/l
Phenol	3.5 mg/l
Dibutyl phthalate	34 mg/l
Diethyl phthalate	350 mg/l
Di-2-ethylhexyl phthalate	15 mg/l
Dimethyl phthalate	313 mg/l
Toluene	14.3 mg/l
Others	
Chloride	250 mg/l
Color	75 Platinum Cobalt Color Units
Cyanide (free)	0.200 mg/l
Fecal Coliform	2000/100 ml Geometric mean)
Fluoride	1.0 mg/l
Methylene Blue Active Substances	0.5 mg/l
Nitrate (NO_3-N)	10 mg/l
Sulfate	250 mg/l
Total Dissolved Solids	750 mg/l
Substances Linked to Cancer	
Metals (ug/l)	
Beryllium	0.0068

Organics (ug/l)	
Acrylonitrile	0.058
Aldrin	0.000074
Asbestos (fibers/liter)	30,000
Benzene	1.2 [0.66]
Benzidine	0.00012
Carbon tetrachloride	0.40
Chlordane	0.00046
Hexachlorobenzene	0.00072
1,2-dichloroethane	0.94
1,1,2-trichloroethane	0.60
1,1,2,2,-tetrachloroethane	0.17
Hexachloroethane	1.9
2,4,6-trichlorophenol	1.2
bis(2-chloroethyl) ether	0.03
Chloroform	5.7 [0.19]
DDT	0.000024
Dichlorobenzidine	0.01
1,1-dichloroethylene	0.033
Dieldrin	0.000071
2,4-dinitrotoluene	0.11
[Dioxin (2,3,7,8-TCDD)	0.000000013]
Diphenylhydrazine	0.042
Halomethanes	0.19
Heptachlor	0.00028
Hexachlorobutadiene	0.45
alpha Hexachlorocyclohexane (HCH)	0.009
beta HCH	0.016
gamma HCH (Lindane)	0.019
Technical HCH	0.012
N-nitrosodiethylamine	0.0008
N-nitrosodimethylamine	0.0014
N-nitrosodibutylamine	0.0064
N-nitrosodiphenylamine	4.9
N-nitrosopyrrolidine	0.016
Polychlorinated Biphenyls (PCBs)	0.000079
Polynuclear Aromatic Hydrocarbons (PAHs)	0.0028
Tetrachloroethylene	0.8
Toxaphene	0.00071
Trichloroethylene	2.7
Vinyl Chloride	2.0

[1]**Total recoverable form measured in an unfiltered sample.** [See note 1 in Table 2.]

Section 6. Recreational Waters. (1) Primary contact recreation water. Primary contact recreation waters are waters suitable for full body contact recreation during the recreation season of May 1 through October 31. Criteria for primary contact recreation waters are listed below:

(a) Fecal coliform content shall not exceed 200 colonies per 100 ml as a monthly geometric mean based on not less than five (5) samples per month; nor exceed 400 colonies per 100 ml in twenty (20) percent or more of all samples taken during the month; these limits are applicable during the recreation season. Fecal coliform criteria listed in subsection (2)(a) of this section apply during the remainder of the year.

(b) pH shall be between six (6.0) to nine (9.0) and shall not change more than one (1) pH unit within this range over a period of twenty-four (24) hours.

(2) Secondary contact recreation water. Secondary contact recreation waters are waters suitable for partial body contact recreation, with minimal threat to public health due to water quality. The following criteria apply to waters classified for secondary contact recreation use during the entire year:

(a) Fecal coliform content shall not exceed 1000 colonies per 100 ml as a monthly geometric mean based on not less than five (5) samples per month; nor exceed 2000 colonies per 100 ml in twenty (20) percent or more of all samples taken during the month.

(b) pH shall be between six (6.0) to nine (9.0) and shall not change more than one (1) pH unit within this range over a period of twenty-four (24) hours.

Section 7. Outstanding Resource Waters. This classification category includes certain unique waters of the Commonwealth.

(1) Water for inclusion.

(a) Automatic inclusion. The following surface waters shall automatically be included in this category:

1. Waters designated under the Kentucky Wild Rivers Act, KRS 146.200-146.360.

2. Waters designated under the Federal Wild and Scenic Rivers Act, 16 U.S.C. 1271 et seq. and high quality waters constituting an outstanding national resource water.

3. Waters identified under the Kentucky Nature Preserves Act, KRS 146.410-146.530, which are contained within a formally dedicated nature preserve or are published in the registry of natural areas and concurred upon by the cabinet.

4. Waters that support federally recognized endangered or threatened species under the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 et seq.

(b) Permissible consideration. Other surface waters may be included in this category as determined by the cabinet if:

1. The surface waters flow through or are bounded by state or federal forest land, or are of exceptional aesthetic or ecological value or are within the boundaries of national, state, or local government parks, or are a part of a unique geological or historical area recognized by state or federal designation; or

2. They are a component part of an undisturbed or relatively undisturbed watershed that can provide basic scientific data and possess outstanding water quality characteristics; or two (2) of the following criteria:

a. Support a diverse or unique native aquatic flora or fauna.

b. Possess physical or chemical characteristics that provide an unusual and uncommon aquatic habitat.

c. Provides a unique aquatic environment within a physiographic region.

(2) Outstanding resource waters protection: The classification of certain waters as outstanding resource waters shall fairly and fully reflect those aspects of the waters for which the classification is proposed. The cabinet will determine water quality criteria for these waters as follows:

(a) At a minimum, the criteria of Section 2 of this regulation and the appropriate criteria associated with the stream use classification assignments in 401 KAR 5:026, are applicable to these waters.

(b) Where the values identified for an outstanding resource water are dependent upon or related to in-stream water quality, the cabinet will review existing water quality criteria and determine whether additional criteria or more stringent criteria are necessary for protection, and evaluate the need for the development of additional data upon which to base the determination. Existing water quality and

habitat shall be maintained and protected in those waters designated as outstanding resource waters which support federally threatened and endangered species of aquatic organisms, unless it can be demonstrated to the satisfaction of the cabinet, that lowering of water quality or a habitat modification will not have a harmful effect on the threatened or endangered species which the water supports.

(c) "Water quality shall be maintained and protected in waters which constitute an outstanding national resource. The cabinet may approve temporary or short-term changes in water quality if the changes to the waters in question have no demonstrable impact on the ability of the waters to support this use."

(d) Adoption of more protective criteria in accordance with this section will be listed with the respective stream segment in 401 KAR 5:026, and will be promulgated as an administrative regulation pursuant to KRS Chapter 13A.

(3) Determination of classification.

(a) Any person may present a proposal to classify certain waters under this section. Documentation requirements in support of an outstanding resource water proposal shall contain those elements outlined in 401 KAR 5:026, Section 5(1) through (8).

(b) The cabinet will review the proposal and supporting documentation to determine whether the proposed waters qualify as outstanding resource waters within the criteria established by this regulation. The cabinet will document the determination to deny or to propose reclassification, and a copy of the decision will be served upon the petitioner and other interested parties.

(c) After considering all of the pertinent data, a reclassification, if appropriate, will be made pursuant to 401 KAR 5:026.

Section 8. Water Quality Criteria for the Main Stem of the Ohio River. The following criteria apply to the main stem of the Ohio River from its juncture with the Big Sandy River at River Mile 317.1 to its confluence with the Mississippi River, and shall not be exceeded: these waters are subject to all applicable provisions of 401 KAR 5:026, 401 KAR 5:029, and this regulation.

(1) Dissolved oxygen. Concentrations shall average at least five (5.0) mg/l per calendar day and shall not be less than four (4.0) mg/l at any time provided that a minimum of five and one-tenth (5.1) mg/l at any time is maintained during the April 15 - June 15 spawning season.

(2) Temperature.

(a) Allowable stream temperatures are:

Month/Date	Period Average (°F)	Instantaneous Maximum (°F)
January 1-31	45	50
February 1-29	45	50
March 1-15	51	56
March 16-31	54	59
April 1-15	58	64
April 16-30	64	69
May 1-15	68	73
May 16-31	75	80
June 1-15	80	85
June 16-30	83	87
July 1-31	84	89
August 1-31	84	89
September 1-15	84	87
September 16-30	82	86
October 1-15	77	82
October 16-31	72	77
November 1-30	67	72
December 1-31	52	57

(b) A successful demonstration conducted for thermal discharge limits under Section 316(a) of the Clean Water Act will constitute compliance with these temperature criteria.

(3) Total dissolved solids: not to exceed 500 mg/l as a monthly average, nor exceed 750 mg/l at any time. Equivalent twenty-five (25) degrees Centigrade specific conductants values are 800 and 1200 micromhos/cm respectively.

(4) Maximum allowable in-stream concentrations for specific parameters are given below. Metal concentrations are total recoverable values except hexavalent chromium which is dissolved.

Parameter	Concentration (mg/l)
Arsenic	.05
Barium	1.0
Chloride	250
Fluoride	1.0
Nitrite + Nitrate Nitrogen	10.0
Nitrite-Nitrogen	1.0
Phenolics	.005
Sulfate	250

Parameter	Chronic Criteria Concentration ug/l	Acute Criteria Concentration ug/l
Cadmium	e(.7852(ln Hard)-3.490)	e(1.128(ln Hard)-3.828)
Chromium (hexavalent)	11	16
Copper	e(.8545(ln Hard)-1.465)	e(.9422(ln Hard)-1.464)
Cyanide (free)	5	22
Lead	e(1.273(ln Hard)-4.705)	e(1.273(ln Hard)-1.460)
Mercury	.012	2.4
Zinc	e(.8473(ln Hard)+.7614)	e(8473(ln Hard)+.8604)

(5) The net discharge of aldrin, dieldrin, DDT, including DDD and DDE, endrin, toxaphene, benzidine, and PCBs is prohibited.

Section 9. Exceptions to Criteria. (1) The cabinet may grant exceptions to the criteria contained in Sections 2, 4, 5, 6 and 7 of this regulation upon demonstration by an applicant that maintenance of applicable water quality criteria are not attainable or scientifically valid but the use classification is still appropriate. This determination will be made on a case-by-case basis with respect to a specific surface water following an analysis for each area.

(2) The analysis shall show that the water quality criteria cannot be reasonably achieved either on a seasonal or year-round basis due to natural conditions, or site-specific factors differing from the conditions used to derive criteria in Sections 2, 4, 5, 6, 7, and 8 of this regulation, or a demonstration that meeting the criteria would cause substantial and widespread economic and social impact. Site-specific criteria shall be developed by the

applicant utilizing toxicity tests, indicator organisms, and application factors that are consistent with those outlined in "Water Quality Standards Handbook" (EPA, 1983). In addition, an applicant shall supply the documentation listed in Section 5 of 401 KAR 5:026.

(3) An exception to criteria listed in Section 2(2) of this regulation for the protection of human health from the consumption of fish tissue may be granted if it can be demonstrated that natural, ephemeral, intermittent or low flow conditions or water levels preclude the year-round support of a fishery, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges.

(4) Before granting an exception to water quality criteria, the cabinet shall ensure that the water quality standards of downstream waters are attained and maintained.

(5) All exceptions to water quality criteria will be subject to review at least every three (3) years.

(6) Upon completing a review and the procedures for promulgation under administrative rule-making, all exceptions to water quality criteria shall be listed with the respective stream segment in Section 7 of 401 KAR 5:026.

Section 10. This administrative regulation shall expire on adjournment of the next regular session of the General Assembly.

FRANK DICKERSON, Commissioner
JOHN F. NICHOLS, JR., Secretary
APPROVED BY AGENCY: December 5, 1991
FILED WITH LRC: December 6, 1991 at noon

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings & Construction
Office of State Fire Marshal
(Amended After Hearing)

815 KAR 25:010. Mobile homes.

RELATES TO: KRS 227.550 through 227.660, 227.990, **National Mobile Home Construction Safety Standards Act of 1974**

STATUTORY AUTHORITY: KRS 227.570, 227.590

NECESSITY AND FUNCTION: KRS **227.570 and** 227.590 requires the Mobile Home Certification and Licensure Board to establish **and the State Fire Marshal's Office to enforce** rules and regulations governing the standards for manufacture, sale, installation and alteration of mobile homes; and the office of the State Fire Marshal to license mobile home dealers pursuant to KRS 227.610 and to issue certificates of acceptability pursuant to KRS 227.580. These regulations are **consistent with Title 6 of the Federal Housing and Community Development Act of 1974 and are** intended to assure safety for owners and occupiers of **new and used** mobile homes **sold by dealers**. This amendment is necessary to clarify that all mechanical systems in mobile homes are to be inspected when dealers sell used mobile homes, to create a definition of installation, to tier the licensing of dealers whose only activity is brokering mobile homes owned by others located on private property and to make it unlawful for a dealer to sell a mobile home if he cannot provide its title. [This amendment is necessary to upgrade the quality of inspections and otherwise provide efficient administration of the law. This amended regulation was approved by the Mobile Home Board on May 9, 1991.]

Section 1. Definitions. In addition to the following definitions, the definitions of National Fire Protection Association Pamphlet Number 501(b) and the HUD Act shall apply:

(1) "Act" means the Mobile Home and Recreational Vehicle Act, KRS 227.550 to 227.660.

(2) "Agency, testing" means an independent organization which is:

(a) Primarily interested in testing and evaluating equipment and installations;

(b) Qualified and equipped for, or to observe experimental testing to approved standards;

(c) Not under the jurisdiction or control of any manufacturer or supplier of any industry;

(d) Makes available a published report in which specific information is included stating that the equipment and installations listed or labeled have been tested and found safe for use in a specific manner; and

(e) Approved by the board.

(3) "Alteration or conversion" means the replacement, addition, modification or removal of any equipment or installations which may affect the body and frame design and construction, plumbing, heat-producing, cooling, fuel burning systems or electrical systems or smoke detectors or their function unless excluded by this regulation.

(4) "ANSI" means the American National Standards Institute.

(5) "Board" means the Mobile Home Certification and Licensure Board defined in KRS 227.550(1).

(6) "Certificate of acceptability" means the certificate provided to the manufacturer signifying the manufacturer's ability to manufacture, import or sell mobile homes within the state to licensed Kentucky dealers.

(7) "Certified Kentucky dealer" means a dealer who is approved by the State Fire Marshal to inspect used mobile homes before registration or title in [which are brought into] Kentucky, and repair them, if necessary, under NFPA 501(B) before placing a "B" seal upon them.

(8) "Class "A" seal" as defined by KRS 227.550(2) is for application on new mobile homes not covered by the HUD Act.

(9) "Class "B" seal" as defined by KRS 227.550(3) is for application on used mobile homes.

(10) "Dealer" as defined by KRS 227.550(4).

(11) "Established place of business" as defined by KRS 227.550(5).

(12) "Hard surfaced lot" means an area open to the public during business hours with a surface of concrete, asphalt/macadam, compacted gravel or stone, or other material of similar characteristics.

(13) "HUD Act" or "federal act" as defined by KRS 227.550(6).

(14) "Installation" means the **work performed and operations involved in the placement of a manufactured home on a foundation system, including anchoring devices together with any accessories and appurtenances specified in the sales contract; and, unless exempted by the contract, the connection of utilities.** [set-up and connection of utilities of the mobile home upon delivery to the consumer and includes all activities for the set-up, such as site design and foundation systems, attachment of water

service and electrical facilities, and all additions to the unit.]

(15) [(14)] "Manufacturer" as defined by KRS 227.550(8).

(16) [(15)] "Manufactured housing" as defined by KRS 227.550(7).

(17) [(16)] "Mobile home or manufactured home" as defined by KRS 227.550(9). Homes or recreational vehicles known as "park trailers" under the HUD Act are regulated by 815 KAR 25:020.

(18) [(17)] "NFPA" means National Fire Protection Association pamphlets published by and available from the National Fire Protection Association, Batterymarch Park, Quincy, Massachusetts 02269.

(19) [(18)] "Offer for sale" means to display, exhibit or otherwise advertise a mobile home. It also means negotiating the purchase and sale or exchange of mobile homes for a fee, commission, compensation, or other valuable consideration.

(20) [(19)] "Person" means a person, partnership, corporation or other legal entity.

(21) [(20)] "Red tag" means a written notice which is applied to a mobile home by a representative of the State Fire Marshal's Office in accordance with Section 10 of this regulation signifying that the mobile home is not in compliance with applicable laws.

(22) [(21)] "Registration" means the transfer of title or any other official recording of change of ownership.

(23) [(22)] "Salvage unit" means any used mobile home which is identified by the State Fire Marshal and the dealer, or by title, to not be subject to "B" seal requirements because it is not to be sold or used for habitable purposes.

(24) [(23)] "Suitable sign" means a sign with the dealership name and type of dealership in letters of a minimum height of six (6) inches and minimum width of one and one-half (1 1/2) inches.

(25) [(24)] "Used mobile home" means any mobile home unit which is offered for sale after the original purchase. These units are not covered by the HUD Act.

Section 2. Authorization and Enforcement. (1) These rules are authorized by KRS 227.590 and established pursuant to the rule making procedures set forth in KRS Chapter 13A, in order to implement, interpret, and carry out the provisions of laws of 1974, as amended in 1976, KRS Chapter 227, relating to mobile homes. Title VI of the Federal Housing and Community Development Act of 1974 (HUD Act), shall govern all new mobile homes.

(2) Subject to the provisions of applicable law, the Office of the State Fire Marshal shall administer and enforce all the provisions of the Mobile Home and Recreational Vehicle Act. Any officer, agent, or employee of the State Fire Marshal's office is authorized to enter any dealer's place of business in order to inspect any mobile home for which the office has issued a seal of approval, or to inspect the mobile home's equipment and its installations to insure compliance with the Act, the code and the HUD Act and these regulations. Upon complaint and request by the owner or occupant, a privately owned mobile home requiring [bearing] a seal may be entered to determine compliance with these regulations. When it becomes necessary to determine compliance, the inspector may require that a portion of the mobile homes be removed or exposed in order that a compliance inspection can be made.

Section 3. Scope and Purpose of the Act and Regulations. Except to the extent otherwise stated in the Act, this regulation shall govern the design, manufacture, installation and sale of new and used mobile homes not covered by the HUD Act, which are manufactured, sold or leased for use within or outside of the Commonwealth by dealers and manufacturers. Any person, firm or corporation who sells or offers for sale in Kentucky three (3) or more mobile homes in any consecutive twelve (12) month period shall be considered a dealer subject to all requirements set forth in this regulation and KRS 227.550 to 227.660. These regulations apply to mobile homes manufactured in manufacturing facilities located within or outside the Commonwealth. Mobile homes brought into this state for exhibition use only, in accordance with Section 9(4) of this regulation, and which shall not be sold in this state, shall be exempt from the requirements of this regulation if inspections reveal no condition hazardous to health or safety.

Section 4. Standards for Manufactured Homes in Manufacturers' or Dealers' Possession. (1) The office shall enforce standards and requirements for the installation of plumbing, heating, cooling, fuel burning systems, electrical systems and smoke detectors in mobile homes not covered by the HUD Act, as it determines are reasonably necessary to protect the health and safety of the occupants and the public.

(2) The office shall also enforce the standards and requirements for the body and frame design, construction and installation of mobile homes.

(3) All new mobile homes not covered by the HUD Act, manufactured for sale within the Commonwealth of Kentucky, shall be constructed in accordance with NFPA 501(B), 1977 edition, hereby adopted by reference. Copies of this publication are available from the National Fire Protection Association, 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269-9101. This material is available for public inspection at the Department of Housing, Buildings and Construction, The 127 Building, 1047 U.S. 127 South, Frankfort, Kentucky, between 8 a.m. and 4:30 p.m., Monday through Friday.

(4) NFPA 501(B), which is adopted by reference in subsection (3) of this section shall be the standard for all used mobile homes, unless otherwise provided in this regulation, and it shall be used by the dealer upon inspection in accordance with subsection (7) of this section to determine and certify:

(a) The safe and adequate working condition of the electric, heating, cooling, fuel burning and plumbing systems; and

(b) The door, window, and general structural integrity of the unit; and

(c) The sealing of all exterior holes to prevent the entrance of rodents, and repaired if necessary; and

(d) The existence of adequate and operable smoke detection equipment; and

(e) The existence of storm windows.

(5) All mobile homes taken in trade by the dealer shall be reinspected and certified that they are in compliance with requirements of subsection (4) of this section. The existing Class "A" or Class "B" seal shall be removed and

a new seal affixed to the unit or a new seal may be affixed over the existing seal or label. When a new mobile home purchased under the provision of the HUD Act is resold, it becomes a used mobile home and subject to the provisions of this section. "A" and "B" seals shall not be required if the dealer submits to the office an affidavit that the unit is a salvage unit. No salvage unit shall be sold until it has been authorized, in writing, by the office to be labeled "salvage only" and the label has been affixed to the unit by the dealer. Upon prior approval of the office, one (1) licensed dealer may sell units to another licensed dealer without applying seals.

(6) All mobile homes shall be installed in accordance with manufacturer's instructions or ANSI A225.1/NFPA 501A, Manufactured Home Installations, 1982 Edition, hereby adopted by reference. Copies of this publication are available from the National Fire Protection Association, 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269-9101. This material is available for public inspection **and copying** at the Department of Housing, Buildings and Construction, The 127 Building, 1047 U.S. 127 South, Frankfort, Kentucky, between 8 a.m. and 4:30 p.m., Monday through Friday.

(7) All new mobile homes purchased outside the Commonwealth of Kentucky not bearing a Class "A" seal of approval or a HUD label and all used mobile homes purchased outside the Commonwealth of Kentucky, regardless of the type seal or label affixed, shall be inspected by a certified Kentucky dealer or the office and a Class "B" seal of approval affixed prior to registration of the home. This inspection shall consist of the following:

(a) Inspection of the plumbing and waste systems, to determine operability and absence of leaks.

(b) Inspection of the heating, cooling or fuel burning system [unit] to determine adequacy of system.

(c) Inspection of the electrical system, including the main circuit box and all outlets/switches, to detect any damaged coverings, lost screws, or improper installations.

(d) Inspection for the existence of adequate and operable smoke detection equipment.

(e) Inspection for storm windows. EXCEPTION: This paragraph and paragraph (4)(e) of this subsection shall not apply to mobile homes built prior to the HUD Act.

(8) Any licensed Kentucky mobile home dealer that maintains the capability to perform minor maintenance of plumbing, heating, cooling, fuel burning systems, and electrical systems of mobile homes shall be permitted to inspect and certify those mobile homes purchased in another state for use within the Commonwealth of Kentucky. Any dealer desiring to perform this service, shall make application to the Office of the State Fire Marshal for appropriate certification as a certified Kentucky dealer. The office shall maintain a list of all certified mobile home dealers.

(9) Any unit found to be in noncompliance with the requirements of Section 4(5) or (7) of this regulation, shall be corrected prior to the dealer certifying the unit or offering the unit for sale unless the unit has been issued a salvage label in accordance with this regulation. All units requiring repairs or correction prior to unit certification, shall be reported to the office specifying the repairs required to correct the deficiencies. Appropriate reporting forms shall be made available to qualified dealers performing inspection.

(10) The fee for the inspection of mobile homes shall be twenty (20) dollars per hour plus twenty-two (22) cents per mile and a twenty-five (25) dollar seal fee when performed by a certified Kentucky dealer. Inspections performed by the office shall be thirty-five (35) dollars inspection fee and twenty-five (25) dollars seal fee.

Section 5. Applicability and Interpretation of Code and Regulation Provisions. Any questions regarding the applicability or interpretation of any provisions of the HUD Act, the code or regulation adopted shall be submitted to the office, in writing, by any interested person. It is the policy of the office that with respect to questions regarding NFPA 501(B), that the questions shall, whenever feasible, first be submitted to the NFPA for their recommendation; however, the office shall answer these questions and render the official interpretations and the decision of the office shall be in writing.

Section 6. Certificate of Acceptability. (1) No manufacturer shall manufacture, import, or sell any mobile home in this state unless he has procured a certificate of acceptability from the board. Compliance shall be enforced through KRS 227.992. Mobile homes not covered by the HUD Act, manufactured in this state and designed for delivery to and for sale in a state that has a code that is inconsistent with NFPA 501(B) shall not comply with this provision.

(2) Requirements for issuance.

(a) The manufacturer shall submit and the office shall approve in-plant quality control systems.

(b) A $500 fee shall accompany the application. The fee shall be paid by check or money order and shall be made payable to Kentucky State Treasurer.

(c) The manufacturer shall furnish and maintain with the office a certificate of insurance from a Kentucky authorized insurance company for general liability insurance to include lot and completed operations insurance in the minimum amount of $300,000 bodily injury or death for each person, $400,000 bodily injury or death for each accident, and $100,000 property damage.

(3) Quality control measures shall be provided for all mobile units not covered by the HUD Act (i.e., all office and used units). To obtain in-plant quality control approval, a manufacturer shall submit a system for in-plant control pursuant to paragraph (b) of this subsection and submit to inspection by the office for field certification of satisfactory quality control. Applications for approval of in-plant quality control systems shall contain the following:

(a) A certified copy of the plans and specifications of a model or model-group for body and frame design, construction, electrical, heating, cooling, fuel burning systems and plumbing systems. All plans shall be submitted on sheets, the minimum possible size of which is eight and one-half (8 1/2) inches by eleven (11) inches and the maximum possible size of which is

twenty-four (24) inches by thirty (30) inches. The manufacturer shall certify that the systems comply with NFPA 501(B).

(b) Also, a copy of the procedure which will direct the manufacturer to construct mobile homes in accordance with the plans, specifying:

1. Scope and purpose.
2. Receiving and inspection procedure for basic materials.
3. Material storage and stock rotation procedure.
4. Types and frequency of product inspection
5. Sample of inspection control form used.
6. Responsibility for quality control programs, indicating personnel, their assignments, experience and qualifications.
7. Test equipment.
8. Control of drawings and material specifications.
9. Test procedures.

(4) A unit certification format certifying compliance with the Act and this regulation shall be submitted to the office no later than the end of the first week of each month for those units manufactured under the state code and not bearing a HUD label, i.e., mobile offices, add-a-rooms, duplex units, etc. The unit certification format shall contain the information in the format as outlined in Section 13 [12] of this regulation.

(5) A manufacturer to which a certificate of acceptability has been issued shall not modify in any way its manufacturing specifications without prior written approval of the office.

(6) If the manufacturer is also a dealer, he shall also comply with dealer licensing provisions.

(7) If the applicant does not conform with these regulations, the applicant shall be so notified in writing by the office within ten (10) working days of the date received. If the applicant fails to submit a corrected application in accordance with the information supplied on the application correction notice, the application shall be deemed abandoned and twenty (20) percent of fees due shall be forfeited to the office. Any additional submission shall be processed as a new application.

(8) Manufacturers shall notify the office, in writing, within thirty (30) days of any of the following occurrences:

(a) The corporate name is changed;
(b) The main address of the company is changed;
(c) There is a change in twenty-five (25) percent or more of the ownership interest of the company within a twelve (12) month period;
(d) The location of any manufacturing facility is changed;
(e) A new manufacturing facility is established; or
(f) There are changes in the principal officers of the firm.

(9) Any information relating to building systems or in-plant quality control systems which the manufacturer considers proprietary, shall be so designated at the time of plans submission, and shall be so held by the office, and by the inspection, evaluation, and local enforcement agencies unless the board determines in each case that disclosure is necessary to carry out the purposes of the Act.

(10) If the office determines that the standards for mobile home units are at least equal to NFPA 501(B) because they comply with the Kentucky Building Code, it may issue a certificate of acceptability for the mobile homes.

(11) Under proceedings for the suspension of a certificate of acceptability for any of the violations enumerated in the Act, the holder of a certificate of acceptability may have the alternative, subject to the approval of the board, to pay in lieu of part or all of the days of any suspension the sum of fifty (50) dollars per day.

Section 7. Serial Numbers, Model Numbers, Date Manufactured. A clearly designated serial number, model number, and date manufactured shall be stamped into the mobile home tongue, or front cross member of the frame at the lower left hand side (while facing the unit), and if there is no tongue or cross member, then a data plate with this information shall be affixed on the outside in a conspicuous place.

Section 8. Dealer License. (1) A dealer of mobile homes shall not engage in business in this state without a license issued by the office upon application.

(2) Application shall contain the following information:

(a) Name and address of the chief managing officer;
(b) Location of each and every established place of business;
(c) Social security number and date of birth of chief managing officer;
(d) Affidavit certifying compliance with the Act and regulations;
(e) Names of offices, if dealership in corporate form;
(f) Names of partners, if dealership in partnership form;
(g) A copy of a valid Kentucky sales tax certificate;
(h) Any other information the office deems commensurate with safeguarding of the public interest in the locality of the proposed business;

(3) All licenses shall be granted or refused within thirty (30) days after application, and shall expire, unless revoked or suspended, on December 31 of the calendar year for which they are granted.

(4) The license fee shall be $200. The fee shall be paid by check or money order and shall be made payable to the Kentucky State Treasurer.

(5) The license shall be conspicuously displayed at the established place of business. If the business location is changed, the office shall endorse the change of location on the license without charge if it is located within the same municipality. A change of location to another municipality shall require a new license.

(6) The dealer shall furnish and maintain with the office a certificate of insurance to certify proof of liability insurance in the minimum amount of $200,000 bodily injury or death for each person, $300,000 bodily injury or death for each accident, and $100,000 property damage.

(7) Dealers shall maintain a record of all units sold, new and used, to include serial numbers, Kentucky seal numbers ("A" or "B"), date manufactured, make, and the name and address of the purchaser. This report shall be in the format depicted in Section 14 [13] of this regulation. The report shall be made available to the field inspector on a monthly

basis.

(8) A dealer shall not have the authority to make any alterations to any mobile home manufactured under the HUD Act or NFPA 501(B) without the express permission of the manufacturer; except that in the case of used mobile homes, permission may be obtained from the State Fire Marshal's Office in accordance with this regulation. Any dealer altering a mobile home, shall be guilty of a federal violation and shall be subject to the penalties provided in KRS 227.990. Alteration of a mobile home shall include but is not limited to: addition or deletion of windows, doors, or partitions; conversion of a heating, cooling, fuel burning systems [producing appliance] from one (1) fuel to another, i.e., electric to gas or gas to electric or oil; addition of an electrical circuit to accommodate a washer or dryer; addition of central air conditioning when the unit is not designed for that purpose; improper or improperly listed materials for the repair of a unit; installing an unlisted heating, cooling, or fuel burning [producing] appliance, etc. The following shall not constitute an alteration or conversion: replacement of equipment in kind, i.e., gas furnace with gas furnace; replacement or changing of furniture to accommodate the consumer and any other cosmetic repairs.

(9) Notification of a change in the application information shall be made within thirty (30) days of any of the following occurrences:

(a) Dealership name is changed;

(b) Established place of business is changed (move to a different county requires a new license);

(c) There is a change in twenty-five (25) percent or more of the ownership interest of the dealership within a twelve (12) month period; or

(d) There are changes in the principal officers of the firm.

(10) Out-of-state dealers with valid Kentucky licenses. Exception: any applicant whose place of business is in another state and who possesses a valid dealers license in another state shall be licensed upon application and approval by the office in accordance with this regulation. These out-of-state dealers shall provide Kentucky seals for units actually sold for delivery into Kentucky.

(11) If any person who sells mobile homes does not take possession or ownership of the mobile homes and offers for sale used mobile homes only as a **negotiator** [negotiation] or broker for a fee, commission, compensation or other valuable consideration, the person shall apply for and be issued a license as a dealer for that limited function pursuant to this regulation with the following conditions:

(a) His established place of business may be his business address and the dealer shall not be required to have a hard surfaced lot for display and repair; and

(b) The unit shall be inspected by the office or a certified Kentucky dealer and the "B" seal of approval or salvage label shall be affixed to the unit prior to offering it for sale.

Section 9. Temporary License. (1) No person, other than one duly licensed in Kentucky pursuant to Section 8 of this regulation, shall show or offer mobile homes within the Commonwealth of Kentucky; except that, for the express purpose of retailing the units to the general public at a specified location, the person or company may purchase from the Office of the State Fire Marshal a temporary license. The temporary license shall not exceed fifteen (15) days duration and the license fee shall be $100 for each authorized event. The applicant for the license shall notify the department at least thirty (30) days in advance of any event at which he plans to exhibit mobile homes for sale giving the name, location and time of the proposed event.

(2) Applicant shall meet the following requirements before a temporary license is granted:

(a) Be a duly licensed dealer in a state other than Kentucky;

(b) Furnish to the office a certificate of insurance to certify that the dealership has proper liability insurance in the minimum amount of $200,000 bodily injury or death for each person, $300,000 bodily injury or death for each accident, and $100,000 property damage;

(c) Provide satisfactory assurance to the office by way of a physical inspection by an authorized representative of this office that each new unit not covered by the federal Act the dealer intends to display, show or offer for sale, bears a Kentucky Class "A" seal of approval. Used mobile homes shall not be permitted to be shown or offered for sale within the Commonwealth of Kentucky by nonresident dealers at any time;

(d) Possess a valid Kentucky Sales Tax Certificate;

(e) Provide all other information required by the office;

(f) The state in which the applicant is licensed shall have reciprocal provisions for temporary licensing of Kentucky dealers.

(3) Temporary licenses shall be prominently displayed at the location where the applicant is transacting business.

(4) Temporary licenses shall not be required for those dealers attending a mobile home show within the Commonwealth of Kentucky if they do not sell or offer for sale to the general public new or used mobile homes, and if the dealer has notified the department, in writing, at least thirty (30) days in advance of any event at which he plans to exhibit mobile homes, giving the name, location and time of the proposed event.

Section 10. Seals. (1) A manufacturer who has received a certificate of acceptability from the office shall not sell or offer for sale to Kentucky dealers in this state mobile homes not covered by the HUD Act, unless they bear a Class "A" seal of approval issued by and purchased from the office. This provision shall not apply to vehicles sold or offered for sale for shipment out of state.

(2) A dealer who has received a license from the office shall not sell or offer for sale a mobile home except as permitted between licensed dealers, pursuant to Section 4(5) of this regulation, unless it has either a HUD seal, an "A" seal, a "B" seal or a salvage label, except as otherwise provided in this regulation. Any dealer who has acquired a used mobile home without a seal, shall apply to the office for a Class "B" seal by submitting an affidavit certifying either that all electrical, heating, cooling, fuel burning systems and plumbing

equipment has been checked, and if necessary, repaired, and is now in safe working condition, or that the unit meets the applicable code.

(a) Acquisition of seal.

1. Any manufacturer, except one altering a new mobile home not covered by the HUD Act bearing a seal, shall qualify for acquisition of a Class "A" seal by obtaining a certificate of acceptability pursuant to KRS 227.580 and Section 6 of this regulation.

2. Any dealer, except one altering a mobile home bearing a seal, shall qualify for acquisition of a Class "B" seal by giving an affidavit certifying either that all electrical, heating, cooling, fuel burning systems and plumbing equipment has been checked, if necessary, repaired, and is now in safe working condition or that the unit meets the applicable code.

(b) Application for seals.

1. Any person who has met the applicable requirements of Section 6 or 8 of this regulation shall apply for seals in the form prescribed by the office. The application shall be accompanied by the seal fee of twenty-five (25) dollars for each Class "A" seal or twenty-five (25) dollars for each Class "B" seal.

2. If the applicant has qualified to apply for seals pursuant to the in-plant quality control approval method, the seal application shall include the certificate of acceptability number.

(c) Alteration or conversion of a unit bearing a seal.

1. Any alteration of the construction, plumbing, heat-producing, cooling, fuel burning systems equipment, electrical equipment installations or fire safety in a mobile home not covered by the HUD Act, which bears a seal, shall void the approval and the seal shall be returned to the office.

2. The following shall not constitute an alteration or conversion for those mobile homes not covered by the HUD Act:

a. Repairs with approved component parts.

b. Conversion of listed fuel-burning appliances in accordance with the terms of their listing.

c. Adjustment and maintenance of equipment.

d. Replacement of equipment in kind.

e. Any change that does not affect those areas covered by NFPA 501(B) or the HUD Act.

3. Any dealer proposing an alteration to a mobile home not covered by the HUD Act bearing a seal, shall make application to the office. The application shall include:

a. Make and model of mobile home.

b. Serial number.

c. State seal number.

d. A complete description of the work to be performed together with plans and specifications, when required.

e. Location of the mobile home where work is to be performed.

f. Name and address of the owner of the mobile home.

4. Upon completion of the alteration, the applicant shall request the office to make an inspection.

5. The applicant may purchase a replacement seal, based on inspection of the alteration for a fee of two (2) dollars.

(d) Denial and repossession of seals. If inspection reveals that a manufacturer is constructing mobile homes not covered by the HUD Act (such as office units) according to NFPA 501(B); or, if inspection reveals that any dealer failed to repair a used mobile home under the standards and procedures set forth in this regulation and KRS 227.550 to 227.660 or failed to comply with any other provision for placement of seals and labels; and the dealer or manufacturer, after having been served with a notice setting forth in what respect the provisions of these rules and the code have been violated, continues to manufacture, sell or offer for sale mobile homes in violation of these rules and the code, applications for new seals shall be denied and the seals previously issued and unused shall be confiscated and credit given. Upon satisfactory proof of compliance, the manufacturer or dealer shall resubmit an application for seal.

(e) Seal removal. If a mobile home not covered by the HUD Act is found to be in violation of these rules, the office shall attach to the vehicle a notice of noncompliance or a "red tag" and furnish the manufacturer or dealer a copy of same. The office, dealer or manufacturer shall not remove the noncompliance "red tag" until corrections have been made, and the owner or his agent has requested an inspection in writing to the office and given an affidavit certifying compliance. Removal of any "red tag" shall result in repossession of all seals held by the dealer or manufacturer until the facility is once again in full compliance with the Act and this regulation.

(f) Placement of seals.

1. Each seal shall be assigned and affixed to a specific mobile home not covered by the HUD Act. Assigned seals shall not be transferable unless assigned between dealers and shall be void when not affixed as assigned, and all seals shall be returned to or may be confiscated by the office. The seal shall remain the property of the office and may be seized by the office in the event of violation of the Act or regulations.

2. The seal shall be securely affixed by the door on the handle side at approximately handle height.

3. No other seal, stamp, cover, or other marking shall be placed within two (2) inches of the seal.

(g) Lost or damaged seals.

1. When a seal becomes lost or damaged, the office shall be notified immediately in writing by the owner. The owner shall specify the manufacturer, the mobile home serial number, and when possible, the seal number.

2. All damaged seals shall be promptly returned. Damaged and lost seals shall be replaced by the office with a replacement seal upon payment of the replacement seal fee of two (2) dollars.

3. A dealer shall not display, sell or offer for sale a mobile home not covered by the HUD Act unless an "A" or "B" seal or salvage label is affixed.

Section 11. Examination for Installation of Manufactured Homes. The office shall administer an examination designed to determine qualifications based on NFPA 501A and other applicable standards adopted by regulation by the board. Any dealer or other person who successfully completes the examination shall be deemed qualified to install manufactured homes. The dealer shall be responsible for the proper installation of the manufactured home as required by the standards adopted by the board.

Section 12. No dealer shall sell or offer for sale any mobile home upon which he cannot present a marketable title to the purchaser.

Section 13. [12.] Mobile Home Unit Certification Format.

MOBILE HOME
UNIT CERTIFICATION FORMAT

_____
Name of Manufacturer

_____ _____
Mailing Address County

_____, _____ _____
City State Zip Code

I hereby certify that the mobile homes as described hereon have been constructed in compliance with NFPA 501 B.

No.	Serial #	KY Seal #	Date Mfg.	Model	Size	Dealer
1						
2						
3						
4						
5						

This form shall be used in reporting units to the Office of the State Fire Marshal. The form shall be completed in duplicate with the original to be sent to the Office of the State Fire Marshal, and the copy retained by the manufacturer. This form shall be mailed to the State Fire Marshal when the last entry has been filled or not later than the first week of each month.

_____ BY _____
Date Person Authorized to Certify These Units

Section 14. [13.] Dealer Certification Format.

DEALER CERTIFICATION FORMAT

_____
Name of Dealer

_____ _____
Mailing Address County

_____, _____ _____
City State Zip Code

I hereby certify that the used units described hereon have been inspected and are in compliance with the standards as required by KRS 227.550 through KRS 227.660 and regulations thereto and that the new mobile homes described hereon have the appropriate HUD label.

No.	Serial #	HUD LABEL #/ KY Seal #	Date Mfg.	Make	Purchaser & Address

This form shall be used in reporting units to the field inspector.

_____ _____
Date Signature

CHARLES A. COTTON, Commissioner
THEODORE T. COLLEY, Secretary
APPROVED BY AGENCY: November 21, 1991
FILED WITH LRC: December 6, 1991 at 10 a.m.

CABINET FOR HUMAN RESOURCES
Office of Inspector General
(Amended After Hearing)

900 KAR 2:050. 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
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" or "transfer" means:**

(a) Relocation of a resident from a facility to a noninstitutional setting or another health care facility as defined by KRS Chapter 216B; or

(b) Any intrafacility relocation of a resident, except between beds within the same distinct Medicare or Medicaid certified or noncertified part of the facility. ["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.]

(4) [(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 **clinical** 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 **for the relocation in a language and manner they understand**;

(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 **shall** [will] be requested and the **time period** [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**; and**

3. The facility's commitment regarding allowing the resident to return, which, if the resident does not receive Medicare or Medicaid, shall be consistent with established facility policy. Facility policy shall be consistent with the conditions under which a resident may be transferred or discharged as set forth in subsections (1) and (2) of this section, which shall be the only limitations to the return of the resident.

(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 **notified and** readmitted to the facility immediately upon the first availability of a bed in a semiprivate room if the resident:

1. Chooses to be readmitted; and

2. [1.] Requires the services provided by the facility; and

3. [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.

(8) [(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 **informing the facility of the date by which the facility shall comply with the findings of the cabinet. A fine of $200 per day shall be assessed for each day that the facility fails to comply with the findings of the cabinet, except for those days a resident requires acute care. These fines may be trebled in accordance with KRS 216.560(3).** [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 **fifteen (15)** [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
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: December 2, 1991
FILED WITH LRC: December 6, 1991 at 9 a.m.

CABINET FOR HUMAN RESOURCES
Office of Inspector General
(Amended After Hearing)

900 KAR 2:060. 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
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 2. 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 **and a hearing shall occur within thirty (30) days**.

(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 **$200** [$500] per day **which may be trebled in accordance with KRS 216.560(3)** from the date of the hearing officer's finding until the **facility complies with the finding of the hearing officer or 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: December 2, 1991
FILED WITH LRC: December 6, 1991 at 9 a.m.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Amended After Hearing)

907 KAR 1:037. Hospital furnished [skilled] nursing [and intermediate care] facility services.

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050, 42 CFR 440.140, 42 USC 1396a, b, d
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance [in accordance with Title XIX of the Social Security Act]. KRS 205.520 empowers the cabinet, by regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation sets forth the provisions relating to [skilled] nursing facility services [and intermediate care facility services] furnished by a licensed hospital for which payment shall be made by the Medicaid [Medical Assistance] Program in behalf of both the categorically needy and the medically needy.

Section 1. Definition. "Hospital furnished [skilled] nursing facility services [and intermediate care facility services]" means nursing facility [such] services provided in a licensed hospital bed by a facility which has entered into an agreement with the secretary, Department of Health and Human Services, pursuant to Section 1883 of the Social Security Act, or nursing facility [such] services [when] provided in a hospital bed which is licensed (in accordance with KRS Chapter 216B) for provision of acute care and is appropriately certified for provision of [skilled] nursing facility [and/or intermediate care] services if the [so long as such] beds qualify for participation in the Medicaid Program in accordance with usual Medicaid requirements for participation.

Section 2. Participation Requirements. The hospital must be licensed and certified to participate in the Medicaid [Medical Assistance] Program, and any beds to be used for hospital furnished [skilled] nursing [facility services and intermediate care] facility services must be appropriately certified [with certificate of need approval for Section 1883 beds]. The requirements for Medicare participation shall be the same as those Medicare participation requirements specified in 907 KAR 1:022.

Section 3. Provision of Service. Payment for services shall be limited to those services provided to eligible individuals meeting the criteria for provision of [skilled] nursing facility services as determined in accordance with 907 KAR 1:022 [or intermediate care services as determined in accordance with 907 KAR 1:024].

Section 4. Utilization Review. The facility shall have in place a program of utilization review which meets the requirements specified in 42 CFR 456, subparts C, E, and F, for hospitals, skilled nursing facilities, and intermediate care facilities. The facility shall be responsible for cooperating with the cabinet [and/]or its designated agents in the establishment of patient status and performance of utilization review and[/ or] control.

[Section 5. The amendments to this regulation shall be effective with regard to services provided on or after July 1, 1987.]

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: December 5, 1991
FILED WITH LRC: December 6, 1991 at 9 a.m.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Amended After Hearing)

907 KAR 1:190. Payments for alternative birth center services.

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050, 42 CFR 447.325, 42 USC 1396a, b, d
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance [in accordance with Title XIX of the Social Security Act]. KRS 205.520 empowers the cabinet, by regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation sets forth the method for determining amounts payable by the cabinet for alternative birth center services.

Section 1. General Requirements. The cabinet shall reimburse participating licensed alternative birth centers for covered services rendered eligible Medicaid [Title XIX] recipients when the [such] services are provided in accordance with the provisions of 902 [904] KAR 20:150, Alternative birth centers.

Section 2. Payments. (1) Prenatal visits, standby services and postnatal visits billed by a birthing center shall [will] be paid at the lower of the billed charge or seventy-five (75) percent of the **upper limit** [75th percentile] for [the general practicing] physicians for the same services **provided on an outpatient basis** when services are provided by the medical professional (i.e., physician or nurse-midwife who is an appropriately licensed and certified advanced registered nurse practitioner).

Laboratory services shall [may] be paid at the lower of the billed charges or the **upper limit** [75th percentile] for [the general practicing] physicians [or the obstetrician whichever is lower].

(2) The delivery fee payable to the center shall be the facility's usual and customary rate not to exceed $365 per delivery. This fee is inclusive of all costs associated with the delivery, including the professional fee for the delivery, necessary supplies and materials, and the post delivery examination.

(3) Program payment shall [is to] be considered payment in full for all services, supplies, and devices provided during the visit billed, and no additional amounts may be requested from the recipient, the medicaid program, or any other source. This shall not, however, preclude the collection of appropriate amounts from liable third party sources which shall serve to reduce the liability of the cabinet.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: December 5, 1991
FILED WITH LRC: December 6, 1991 at 9 a.m.

PROPOSED AMENDMENTS RECEIVED THROUGH NOON, DECEMBER 13, 1991

GENERAL GOVERNMENT CABINET
Kentucky Board of Pharmacy
(Proposed Amendment)

201 KAR 2:105. Licensing/drug distribution requirements for drug manufacturers and wholesalers.

RELATES TO: KRS Chapter 315
STATUTORY AUTHORITY: KRS 315.010, 315.036, 315.191(1)
NECESSITY AND FUNCTION: To establish uniform procedures and fees for the registration of all drug manufacturers and wholesalers and to implement the provisions of the Federal Prescription Drug Marketing Act of 1987, U.S. PL 100-293, 102 Stat. 95, codified at 21 USC SS 321 et seq.; and to effect the federal act's requirement to license anyone in the wholesale distribution of prescription drugs. This applies to any person, partnership, corporation or other entity engaging in the wholesale distribution of prescription drugs within the Commonwealth.

Section 1. Definitions. (1) "Wholesale drug distributor" means anyone engaged in wholesale prescription drug distribution and includes those described in KRS 315.010(12), but excepts a common carrier or individual retained solely to transport them and the lawful distribution of drug samples by manufacturers or distributor representatives.
(2) "Wholesale drug distribution" means the transfer of legend drugs to persons other than consumers or patients, but shall not include:
(a) The sale, purchase, or trade of a legend drug, or offer of same:
1. By a charitable organization as described in Section 501(c)(3) of the U.S. Internal Revenue Code of 1954 to a nonprofit affiliate of the organization to the extent permitted by law;
2. By hospitals or other health-care entities under common control;
3. To alleviate emergency medical necessity or temporary shortage between pharmacies;
4. By a pharmacist dispensing pursuant to a valid prescription order.
(3) "Manufacturer" means anyone engaged in the commercial production, preparation, propagation, compounding, conversion or processing of a drug, either directly or indirectly, by extraction from substances of natural origin or independently by means of chemical synthesis, or both, and includes any packaging or repackaging or a drug or the labeling or relabeling of its container.
(4) "Prescription drug" means any drug required by federal law or regulation to be dispensed only by a prescription, including finished dosage forms and active ingredients subject to Section 503(6) of the Federal Food, Drug, and Cosmetic Act.
(5) "Drug sample" means a unit of a prescription drug that is not intended to be sold and is intended to promote the sale of the drug.

Section 2. Requirements. (1) Permit shall be acquired pursuant to KRS 315.036.
(2) A separate permit shall be required for each facility within the Commonwealth regardless of whether joint ownership or control exists.
(3) An agent or employee of a licensee need not seek licensure under this section when the agent or employee is acting in the usual course of business or employment.
(4) A permit shall not be issued or renewed unless the applicant demonstrates or continues to demonstrate acceptable operational procedures, including, but not limited to:
(a) Adequate maintenance and storage conditions to ensure proper lighting, ventilation, temperature and humidity control, sanitation, space, and security as deemed appropriate by the Kentucky Board of Pharmacy or as per label requirements or official United States Pharmacoepia (USP) compendium requirements. Appropriate manual, electromechanical or electronic temperature and humidity recording equipment, devices, or logs shall be utilized to document proper storage of prescription drugs;
(b) Separation of deteriorated, outdated, misbranded, adulterated or otherwise recalled merchandise;
(c) Providing accurate and precise records of all goods shipped or received including source/recipient, date, quantity, itemized description, and any other information pertinent to the transaction.
(d) All applicants for licensure as controlled substances wholesale drug distributors shall be registered with the state controlled substance authority, and with the U.S. Drug Enforcement Administration and comply with all DEA regulations.
(5) The Kentucky Board of Pharmacy may choose to adopt regulations to include out-of-state distributors or may reciprocally accept in lieu thereof licensure valid by a comparable authority equally recognizing Kentucky's requirements.

Section 3. Qualifications for Permits. (1) No permit shall be issued pursuant to this regulation unless the applicant has furnished proof satisfactory to the Board of Pharmacy:
(a) That the applicant is in compliance with all applicable federal and state laws and regulations relating to drugs and is of good moral character or if the applicant be an association or corporation that the managing officers are of good moral character; and
(b) That the applicant is equipped as to land, buildings, and security to properly carry on the business described in his application.
(2) A duly licensed manufacturer or wholesaler may sell or distribute federal legend drugs only to the following persons:
(a) A currently licensed manufacturer;
(b) A currently licensed wholesaler;
(c) A currently licensed pharmacy;
(d) A currently licensed practitioner;
(e) A currently licensed hospital, but only for use by or in that hospital;
(f) A person in charge of a laboratory, but only for use in that laboratory for scientific and medical research purposes.
(3) No permit shall be granted to any person who has been convicted of a misdemeanor involving any controlled substance or who has been convicted of any felony.
(4) A permit issued pursuant to this regulation may be suspended or revoked for cause.

(5) The Kentucky Board of Pharmacy reserves the right to deny a license to an applicant if it determines that the granting of such a license would not be in the public interest.

Section 4. Permit Fees; Renewals. All applications for a permit under the provisions of this regulation shall be submitted to the Board of Pharmacy on forms furnished by it and shall contain such information as the board may require. Each application shall be accompanied by an annual fee of seventy-five (75) dollars. All permits shall expire on September 30 following date of issuance and be renewable annually thereafter upon proper application accompanied by the renewal fee of seventy-five (75) dollars and shall be nontransferable.

Section 5. Standards. (1) Facilities. All buildings in which legend drugs are wholesaled, repackaged, stored, held, sold, offered for sale, exposed for sale, or kept for sale shall be of suitable size, construction, and location to facilitate cleaning, maintenance, and proper operations. Buildings shall meet all applicable federal, state, and local standards. A facility shall not be located in a residence.

(2) Security.

(a) All wholesale drug distribution centers shall be equipped with an internal alarm system to detect entry after hours.

(b) Wholesale drug distributors shall ensure that access from outside their premises is reduced to a minimum. This includes, but is not limited to, the installation of adequate lighting at the outside perimeter of the premises.

(c) Internal security policies shall be developed to provide reasonable protection against theft by personnel. These policies shall provide protection against computer theft and crimes.

(d) Licensees shall employ adequate personnel with the education and experience necessary to safely and lawfully engage in the wholesale distribution of prescription drugs.

(e) Lists of officers, directors, managers and other persons in charge of distribution, storage, and handling of prescription drugs, including a description of their duties and summary of their qualifications, shall be maintained for purpose of review.

(3) Recordkeeping.

(a) Inventories and other records of transactions regarding the receipt and disposition of legend drugs shall be maintained and made available for inspection by authorized inspectors for a period of two (2) years. These records shall contain source of supply (items received, quantity, and date) and distribution (items distributed, quantity, and date).

(b) Records may be kept at a central location rather than at each distribution center, but records shall be made available for inspection within seventy-two (72) hours of request by authorized inspectors.

(4) Written policies and procedures.

(a) There shall be written policies and procedures to assure that the wholesale drug distributor prepares for, protects against, and handles crisis situations that affect the security or operation of the facility. Such crises shall include fires, floods, or other natural disasters, and situations of local, state, or national emergency.

(b) There shall be written policies and procedures for managing and correcting all errors or inaccuracies in inventories.

(c) There shall be written policies and procedures to assure that any outdated stock or any stock with an expiration date that, in the wholesale drug distributor's view, does not allow sufficient time for repacking or resale shall be segregated from other stock and shall be prepared for return to the manufacturer or otherwise destroyed, and this shall be documented.

(d) There shall be written policies and procedures by which the wholesaler drug distributor exercises control over the shipping and receiving of all stock within the operation.

(5) Returned goods. A wholesale operation shall maintain and follow a written procedure to assure the proper handling and disposal of returned goods.

(6) Handling recalls. A wholesale operation shall maintain and follow written policy for handling recalls and withdrawals of products. The policy shall cover all recalls and withdrawals of drug products due to:

(a) Any voluntary action on the part of the manufacturer;

(b) The direction of the Food and Drug Administration, or any other federal, state, or local government agency; and

(c) Replacement of existing merchandise with an improved product or new package design.

(7)(a) Visual examination of all materials received or shipped to guarantee product identity and to prevent acceptance or delivery of damaged, contaminated, tampered, or otherwise unfit stock shall be adequately effected.

(b) Procedures for distribution of approved stock shall provide for a rotation whereby the oldest inventory is distributed first.

(c) Wholesale drug distributors shall be subject to the provisions of any applicable federal, state, or local laws or regulations that relate to prescription drug product salvaging or reprocessing, including Chapter 21, Parts 207, 210, and 211 of the Code of Federal Regulations.

Section 6. Inspection Powers of the Kentucky Board of Pharmacy. [(1)] The Kentucky Board of Pharmacy shall make rules and regulations as may be necessary to carry out the purpose and enforce the provisions of this regulation. All rules and regulations promulgated shall conform to and not conflict with the wholesaler drug distribution guidelines adopted by the U.S. Food and Drug Administration or any applicable federal, state, or local laws and regulations and shall permit the Kentucky Board of Pharmacy and authorized federal, state, and local law enforcement officials to enter and inspect the premises and delivery vehicles, purporting or appearing to be used by any manufacturer or wholesaler, and audit records and operational procedures at reasonable times, in reasonable fashion, to the extent authorized by law.

[(2) Any person authorized by the Kentucky Board of Pharmacy is hereby given right of entry for inspection purposes during normal business hours upon all premises purporting or appearing to be used by a drug manufacturer or wholesaler.]

Section 7. Violations. (1) It shall be a violation of these rules for a drug manufacturer or wholesaler to distribute legend drugs

directly to a consumer or a patient or to operate in a manner that endangers the public health.

(2) Violation of any of these provisions shall be grounds for the suspension or revocation of the permit.

DONALD J. RUWE, President

APPROVED BY AGENCY: December 4, 1991

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

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 22, 1992, 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 January 17, 1992, 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: 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: Forty-four currently licensed drug wholesalers/manufacturers in the Commonwealth.

(a) Direct and indirect costs or savings to those affected: No additional direct or indirect costs would be involved to those 44 licensed wholesalers/manufacturers currently licensed by the Kentucky Board of Pharmacy here in the Commonwealth.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition): As in (1)(a) no increasing costs and no effect on competition.

(b) Reporting and paperwork requirements: No additional reporting or paperwork.

(2) Effects on the promulgating administrative body: Would allow uniform requirements for all persons engaged in the wholesaling/manufacturing of legend drugs in the Commonwealth. Would allow compliance with federal requirements for these entities.

(a) Direct and indirect costs or savings: No direct or indirect costs or savings.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: No additional reporting or paperwork.

(3) Assessment of anticipated effect on state and local revenues: No effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: All that are currently licensed are meeting these requirements. Allows for specific uniform requirement for all licensees.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflict, overlapping, or duplication.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: Changes being made to allow conformance with federal requirements.

TIERING: Was tiering applied? No. N/A

TOURISM CABINET
Department of Fish and Wildlife Resources
(Proposed Amendment)

301 KAR 1:085. Mussel shell harvesting.

RELATES TO: KRS 150.025, 150.110, 150.170, 150.175, 150.190, 150.510, 150.520

STATUTORY AUTHORITY: KRS 13A.150, 150.025

NECESSITY AND FUNCTION: It is necessary to regulate the manner of taking mussels because of their value and their susceptibility to overharvest. This amendment is necessary to contain the growth and proliferation of musseling activity until we learn to deal with the present biological and social impacts and gain a better understanding of the mussel resources in those other waters with harvest potential. [protect three (3) species of mussels designated as endangered under the Endangered Species Act. These species are the orange-footed pimple-back, Plethobasus cooperianus, the pink mucket, Lampsilis orbiculata, and the rough pigtoe, Pleurobema plenum.]

Section 1. Conforming with KRS 150.170, all persons who actively participate in the harvesting and sale of mussels or mussel shells, whether or not they own or possess the gear being used in the harvest of mussels or mussel shells, shall have an appropriate license. Those persons having a valid mussel buyers license are authorized to sell mussels and mussel shells. No boat shall be used in musseling operations without a licensed operator in the boat.

Section 2. Only those individuals that purchased a valid musseling license in either 1990 or prior to December 1 in 1991 shall be allowed to purchase a 1992 license. In 1993 only those individuals that purchased a musseling license in 1991 or 1992 will be eligible with the same two (2) year eligibility criterion being applied in succeeding years.

Section 3. Except as specified in Section 4 of this regulation, the musseling season is open year around only on the following waters:

(1) Kentucky Lake;

(2) Barkley Lake;

(3) Tennessee River from Kentucky Lake dam to the mouth;

(4) Cumberland River from Barkley Lake dam to the mouth;

(5) Ohio River;

(6) Green River from Green River Lake dam to the mouth;

(7) Barren River from Barren River Lake dam to

the mouth;
(8) Kentucky River from Beattyville downstream to the mouth;
(9) Rough River from Rough River Lake dam to the mouth;
(10) Rolling Fork River.

Section 4. Musseling is prohibited in the following designated areas which are established as mussel sanctuaries:
(1) The Tennessee River from Kentucky Dam downstream to river mile seventeen and eight-tenths (17.8).
(2) The stream segments 200 yards below any dam on any stream.
(3) The Cumberland River from Barkley Dam downstream to U.S highway 62 bridge.
(4) All embayments on Barkley and Kentucky Lakes.
(5) The Ohio River between river mile 418 and river mile 419 and between river mile 966.3 and river mile 970.0.
(6) The Green River from lock and dam #5 downstream one and three-tenths (1.3) miles to the state highway 185 bridge.
(7) The Barren River from lock and dam #1 downstream three and five-tenths (3.5) miles to the confluence with Mortar Branch.

[Section 2. The mussel season is open year round in all streams and on all beds, except as specified in this section.]
[(1) Musseling is prohibited in the Tennessee River from Kentucky Dam downstream to river mile seventeen and eight-tenths (17.8), an area established as a mussel sanctuary.]
[(2) Musseling is prohibited within the stream segments 200 yards below any dam on any stream.]
[(3) Musseling is prohibited on the Cumberland River from Barkley Dam downstream to the U.S. Highway 62 bridge.]
[(4) Musseling is prohibited in all embayments on Barkley and Kentucky Lakes.]
[(5) Musseling is prohibited in the Ohio River between river mile 418 and river mile 419 and between river mile 966.3 and river mile 970.0 establishing these areas as mussel sanctuaries.]
[(6) Musseling is prohibited on the Big South Fork of the Cumberland River and tributaries above the confluence of Koger Creek.]
[(7) Musseling is prohibited in the Green River from Lock and Dam #5 downstream one and three-tenths (1.3) miles to the state highway 185 bridge, an area established as a mussel sanctuary.]
[(8) Musseling is prohibited in the Barren River from Lock and Dam #1 downstream three and five-tenths (3.5) miles to the confluence with Mortar Branch, an area established as a mussel sanctuary.]

Section 5. [3.] Musseling is permitted during the hours of 6 a.m. and 6 p.m. daily except in Barkley and Kentucky Lakes where the hours are 8 a.m. to 6 p.m.

Section 6. [4.] The statewide size limits for taking of mussels shall be as follows. All mussels smaller than these minimum sizes shall immediately be returned to the water from which taken.
(1) Washboard mussels, Megalonaias gigantea, shall be large enough so as not to be able to pass through a circular ring or opening having a diameter of three and three-fourths (3 3/4) inches.
(2) Three (3) ridge mussels, Amblema plicata, shall be large enough so as not to be able to pass through a circular ring or opening having a diameter of two and three-fourths (2 3/4) inches.
(3) All other mussels, except the Asiatic clam, Corbicula sp. shall be large enough so as not to be able to pass through a circular ring or opening having a diameter of two and one-half (2 1/2) inches.
(4) The Asiatic clam, Corbicula sp., may be taken at any size.

Section 7. Method of Harvest. (1) [5.] Mussel harvesting [from the waters of the Commonwealth of Kentucky], except as provided in Section 8 of this regulation, shall be by brail only.
(2) No more than two (2) brails each sixteen (16) feet or less in length shall be simultaneously operated from any boat.
(3) More than two (2) brails may be carried aboard the boat.
(4) [Section 6.] Mussel brail hooks [when used] shall be constructed of wire of at least fourteen (14) gauge; smaller wire is prohibited.
(5) [Section 7.] Prongs of hooks shall be no longer than one and one-fourth (1 1/4) inch as measured from the tip of point to place on hook where the prongs are joined.

Section 8. The Commissioner may designate as disaster areas waters in which all live mussels have been killed, and may issue a special permit allowing the use of various harvest methods.

Section 9. No mussels designated as endangered shall be taken.

Section 10. Section 4(6) and (7) [Subsections (7) and (8) in Section 2] of this regulation shall not be enforced until January 1, 1992.

DON R. McCORMICK, Commissioner
DAVID H. GODBY, Chairman
ARNOLD MARSHALL, Deputy Secretary
APPROVED BY AGENCY: December 12, 1991
FILED WITH LRC: December 12, 1991 at 2 p.m.
PUBLIC HEARING: A public hearing on this regulation will be held on Tuesday, January 28, 1991 at 10 a.m. in the meeting room of the Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky. Those interested in attending this hearing shall contact: Peter W. Pfeiffer, Director, Division of Fisheries, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Don R. McCormick
(1) Type and number of entities affected: Presently there are approximately 760 licensed mussel fishermen in Kentucky. No legal musseling activity is occurring in the waters proposed for closure. The sale of musseling licenses in 1991 declined by 7% under those sold in 1990. However, license data indicate that over the past few years an annual exchange of individual musselers has occurred with 200-300 prior year musselers being replaced by a similar number of first-time musselers. Limiting future license sales to those that had a license in either of the past two years will eliminate this annual influx of new musselers.

(a) Direct and indirect costs or savings to those affected: No direct or indirect cost or saving will occur with regard to the individual mussel fisherman (1,025) that will be eligible to buy a license in 1992. The economic impact on those individuals that would have been first time musselers in 1992 is not known.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: No reporting or paperwork are involved.

(2) Effects on the promulgating administrative body: No additional effort will be required. Policing will be a part of ongoing routine patrol.

(a) Direct and indirect costs or savings: Very small increased costs will occur as a result of time spent apprehending violators and publication of informational brochures.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Slight increase in citations and associated law enforcement reports.

(3) Assessment of anticipated effect on state and local revenues: There is no anticipated effect on budgets, funding, manpower levels or equipment needs.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The Department of Fish and Wildlife Resources is not aware of any equitable or reasonable alternative approaches that would achieve containment.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, administrative regulations or government policies which are in conflict, overlapping or duplication.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. Only one entity, the commercial mussel fisherman, is impacted by this regulation. There is no social or biological justification for the nonuniform application of commercial musseling requirements.

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, revised December 6 [November 8], 1991, are incorporated by reference and 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
01-04-01	[1.4] The operation of Contracted Adult Correctional Facilities (Amended 12/6/91)
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
16-01-01	Inmate Visits (Added 12/6/91)
[16.1	General Inmate Visiting Procedure (Deleted 12/6/91)]
16.2	Inmate Correspondence
16.3	Telephone Calls

16.4 Inmate Packages
17-01-01 [17.1] Inmate Personal Property (Amended 12/6/91)
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
18-10-01 [18.10] Preparole Progress Reports (Amended 12/6/91)
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 (Amended 12/6/91)
22.1 Privilege Trips
25-01-01 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: December 6, 1991
FILED WITH LRC: December 6, 1991 at 3 p.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for January 22, 1992 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.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Carriers
Division of Driver Licensing
Division of Motor Vehicle Licensing
(Proposed Amendment)

601 KAR 1:029. Definitions relating to 601 KAR 1:030 through 601 KAR 1:145.

RELATES TO: KRS Chapter 281
STATUTORY AUTHORITY: KRS 281.600
NECESSITY AND FUNCTION: To assure uniformity of all terminology in the administrative regulations relating to motor carriers.

Section 1. (1) KRS 281.010-281.014 Adopted. The definitions set forth in KRS 281.010-281.014 shall have the same meaning and effect in the administrative regulations of the Transportation Cabinet which relate to motor carriers: 601 KAR 1:030 through 601 KAR 1:145.
(2) Approval. "Approval" shall mean written approval.
(3) Authorized Carrier. "Authorized carrier" shall mean a person duly qualified with the cabinet to engage in the transportation of persons or property for hire in either interstate commerce, or intrastate commerce in Kentucky, or both.
(4) Delivery. "Delivery" shall mean handing the legal document or paper to the attorney or to the party; or leaving it at his office with the person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein, or if the office is closed, or the person to be served has no office, leaving it at his dwelling house or his place of abode with some person of suitable age and discretion then residing therein.
(5) Filing. "Filing" shall mean the receipt of a signed or attested document in the Transportation Cabinet, Office of General Counsel, at 501 High Street, Frankfort, Kentucky, during regular office hours.
(6) [(5)] Manifest. "Manifest" shall mean a complete listing of all shipments on a truck. The manifest shall refer to the freight bill of each shipment by individual pro number, and show the weight of each shipment and the origin and destination of each shipment.
(7) [(6)] Party. "Party" shall mean either an applicant, complainant, respondent, or a person who has filed a protest in accordance with 601 KAR 1:030.
(8) [(7)] Qualified Equipment. "Qualified equipment" shall mean a motor vehicle duly and currently registered and licensed for the transportation of persons or property for hire in intrastate commerce in Kentucky by an authorized carrier who may properly conduct such transportation.
(9) [(8)] Service. "Service" when regarding a legal document or paper shall mean the delivery of a copy [of a pleading, protest, or other paper] to the other party or his attorney, or by mailing it to him at his [the other party or his attorney, at the last known] address of record [either].

[Section 2. Official Maps Defined for Use. The cabinet, when considering, in any matter, that phase of the authority issued by it involving highways or specific highway routes shall use photostatic copies of official maps issued by the Kentucky Department of Highways and certified by them for the year in which the authority was issued, or the map issued immediately preceding the year of issuance, if the map for that year will be or was issued subsequent to the authority.]

JEROME L. LENTZ, Acting Commissioner
MILO D. BRYANT, Secretary
APPROVED BY AGENCY: December 5, 1991
FILED WITH LRC: December 13, 1991 at 9 a.m.
PUBLIC HEARING: A public comment hearing will be held on this administrative regulation on January 24, 1992 at 11 a.m., local prevailing time in the Fourth Floor Hearing Room of the State Office Building located at the corner of High and Holmes Streets, Frankfort, Kentucky 40622. Any person who intends to attend this hearing must in writing by January 19, 1992 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 January 19, 1992. Send written notification of intent to attend the public hearing or written comments on the administrative regulation to: Sandra G. Pullen, Executive's Staff Advisor, Transportation Cabinet, 10th Floor State Office Building, Frankfort, Kentucky 40622.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sandra G. Pullen
(1) Type and number of entities affected: All motor carriers operating in the Commonwealth of Kentucky.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: Clarification of definitions and the Department of Highways does not have official maps.
(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. Definitions are not tiered.

TRANSPORTATION CABINET
Department of Vehicle Regulation
(Proposed Amendment)

601 KAR 1:030. Hearings.

RELATES TO: KRS Chapter 281
STATUTORY AUTHORITY: KRS 281.600
NECESSITY AND FUNCTION: KRS Chapter 281 provides in part that hearings be held on applications for authority to operate motor carriers in the Commonwealth. This regulation establishes guidelines for conducting the required hearings.

Section 1. (1) Application to be heard together. Applications shall be set for a hearing at the earliest statutorily-permissable date convenient to the department. If more than one (1) application has been filed seeking a certificate or permit to provide transportation services over the same route or any part thereof, or if one (1) or more than one (1) application seeking the same or similar authority, has been filed prior to the issuance of notices of a hearing on any of the applications, then, [in such an event,] a consolidated hearing shall be called on all these [such] applications. Any similar [such] application filed after hearing notices have been issued but prior to the date of the hearing may, in the commissioner's discretion, be considered at a consolidated hearing or may be heard independently at a time set by the department.
(2) Road conditions. Upon the filing of an application for a certificate or permit authorizing operations over any highway which has not at the time of the [such] application been opened for use by the general traveling public the department may, within its discretion, refuse to call a hearing upon the [such] application until the highway in question is open for traffic or shall be opened for traffic within sixty (60) days. If [In the event] a hearing is called on [such] an application, and it is determined at the hearing that the [said] highway is not open for traffic and will not be opened for traffic within sixty (60) days of the date of the [said] hearing, the department may proceed with the hearing or may dismiss the [said] hearing with the provision that a hearing de novo will be called when it is determined that the [said] road is open for traffic or will be opened for traffic within sixty (60) days.

Section 2. Notice by Department. (1) The department shall give a minimum of thirty (30) days' written notice of all hearings to all known, required and interested parties. The [Such] notice shall state the time and place the hearing will be held, fully describing the matter to be heard, shall contain the name and address of the party initiating or involved in the matter to be heard, and the docket number assigned to the matter by the department. The notice shall state that anyone having an interest in the matter may file a protest or other proper pleading in accordance with the requirements of the [rules and] regulations of the department.
(2) At a minimum when an application for a particular type of authority is received by the department, the department shall send a notice of hearing to all holders of certificates or permits granting the same or similar authority and other applicants for the same or similar authority. If the authority sought is that listed below in the first column, then the department shall send notice to the authority holders or applicants for authority listed in the second column:
(a) Airport shuttle service - all airport shuttle services, charter buses, limousines, and taxicabs operating in the county for which authority is sought;
(b) Bus whether common carrier, city, suburban, industrial, charter, or nonprofit - all taxicabs and limousines with a situs in the proposed bus service area and all buses in the state;
(c) Common carrier limousine - all airport shuttle services, charter buses, limousines and taxicabs in the county for which the certificate is sought and all limousines with operating authority in counties contiguous to that in which the authority is sought;
(d) Common carrier taxicab - all airport shuttle services, charter buses, limousines and taxicabs with operating authority in the county

for which the certificate is sought:

(e) Regular and irregular route common carriers – all common carrier trucks, contract truck carriers, local cartage carriers, and parcel delivery carriers;

(f) Contract truck carrier – all local cartage carriers, common carriers, contract truck carriers and parcel delivery carriers;

(g) Household goods carrier – all household goods, local cartage and common carriers;

(h) Local cartage carrier – all local cartage carriers, household goods carriers, parcel delivery carriers and common carriers;

(i) Mobile home mover – all mobile home movers; and

(j) Parcel delivery carrier – all parcel delivery carriers, local cartage carriers and common carriers.

Section 3. Notice by Applicant. A carrier, other than a city bus operator, who proposes a change in route or an abandonment of any route shall give detailed notice of its proposed action to all competing and connecting carriers, and shall cause an advertisement to be published in a sufficient number of newspapers of general circulation to cover the territory affected by the change sought, this [such] advertisement to be published once a week for three (3) consecutive weeks. The advertisements shall clearly indicate the proposed change, the proposed effective date of the [such] change, and shall state that any person desiring to protest may do so by filing a protest with the department. The [, such] protest shall [to] be filed in accordance with the administrative [rules and] regulations of the department. The first [such] required notice shall be published on or before the date on which the application is filed with the department, and the second and third [such] required notice shall be published during the next two (2) succeeding calendar weeks. Not later than ten (10) days subsequent to the third publication of the advertisement, the applicant shall file with the department an affidavit, in duplicate, to the effect that the required notice has been given. The affidavit shall be accompanied by a copy or copies of the advertisements.

Section 4. Protests and Other Pleadings. (1) General [rules]. All protests, pleadings, motions and other papers shall [must] be filed with the department in duplicate and shall be typewritten and double-spaced on white eight and one-half (8 1/2) inches by eleven (11) inches [legal size] paper, properly styled with the matter to which they are relative, and the docket number assigned thereto by the department, if any. Any protests, pleadings, motions, or other papers may be printed and, if printed, need not be [on legal size paper and] double spaced. Pleadings, protests, motions, or other papers filed by the parties represented by an attorney shall be signed by at least one (1) attorney of record in his individual name and shall state his address. Except when specifically provided otherwise, pleadings need not be verified or accompanied by an affidavit. The attorney's signature shall constitute a [the] certification [by him] that he has read the matter; that to the best of his knowledge, information, and belief the statements contained therein are true; and that it is not interposed for delay. If the matter is not signed or is signed with the intent to defeat the purpose of this regulation [rule], it may be stricken as sham and false, and the matter may proceed as though there had been no filing. All protests shall [must] state the ground of the [such] protest and the reasons therefor. That which is not filed in conformance herewith shall [will] not be considered or accepted as a matter of record.

(2) Filing. The [Filing with the department means the receipt of the protest, or other papers in the office of the Transportation Cabinet, Office of General Counsel, at Frankfort, Kentucky, during the regular office hours, and the] date and time of filing a protest or any other papers with the Office of General Counsel [such receipt] shall be indicated thereon by the department. If [, such date being the date of filing. In the event] the date on which any protests, pleadings, motions or other papers shall [must] be filed is Saturday, Sunday, or a legal holiday, the date for filing shall [will] be the close of the next regular business day of the department.

(3) Time of filing. All protests shall [must] be filed with the department at least ten (10) days before the date set for the hearing in the matter except:

(a) A protest to a time schedule change shall [must] be filed not later than five (5) days before the effective date of the proposed time schedule change;

(b) A protest to a proposed change in the existing tariff of carriers of property shall [must] be filed not later than fifteen (15) days after the proposed tariff change is filed with the department;

(c) A protest to a proposed change in existing fares of carriers of passengers shall [must] be filed at least ten (10) days before the proposed effective date of the proposed change.

(4) Service of pleadings and other papers. Any person who files a protest, pleading, complaint or other paper, shall [must] serve a copy thereof upon the applicant, respondent, or initiating party and shall certify to the department that the [such] service has been accomplished.

(5) Withdrawal. Any person who desires to withdraw an application, [a] protest, pleading or other paper may do so upon written notice to the department and to the interested parties as soon as possible. A [Such] notice of withdrawal shall [must] be in conformance with the requirements of this administrative regulation [601 KAR 1:030].

(6) Replies to protests. If [In the event of] a protest to a proposed change in the existing tariff of a carrier of property is filed, the carrier [or carriers] requesting the proposed change may file a reply to the protest within ten (10) days of the filing of the [such] protest.

(7) If no protests or other pleadings are filed within the time prescribed, the department may determine the case on the basis of affidavits. The procedure to be followed is set forth in 601 KAR 1:031.

Section 5. Continuances. (1) All hearings shall be held on the day set by the notice issued by the department. No change will be made in a hearing date except:

(a) Upon agreement of all interested parties with approval of the department; or

[(b) Upon an order of the department issued pursuant to a written motion made by the party desiring the continuance, which motion shall state fully the reasons for the continuance, a copy of which shall be mailed by registered mail to or accepted by all interested parties, and shall be so certified by the movant to the department; and]

(b) [(c)] Upon order of the department for any reasons deemed necessary or advisable.

(2) If the continuance is granted prior to the expiration of the protest period, thirty (30) days' notice shall be given of any hearings which may thereafter be called in the matter, and further protests shall [will] be allowed to be filed in accordance with the requirements of this administrative regulation [601 KAR 1:030]. If the continuance is granted after the expiration of the protest period, the hearing may be reset at any time provided that not less than ten (10) days' notice of the [such] hearing [will] be given, and no further protests shall [will] be received.

Section 6. General Practice. (1) Appearances. If an appearance by an applicant is not made at a hearing on the application, the application may be denied or dismissed, and if [in the event] it is denied or dismissed, a similar application by the same applicant shall [will] not be entertained until six (6) months have elapsed. If a protestant does not appear in person or by legal counsel at the hearing on the matter in which the protest is filed, the [such] protest shall [will] not be considered as a part of the record.

(2) Adjournment. The hearing may be adjourned to a future day for [a] just cause shown, or with consent of the parties, or by the examiner on his own motion and order.

(3) Service on attorney. When a party has appeared by an attorney, all communications, notices, pleadings, etc., shall [must] be sent to the [such] attorney. Service on the attorney shall [will] be considered as service on the party. The department shall be notified of any change in [such] attorney.

(4) Proof. Evidence at all hearings shall be by oral testimony, except upon special permission of the examiner designated by the department to hold the hearing.

(5) Prepared statements. Prepared statements may be received in evidence, but copies thereof shall [must] have been furnished the hearing examiner, reporter, and all parties a reasonable time before their receipt into evidence, so that any objections may be made before the [such] statements are made a part of the record.

(6) Exhibits. All exhibits filed during a hearing shall [must] be filed in duplicate and a copy thereof shall be furnished to each party, unless otherwise ordered by the hearing examiner.

(7) Stipulations. Parties to any proceeding before the department, may, by stipulation entered in the record, agree upon the facts therein or any portion thereof. It is desirable that facts be thus agreed upon whenever practicable. Those [Such] stipulations shall [will] not be binding on the department, nor upon the parties who are not parties to the stipulation, and the examiner may require additional evidence if he deems if necessary.

(8) Qualification of witnesses. Witnesses shall not be permitted to give opinion evidence unless they have first qualified [so as] to show that their special familiarity and knowledge with the subject entitles them to express an opinion which will be helpful to the department.

(9) Evidence. Any evidence which would be admissible under the statutes of the State of Kentucky, and under rules of evidence followed by the circuit courts of the State of Kentucky, shall [will] be generally admitted by the examiner in hearings before the department. However, subject to the discretion of the examiner, information [matter] may be admitted that may [will] be of assistance in determining the rights of the parties.

(10) Transcript. The examiner holding a hearing may, in any case, in his discretion, order the taking of a transcript of the hearing. Should a case be protested or contested in any manner, a transcript of the testimony, exhibits, statements and arguments shall be made. When [In the event] a transcript is ordered by the examiner or is required by this regulation, it shall be the duty of the party instituting the proceeding to provide the stenographic reporter for its transcription. If the party instituting the proceeding fails to provide a reporter or if a substitute reporter cannot be provided within one (1) hour of the time scheduled for the hearing, the hearing examiner may dismiss the proceeding. The reporter shall furnish an original of the transcript to the department. All transcripts shall be indexed to show the location of the testimony of each witness and all exhibits. The cost of transcribing the evidence and of furnishing an original of the transcript to the department shall be borne by the parties to the hearing and shall be prorated between or among them, on the basis of testimony, cross-examination, and statements put in the record by each party. Additional copies of the transcript may be purchased from the reporter at the entire cost of the party desiring same. The department shall not issue a recommendation or final order until the original of the transcription of all hearings have been received in the Office of General Counsel.

(11) Exclusion of witnesses. Upon request of a party or on the examiner's own motion, witnesses may be ordered excluded from the hearing room. Principals including owners, officers, partners, or directors may remain in the hearing room subject to the approval of the hearing examiner.

(12) Briefs. The department may [will] receive briefs, if a party desires to submit one (1) and is allowed to do so by the examiner, or the examiner may require the filing of briefs, which briefs when submitted may be answered by the opposition and shall [will] be considered in the determination of the matter. The time for filing of the briefs and replies shall [will] be set by the examiner at the close of the hearing [and no additional time will be allowed without good cause shown].

(13) When matter may be reopened. In addition to the provisions of KRS 281.775 any matter may be reopened at any time by the department if it is found that fraud, or any act, or omission of an act, amounting to a fraud, has been perpetrated; or if it appears that the laws[, rules] and regulations were not compiled with by any party or by the department, and if it appears that the rights of any person have been prejudiced thereby.

(14) Subpoenas. Any applicant, protestant, or other party, who desires to summon and compel the attendance at any hearing of any witness or

witnesses, or who desires the production in evidence of any books, records, papers, etc., may procure the issuance of a subpoena or a subpoena duces tecum or orders of personal attendance by application to the hearings clerk of the Office of General Counsel unless the hearing in connection with which the subpoena or subpoena duces tecum or order of personal attendance is sought is in progress, in which case application shall be made to the examiner conducting the hearing. Applications for subpoenas or subpoenas duces tecum or orders of personal attendance shall be made in the manner provided by the appropriate sections of the Kentucky Rules of Civil Procedure, and upon their issuance shall be served as provided in Rule 45.03 of the Kentucky Rules of Civil Procedure. Cost of service shall be paid by the party at whose instance the issuance was made. However, it shall be the duty of the person desiring the attendance of a witness to see that the [said] witness is present at the time and place of the hearing; the failure of the witness to appear, whether subpoenaed or not shall [will] not constitute grounds for the continuance of the hearing.

(15) Affidavits. When affidavits relative to the character of persons are required to be filed with an application, [the affidavit shall be on the form prescribed and furnished by the department and shall be] the affidavits shall be from [of] reputable persons who have known the applicant for a sufficient length of time to become reasonably acquainted with the applicant's character, both moral and professional.

(16) Restrictive amendments. An applicant may offer a restrictive amendment which is reasonable, enforceable and consistent with the public interest prior to, during or after any hearing held on its application. The restrictive amendment shall be in writing meeting the requirements of Section 4 of this administrative regulation or be given before a stenographic reporter who shall provide a transcribed copy of the proposed restrictive amendment to the department. Acceptance of a restrictive amendment shall be by the commissioner of the department or a properly designated representative of the commissioner. The department reserves the right to reject any restrictive amendment, notwithstanding any prior acceptance, that would be unreasonable, adverse to the public interest, would be unenforceable, would make no difference in the application or would otherwise adversely affect the administration of the motor carrier laws. The department shall provide a copy of an order accepting or denying a restrictive amendment request to the applicant, protestants and other parties to the proceedings.

Section 7. Report and Recommended Order. Upon the conclusion of a hearing, the examiner shall make a report and recommended order which shall contain findings of fact and conclusions of law together with recommended grant or denial or partial grant or denial of authority, rates, fares or changes of time schedules, when necessary. The report and recommended order shall be issued within ninety (90) days of receipt of all transcripts, documents, or evidence upon which the hearing examiner is to base his opinion. Copies of the report and recommended order shall be served upon each of the parties to the matter heard.

Section 8. Exceptions and Replies Thereto. Any party to a hearing may, within twenty (20) days after the date of the report and recommended order, file and serve his exceptions thereto. The exceptions shall conform to the requirements of this administrative regulation [601 KAR 1:030]. Exceptions shall consist of as many objections to the whole or any part of the report as the party filing the exception desires to make, with each objection numbered. Each objection shall fully state the nature thereof and the grounds therefor. Parties filing exceptions shall serve a copy thereof upon every other party participating in the hearing, and shall certify to the department that this [such] service has been accomplished. Replies to exceptions shall be filed within twenty (20) days after service of the exceptions, if any party desires to make a reply. The reply shall conform to the requirements of this administrative regulation [601 KAR 1:030]. The reply shall consist of a separate reply to each objection set out in the exception. Any party filing a reply shall serve a copy thereof on every other party participating in the hearing and shall certify to the department that this [such] service has been accomplished.

Section 9. Final Order. Upon the filing of the exceptions and replies thereto [and/]or upon expiration of the time for filing of same, the examiner shall render the complete record to the commissioner or assistant commissioner, who shall consider and pass upon the case. The commissioner or assistant commissioner may, after a study of the case, refer it back to the examiner and request the taking of more proof on any point in issue. The commissioner or assistant commissioner may require oral argument of the case. When passed upon by the commissioner, or when passed upon by the assistant commissioner and approved by the commissioner, the decision shall be served by mail upon all parties and shall be a final order of the department. The final order shall contain the date of its rendition. At the time a certificate is granted, the final order granting it may approve a time schedule and a schedule of rates, fares and charges filed by the applicant or a time schedule or a schedule of rates, fares, and charges determined by the department which, when approved, shall be at the time schedule and the schedule of rates, fares and charges upon which the carrier shall operate until the department has approved a change or modification thereof.

JEROME L. LENTZ, Acting Commissioner
MILO D. BRYANT, Secretary
APPROVED BY AGENCY: December 5, 1991
FILED WITH LRC: December 13, 1991 at 9 a.m.

PUBLIC HEARING: A public comment hearing will be held on this administrative regulation on January 24, 1992 at 11 a.m., local prevailing time in the Fourth Floor Hearing Room of the State Office Building located at the corner of High and Holmes Streets, Frankfort, Kentucky 40622. Any person who intends to attend this hearing must in writing by January 19, 1992 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 January 19, 1992. Send written notification of intent to attend the public hearing or written comments on the administrative regulation to: Sandra G. Pullen, Executive's Staff Advisor, Transportation Cabinet, 10th Floor State Office Building, Frankfort, Kentucky 40622.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sandra G. Pullen
(1) Type and number of entities affected: All motor carriers operating in intrastate commerce in the Commonwealth of Kentucky.
(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: Changed the requirement from legal-sized paper to letter-sized paper.
(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: Sets forth the minimum list of persons or entities which are to receive a notice that an application for a specific type of authority had been filed.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: Primarily cleanup. Changed paper size to match action taken by courts.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? Yes. Applications and orders are treated differently if there is/is not a protest or exception filed.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Carriers
(Proposed Amendment)

601 KAR 1:040. Application for operating authority.

RELATES TO: KRS Chapter 281
STATUTORY AUTHORITY: KRS 281.600, 281.620 [281.610]

NECESSITY AND FUNCTION: This regulation describes the procedure to follow in applying for intrastate operating authority in the Commonwealth.

Section 1. [(1)] Kentucky Intrastate Authority. (1) All applications for operating authority to engage in Kentucky intrastate commerce shall be made on the forms prescribed and furnished by the department and shall be accompanied by a filing fee of twenty-five (25) dollars. The required form, "Application for Authority" form TC 93-13 effective November, 1991 is incorporated by reference as a part of this regulation. All applications for operating authority to engage in Kentucky intrastate commerce shall be made on the forms prescribed and furnished by the department and shall be accompanied by a filing fee of twenty-five (25) dollars. All applications and exhibits shall be filed in duplicate with answers typewritten or printed legibly in ink. Each question shall be fully answered and all instructions with the application shall be read and fully complied with.
(2) When the applicant is a corporation [that has never held operating authority in Kentucky], a copy of the corporation's certificate of good standing from the Secretary of State in the jurisdiction in which it was incorporated and if a foreign corporation, a certificate to do business in Kentucky from the Kentucky Secretary of State shall be submitted with the application. Neither of these certifications shall be more than thirty (30) days old at the time the application is submitted to the department. [articles of incorporation shall be filed as part of the application.]
(3) The application shall be accompanied by the applicant's financial statement prepared in accordance with 601 KAR 2:010.
(4) All applications shall [must] be sworn to by the applicant or a responsible official acting for the applicant. No hearing shall be called or authority issued upon an incomplete application.
(5) The form TC 93-13 may be obtained free of charge from the Transportation Cabinet's Office of General Counsel located on the tenth floor of the State Office Building, 501 High Street, Frankfort, Kentucky 40622. Their hours of operation are 8 a.m. until 4:30 p.m., local prevailing time on days state government is working. The telephone number is (502) 564-7650.

Section 2. [(2)] Temporary Authority Applications. (1) [(a)] Applications for temporary authority shall be made to the department by petition filed in duplicate. The [which] petition shall set forth the facts relied on by the applicant as showing an immediate and urgent need for the authority sought. All existing carriers having authority to perform the proposed service between any of the points sought in the petition shall be fully identified and the authority of each as affected by the application shall be stated. The applicant shall have the burden of proof in showing that any [and/or all] existing carriers with authority are not capable of meeting the need for service. In lieu of meeting this burden, applicant may submit a waiver from each carrier authorized to serve the area sought or any part thereof by filing a letter from each of the [such] carrier waiving any objection to the

temporary grant of authority.

(2) There shall also be filed with the [such] petition verified statements from a supporting shipper or shippers. The supporting statement shall contain at least the following information:

(a) Name and address of the motor carrier who has filed the application for temporary authority;

(b) Statement of character and reputation of the applicant and a brief history of the applicant's work history, including any experience in providing transportation services;

(c) Name, address and interest of each person filing a supporting affidavit;

(d) Description of the specific commodity or passengers to be transported;

(e) Points or areas to, from, or between which the commodities or passengers are to be transported. An estimate of the volume of traffic that will be involved and the frequency of this traffic. If service is needed to or from a territory or area rather than a specific point, a description of the territory or area and evidence of a need to justify the territorial grant of authority is required;

(f) A statement of how the transportation service, if any, is now obtained and how it was obtained in the past;

(g) How soon the transportation service is needed and the reasons for the time limit;

(h) How long the need for the transportation service likely will continue and if the person making the supporting statement would support a permanent service application;

(i) Statement of the consequences if this transportation service is not made available and the circumstances which create an immediate and urgent need for the requested service; and

(j) Whether efforts have been made to obtain the service from existing motor carriers and the dates and results of these efforts; name and address of all existing carriers who have either failed or refused to provide the service; and the reasons given for the failure or refusal. [describing the commodity or commodities to be transported, the frequency of the need for service, the approximate volume of freight to be transported and that there is no available service, or if there is available service, that same is not capable of meeting the need, and if same is not capable of meeting the need, the reasons therefor and the particulars thereof shall be stated.]

(3) [(b)] If there are no [not] existing carriers with authority within the scope and area of the application, if all existing carriers with authority within the scope and area of the application issue waivers for the issuance of temporary authority, if there are unusual and emergency conditions, or if the application is for temporary approval under KRS 281.632(2), the department may issue temporary authority without following any of the requirements listed above.

(4) [(c)] If no application for corresponding permanent authority is made, applications for temporary authority shall be accompanied by a filing fee of twenty-five (25) dollars and the financial statement of the applicant prepared in accordance with 601 KAR 2:010.

Section 3. Application for Approval of Transfer of Certificate or Permit. (1) All applications for approval to transfer a certificate or permit issued by the Department of Vehicle Regulation authorizing Kentucky intrastate commerce shall be made on the forms prescribed and furnished by the department and shall be accompanied by a filing fee of twenty-five (25) dollars. The "Application for Approval of Transfer of Certificate of Permit" form TC 93-17, effective November, 1991 is incorporated by reference as a part of this regulation. All applications and exhibits shall be filed in duplicate with answers typewritten or printed legibly in ink. Each question shall be fully answered and all instructions with the application shall be read and fully complied with.

(2) When the applicant is a corporation, a copy of the corporation's certificate of good standing from the Secretary of State in the jurisdiction in which it was incorporated and if a foreign corporation, a certificate to do business in Kentucky from the Kentucky Secretary of State shall be submitted with the application. Neither of these certifications shall be more than thirty (30) days old at the time the application is submitted to the department.

(3) The application shall be accompanied by the transferee's financial statement prepared in accordance with 601 KAR 2:010. All applications shall be sworn to by the applicant or a responsible official acting for the applicant. No hearing shall be called or authority issued upon an incomplete application.

(4) A copy of the executed transfer agreement and a copy of the certificate or permit sought to be transferred shall accompany the application.

(5) If the application is for the transfer of contract carrier authority, a copy of the contract to be transferred and a duly executed assignment by the original shipper shall be attached to the application.

(6) The form TC 93-17 may be obtained free of charge from the Transportation Cabinet's Office of General Counsel located on the tenth floor of the State Office Building, 501 High Street, Frankfort, Kentucky 40622. Their hours of operation are 8 a.m. until 4:30 p.m., local prevailing time on days state government is working. The telephone number is (502) 564-7650.

Section 4. [2.] Interstate Operating Authority. (1) All for-hire carriers shall before engaging in the interstate transportation of persons or property in Kentucky secure from the department a certificate or permit authorizing this [such] interstate transportation. All applications for this [such a] certificate or permit shall be made on the forms prescribed and furnished by the department and shall be accompanied by a filing fee of twenty-five (25) dollars. The form, TC 95-12, effective October, 1985, "FORM A, Uniform Application for Registration of Operating Authority Issued by ICC or Those Carriers Exempt from ICC Regulations". The application shall be accompanied by a copy of the applicant's operating authority issued by the Interstate Commerce Commission, except where the [such] transportation activities are exempted from federal regulation, in which event the application shall be for authority to transport persons or property under the particular exemption or exemptions of the Federal Motor Carrier Act.

(2) All applications and exhibits shall be

typewritten or printed legibly in ink. Each question shall be fully answered and all instructions with the application shall be read and fully complied with. All applications must be sworn to by the applicant or a responsible official acting for the applicant.

(3) The department may issue a Kentucky interstate common carrier certificate, a Kentucky interstate irregular route common carrier certificate, and a Kentucky interstate contract carrier permit, all pursuant to the interstate authority. In the event the carrier is engaged solely in transportation activities exempted by federal law from regulation, the department shall issue any qualified applicant a Kentucky interstate irregular route common carrier certificate or permit restricted to the [such] federally exempted activities as may be appropriate.

(4) The form TC 95-12 may be obtained free of charge from the Transportation Cabinet's Department of Vehicle Regulation, Division of Motor Carriers located on the third floor of the State Office Building, 501 High Street, Frankfort, Kentucky. Their mailing address is Division of Motor Carriers, Qualification/Permit Branch, P.O. Box 2007, Frankfort, Kentucky 40602. Their hours of operation are 8 a.m. until 4:30 p.m., local prevailing time on days state government is working. The telephone number is (502) 564-7650.

Section 5. [3.] Contract Carrier Permit; Intrastate. All applications for operating authority to engage in intrastate commerce as a contract carrier shall be made on the form[s] incorporated by reference in Section 1 of this regulation [furnished and prescribed by the department] and shall be accompanied by a filing fee of twenty-five (25) dollars and be in conformity with this administrative regulation [601 KAR 1:040] and 601 KAR 1:045. Each application shall include two (2) copies of the contract [or contracts] under which the applicant desires to operate. The contracts shall [must] be executed by the applicant and shipper, and shall set out, among other things, the rates applicable and the extent and scope of the activity covered by the contract and the minimum amount of freight to be shipped. Reference to a published common carrier tariff shall not be acceptable in defining rates or compensation. At least one (1) of the contract copies shall have original signatures. The extent of the authority of the contract carrier permit shall [will] be limited to the scope of the contract [or contracts] on file with the department, made a part of the permit and be briefly set out on the vehicle identification card carried in the vehicle operated by the contract carrier.

Section 6. [4.] Kentucky Intrastate Authority by a Single State Operator who Intends to Register with the ICC. [(1)] All applications for a certificate of public convenience and necessity authorizing motor common carrier operations in the transportation of property or passengers in intrastate commerce, by an applicant who [which also states that applicant] is a single state operator but also [,] desires to engage in transportation in interstate and foreign commerce shall file a copy of its final Interstate Commerce Commission authority with the application for intrastate authority. [and requests that the application be filed with the Interstate Commerce Commission, Washington, DC, for a motor carrier certificate of registration, shall be made on forms prescribed and furnished by the cabinet, and shall be accompanied by a filing fee of twenty-five (25) dollars, and in all other respects fully comply with 601 KAR 1:040.]

[(2) All applications, pursuant to 601 KAR 1:040, shall be filled out not less than thirty-five (35) days before the date of a hearing with the cabinet. On or before the first day of the thirty-five (35) day period, the clerk of the Office of General Counsel shall assign the application a docket number and set the same on a day certain for hearing and shall immediately prepare, sign and mail a notice of the filing of the application for publication in the Federal Register under Section 206(a)(6) of the Interstate Commerce Act as amended October 15, 1962, the same to be sent to the Bureau of Operating Rights, Interstate Commerce Commission, Washington, DC, and otherwise shall proceed to give notice in the usual manner to all intrastate carriers and other parties as now required by KRS 281.625 and the regulations of the department.]

[(3) When applications are made under this section of the regulations, the same shall be reported and transcribed in accordance with 601 KAR 1:030 for compliance with Part 1100-General Rules of Practice, Interstate Commerce Commission, Section 1100.90. Provisions for copies of the record shall be made with the reporter in advance of the same being transcribed at the cost of the party requesting the same.]

[(4) Pursuant to the same section of the above mentioned general rules of practice, protests by interstate carriers shall be filed and placed in the docket, and all inquiries for information made by such carriers shall be promptly answered, and requests for copies shall be handled in accordance with 601 KAR 2:010. All protests or other filings shall be made in the form and manner prescribed by 601 KAR 2:010.]

JEROME L. LENTZ, Acting Commissioner
MILO D. BRYANT, Secretary
APPROVED BY AGENCY: December 5, 1991
FILED WITH LRC: December 13, 1991 at 9 a.m.

PUBLIC HEARING: A public comment hearing will be held on this administrative regulation on January 24, 1992 at 11 a.m., local prevailing time in the Fourth Floor Hearing Room of the State Office Building located at the corner of High and Holmes Streets, Frankfort, Kentucky 40622. Any person who intends to attend this hearing must in writing by January 19, 1992 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 January 19, 1992. Send written notification of intent to attend the public hearing or written comments on the administrative regulation to: Sandra G. Pullen,

Executive's Staff Advisor, Transportation Cabinet, 10th Floor State Office Building, Frankfort, Kentucky 40622.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sandra G. Pullen
(1) Type and number of entities affected: All motor carriers operating in Kentucky.
(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: Identifies the forms which are required to be filed when applying for operating authority.
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: The application forms were revised and in accordance with KRS Chapter 13A they were incorporated.
(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: Section 6 was amended to reflect the partial deregulation of the motor carrier industry at the federal level.
TIERING: Was tiering applied? Yes. Different forms for requests of different types.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Carriers
(Proposed Amendment)

601 KAR 1:045. Application for certificate filing.

RELATES TO: KRS Chapter 281
STATUTORY AUTHORITY: KRS 281.600, 281.650 [281.620]
NECESSITY AND FUNCTION: The statutes require the Department of Vehicle Regulation to accept applications for operating authority by motor carriers. This regulation provides general provisions [rules] for the filing of applications for certificates with the Department of Vehicle Regulation.

[Section 1. (1) General rules. All applications made in accordance with KRS 281.620(1) shall be made on the forms prescribed and furnished by the Department of Vehicle Regulation and shall be accompanied by the filing fee of twenty-five (25) dollars. All applications and exhibits shall be filed with the answers typewritten or printed legibly in ink. All applications and exhibits, except those relating to the establishment of initial rates or fares or changes in existing rates or fares shall be filed in duplicate. All applications relating to rates and fares shall be made in accordance with 601 KAR 1:050. Each question shall be fully answered and all instructions of the application shall be read and the applicant shall comply with them.]

[(2) Each applicant shall furnish the following information in addition to any other required by the application form:]

[(a) Applicant's name and address;]

[(b) Whether applicant is prepared to file proof of the insurance required by KRS 281.655. When the application is for a determination of public convenience and necessity for city bus service pursuant to KRS 281.635; for abandonment of a certificate, route or service; or for extension of the statutory suburban area the applicant shall not be required to file proof of insurance; and]

[(c) The structure and type of the applicant's business organization and detailed information in regard to the business.]

[(3) Each applicant shall furnish the following exhibits, set forth separately and attached to the application form in addition to any others required by the application form:]

[(a) Applicant's financial statement prepared in accordance with 601 KAR 2:010, unless the application is for determination of public convenience and necessity of city bus service pursuant to KRS 281.635, or for an extension of the suburban area of a city; and]

[(b) Name and address of applicant's process agent if applicant is a nonresident.]

[(4) All applications shall be sworn to by the applicant or a responsible official acting for the applicant.]

[(5) No hearing shall be called or authority issued based upon an incomplete application.]

Section 1. (1) [2.] Renewal Applications. Each certificate or permit holder who is properly certificated and operating during a calendar shall apply for authority renewal to the Department of Vehicle Regulation by the end of that calendar year if it intends to continue in operation during the ensuing calendar year. All renewal applications [shall be made on the forms prescribed and] furnished by the department and shall be accompanied by the filing fee prescribed by KRS 281.650. All renewal applications and exhibits shall be [filed with the answers] typewritten or printed legibly in ink. The applicant for renewal shall provide notice that it intends to continue operation, any change in address, any change in ownership, any change in contact person, any change in telephone number or any other change pertinent to its operation as an authorized motor carrier. [Each question shall be fully answered and all instructions of the application shall be read and the applicant shall comply with them.]

(2) No certificate or permit shall be renewed based upon an incomplete application. A certificate or permit which has been revoked shall not be renewed. If a certificate or permit has been altered or amended, it may only be renewed as altered or amended. A certificate or permit which has been suspended shall not be renewed until after the termination of the suspension period.

Section 2. [3.] (1) Merger and reissuance of certificates. If a merger of motor carriers occurs in accordance with KRS 281.630(9), the department may upon its own motion, or at the request of a carrier, in instances where a carrier holds two (2) or more certificates, call a hearing and issue proper orders merging the several certificates into one (1) certificate, and in the same proceeding may make any modification of the wording of the certificate to eliminate unnecessary duplications, to clear up ambiguities and to show present highway numbers if they have been changed.

(2) Applications for merger and reissuance of certificates shall be in petition form signed and sworn to by the person submitting it. The petition shall contain the information required by 601 KAR 1:040 and be accompanied by the exhibits required by 601 KAR 1:040, except that the financial statement may be omitted. The petition shall set out the present wording of all certificates involved and shall also contain the proposed wording for the reissued certificate [which shall conform, as far as practicable, to the style and method used by the Interstate Commerce Commission].

(3) Nothing herein shall be so construed as to require a hearing where a hearing, in the commissioner's judgment, is not necessary. It shall be completely within the discretion of the commissioner whether a hearing on an application for merger and reissuance is necessary, and, if so, the time and place for the hearing to be held.

JEROME L. LENTZ, Acting Commissioner
MILO D. BRYANT, Secretary
APPROVED BY AGENCY: December 5, 1991
FILED WITH LRC: December 13, 1991 at 9 a.m.

PUBLIC HEARING: A public comment hearing will be held on this administrative regulation on January 24, 1992 at 11 a.m., local prevailing time in the Fourth Floor Hearing Room of the State Office Building located at the corner of High and Holmes Streets, Frankfort, Kentucky 40622. Any person who intends to attend this hearing must in writing by January 19, 1992 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 January 19, 1992. Send written notification of intent to attend the public hearing or written comments on the administrative regulation to: Sandra G. Pullen, Executive's Staff Advisor, Transportation Cabinet, 10th Floor State Office Building, Frankfort, Kentucky 40622.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sandra G. Pullen
(1) Type and number of entities affected: All motor carriers operating in Kentucky.
(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: Specific requirements are set forth for the annual renewal of a certificate or permit.
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: Cleanup. Much of the regulation was included in other regulations and was deleted as redundant.
(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: The purpose of this proposed change was conformity with KRS Chapter 13A.
TIERING: Was tiering applied? No. Applicants and filings should all be handled the same.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Carriers
(Proposed Amendment)

601 KAR 1:140. U-drive-it permit application procedures.

RELATES TO: KRS Chapter[s 138, 186,] 281
STATUTORY AUTHORITY: KRS [138.463, 186.005,] 281.600
NECESSITY AND FUNCTION: The Transportation Cabinet has the authority and responsibility to assess and collect the monthly U-drive-it usage tax and to qualify U-drive-it operators. This regulation sets out the procedures to be followed by an applicant for a U-drive-it permit. [It also establishes procedures for obtaining a vehicle identification document and for the payment of the monthly usage tax.]

Section 1. (1) The application for a permit to engage in the business of U-drive-it as defined by KRS 281.014(4) [or for the annual renewal of the permit] shall be on the form TC 95-16, Application for U-drive-it, effective November, 1991 [s prescribed and furnished by the Transportation Cabinet, Department of Vehicle Regulation, Division of Motor Carriers,] and shall be accompanied by a filing fee of twenty-five (25) dollars. Payments made by check or money order shall be made payable to "Kentucky State Treasurer."

(2) The form TC 95-16 is hereby incorporated by reference as a part of this administrative regulation. A copy of the form may be obtained free of charge from the Transportation Cabinet's Division of Motor Carriers on the third floor of the State Office Building located at 501 High Street, Frankfort, Kentucky 40622 from 8 a.m.

until 4:30 p.m. local prevailing time on regular state government work days. The telephone number of the office is (502) 564-4540.

Section 2. (1) All initial applications for a U-drive-it permit shall be [the] subject to the [of a] hearing provisions of [before the cabinet in accordance with the procedures established by] administrative regulation 601 KAR 1:030.

(2) Applicants for a U-drive-it permit shall be required to meet the standards established by KRS 281.626. Prior to any application being docketed and noticed for hearing, the applicant shall submit to the Transportation Cabinet's Division of Motor Carriers with the form TC 95-16 evidence, which may include affidavits, attesting to the fact that the applicant is fit, willing and able to provide the requested service, a description of his proposed business facility and method of operation, and an affidavit that the operation proposed by the applicant is one in which each transaction is arm's length and is based on a fair rental value of the vehicle. Once a completed application and attachments are received by the cabinet, a docket number shall be assigned to the application. The applicant shall be immediately notified of the docket number and the requirements of subsection (3) of this section. [Upon determination by the division that the application is complete, the cabinet shall set the matter for hearing.]

(3) The applicant for a U-drive-it permit shall cause an advertisement to be published in a sufficient number of newspapers of general circulation to cover the communities which would be affected by the permit. This advertisement shall be published at least once a week for three (3) consecutive weeks. The first required notice shall be published as soon as the applicant receives notice of the assigned docket number. The second and third required notices shall be published during the next two (2) succeeding calendar weeks. The advertisement shall clearly indicate the nature of the applicant's proposed business, the applicant's name and address, and the docket number assigned to the matter. The advertisement shall state that any person desiring to protest may do so by filing a protest or other pleading with the Transportation Cabinet no later than a specific date listed in the advertisement. This specific date shall be ten (10) days subsequent to the scheduled third date of publication. The protest shall be filed in accordance with administrative regulation 601 KAR 1:030 of the department. Not later than ten (10) days subsequent to the third publication of the advertisement, the applicant shall file with the cabinet an affidavit that the required notice has been given. The affidavit shall be accompanied by a copy of the advertisement from each newspaper in which it was published showing the publication dates.

(4) [(3)] The cabinet shall give a minimum of thirty (30) days written notice of each hearing to the applicant and all [required and interested] parties who filed a protest or other pleading. The notice shall state the time and place the hearing will be held, shall fully describe the matter to be heard, shall contain the name and address of the party initiating or involved in the matter to be heard, and shall contain the docket number assigned to the matter by the cabinet. [The notice shall state that anyone having an interest in the matter may file a protest or other proper pleading in accordance with the requirements of the regulations of the cabinet.] Any application filed may in the discretion of the Commissioner of the Department of Vehicle Regulation be considered at a consolidated hearing or may be heard independently at a time set by the cabinet.

(5) [(4)] All protests, pleadings, motions, and other papers shall be filed with the cabinet in duplicate and shall refer to the docket number assigned thereto by the cabinet, if any. [All protests shall be filed no later than ten (10) days prior to the scheduled hearing.] Pleadings, protests, motions or other papers filed by the parties represented by an attorney shall be signed by at least one (1) attorney of record in his individual name and shall state his address. Except when specifically provided otherwise, pleadings need not be verified or accompanied by an affidavit. The attorney's signature shall constitute the certification by him that he has read the matter; that to the best of his knowledge, information, and belief the statements contained therein are true; and that it is not interposed for delay. If the matter is not signed or is signed with the intent to defeat the purpose of this administrative regulation, it may be stricken as sham and false, and the matter may proceed as though there had been no filing. All protests shall state the statutory grounds of the protest and the reasons therefor. That which is not filed in conformance herewith will not be considered or accepted as a matter of record.

(6) [(5)] Any application which is protested or which is brought into question by the cabinet shall be set for a separate hearing.

Section 3. If no protest or other pleading is filed with the cabinet in response to the advertisement placed in the newspaper, the cabinet may proceed in accordance with the provisions of 601 KAR 1:031.

Section 4. The Department of Vehicle Regulation shall notify each holder of an active U-drive-it permit by December 15 of each year of the need for renewal of the permit. The notice shall inform the permit holder of the method of permit renewal.

JEROME L. LENTZ, Acting Commissioner
MILO D. BRYANT, Secretary
APPROVED BY AGENCY: December 5, 1991
FILED WITH LRC: December 13, 1991 at 9 a.m.

PUBLIC HEARING: A public comment hearing will be held on this administrative regulation on January 24, 1992 at 10:30 a.m., local prevailing time in the Fourth Floor Hearing Room of the State Office Building located at the corner of High and Holmes Streets, Frankfort, Kentucky 40622. Any person who intends to attend this hearing must in writing by January 19, 1992 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 January 19, 1992. Send written notification of intent to attend the public hearing or written comments on the administrative regulation to: Sandra G. Pullen, Executive's Staff Advisor, Transportation Cabinet, 10th Floor State Office Building, Frankfort, Kentucky 40622.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sandra G. Pullen
(1) Type and number of entities affected: 500 U-drive-it permit holders in the Commonwealth.
(a) Direct and indirect costs or savings to those affected: New applicants (approximately 25 per year) will be required to publish a notice about their proposed business in a newspaper of general circulation.
1. First year: $50 per applicant.
2. Continuing costs or savings: $50 per applicant.
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: Must show the Transportation Cabinet that the notice has been published.
(2) Effects on the promulgating administrative body: Statutes allow the Transportation Cabinet to hold a hearing on new applications for a U-drive-it permit. However, there had been no mechanism established to find anyone who might have an opposition to the application.
(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: The current method was not providing sufficient notice to persons.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? No. All applicants for identical permits to do business should be treated alike.

TRANSPORTATION CABINET
Department of Vehicle Regulation
(Proposed Amendment)

601 KAR 2:010. General procedures.

RELATES TO: KRS Chapters 186 and 281
STATUTORY AUTHORITY: KRS 186.050, 281.600, 365.015
NECESSITY AND FUNCTION: This regulation sets forth general procedures of the Department of Vehicle Regulation that are not specifically covered by topics in other regulations. This regulation is to provide for a more orderly operation of the department.

Section 1. No Sale or Transfer until Operation Begins. An application for sale, lease or transfer of a certificate shall [will] not be considered by the department unless the holder of the certificate has actually started operation under the certificate except that the commissioner may consider such an application if, in his opinion, it would be to the best interest of the traveling or shipping public.

Section 2. Method of Payment; Exception. The department shall [will] accept personal checks, corporate checks, certified checks, cashier's checks, money orders or cash for payment of fees and/or taxes owed to the Commonwealth that are the responsibility of the department to collect; except, however, the payment of apportioned registration licensing fees and payment to replace a check for which there was insufficient funds shall be made only by certified checks, cashier's checks, money orders, or cash.

Section 3. Citations. All citations issued by the Department of Vehicle Regulation shall be governed by 601 KAR 1:095 pertaining to the procedure on complaints, except that the citation shall constitute the thirty (30) day notice required in 601 KAR 1:030 to be given by the department.

Section 4. Trade Name. Where any person operating a motor carrier is the sole owner of the [such] business and is doing business under a trade name, a declaration of assumed name shall [ownership must] be filed with the county [court] clerk of the county in which the main office of the [such] business is located, and a copy of the declaration of assumed name shall [ownership must] be also filed with the department.

Section 5. Declaration of Partnership. Where two (2) or more persons are operating a motor carrier as a partnership, a declaration of partnership shall [must] be filed with the county [court] clerk of the county in which the main office of the [said] business is located, and a copy of the declaration of partnership shall [must] also be filed with the department.

Section 6. Custodian of Records. The Commissioner of the Department of Vehicle Regulation is the custodian of the records of the department. However, the commissioner may designate the deputy commissioner, appropriate division director or other qualified and legally appropriate person to certify as to the authenticity of a particular record or to act on behalf of the commissioner in any other matter pertaining to records maintained by the department. Any person who desires to obtain a copy of any record of the cabinet shall make a request therefor to the proper custodian, and a fee of ten (10) cents per page shall be charged for each copy furnished unless a fee for the record has been established by another administrative regulation.

Section 7. Financial Statements. (1) Financial statements required to be filed with applications shall be completed on the form TC 93-24, Financial Statement, effective November 1991. This form is hereby incorporated by reference as a part of this administrative regulation. It [prescribed and furnished by the

department and] shall be prepared so as to reflect the financial condition as of the end of the last calendar quarter preceding the date of the filing of the application. The [Such] financial statement[s] shall make no provision for, nor assign any value to, certificates or permits whether interstate, or intrastate held by the applicant.

(2) All financial statements filed with the applications shall be notarized or attested by the applicant, or, if the applicant is a corporation, a responsible official of same.

(3) Financial statements filed with applications for the sale, transfer or assignment of the controlling stock of a corporation or such a portion of the stock of a corporation as will vest the controlling stock of the corporation in another shall be the financial statements of the corporation the stock of which is being transferred.

(4) If the applicant has an independent financial statement, it may record on form TC 93-24 that the financial statement is attached. However, the applicant official shall swear on the form that the information is correct. Without this affidavit the financial statement shall be deemed incomplete.

(5) The form TC 93-24 may be obtained free of charge from the Transportation Cabinet's Office of General Counsel located on the tenth floor of the State Office Building, 501 High Street, Frankfort, Kentucky 40622. Their hours of operation are 8 a.m. until 4:30 p.m., local prevailing time on days state government is working. The telephone number is (502) 564-7650.

Section 8. Change of Name. Any authorized carrier may effect a change in the trade, assumed or corporate name under which it conducts its business by making written application therefor to the department and by furnishing evidence to the department of compliance with the applicable Kentucky laws regarding the use of trade or assumed names. The twenty-five (25) dollars application fee shall also be submitted.

Section 9. Papers to be Carried on Common Carrier Vehicles and Available for Inspection. Every vehicle being operated as a common carrier of property in intrastate or interstate commerce shall carry in the possession of the driver thereof, a manifest, bills of lading, freight bills, or other [such] similar papers, covering the intrastate or interstate freight carried by that vehicle. The manifest, bills of lading, freight bills, or other [such] shipping documents may be of any form within the carrier's discretion, but shall [must] clearly show the name of the carrier, the name of the shipper, the name of the consignee, and the address of each. The [Such] manifest, bills of lading, freight bills or other such shipping documents shall be made available for inspection to any authorized officer upon demand.

[Section 10. Report of List of Stockholders. Every corporation which is a holder of a certificate or permit, except a U-drive-it permit, authorizing the transportation of persons or property in intrastate commerce in Kentucky shall have on file with the department a report setting forth the names and addresses of every stockholder in the corporation owning ten (10) percent or more of the voting stock of the corporation and the percentage of stock owned by each. Quarterly thereafter, every such corporation shall file a similar report in the event there has been any change in the list of stockholders owning ten (10) percent or more of the voting stock since the last report filed.]

Section 10. [11.] Prohibited Operations. It shall be illegal for any carrier to transport either persons or property, for hire, to or from a location in Kentucky which is:

(1) Known to the carrier or its employees engaged in the pick up or delivery as a place where unlawful gambling or other illegal activity is conducted; or

(2) Notoriously known as a place where unlawful gambling or other illegal activity is conducted or carried on.

Section 11. [12.] Violation of this regulation by the carriers or its employees shall be grounds for denial of reciprocal privileges, revocation of authority or denial of an application for renewal of operating authority.

JEROME L. LENTZ, Acting Commissioner
MILO D. BRYANT, Secretary

APPROVED BY AGENCY: December 5, 1991
FILED WITH LRC: December 13, 1991 at 9 a.m.

PUBLIC HEARING: A public comment hearing will be held on this administrative regulation on January 24, 1992 at 11 a.m., local prevailing time in the Fourth Floor Hearing Room of the State Office Building located at the corner of High and Holmes Streets, Frankfort, Kentucky 40622. Any person who intends to attend this hearing must in writing by January 19, 1992 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 January 19, 1992. Send written notification of intent to attend the public hearing or written comments on the administrative regulation to: Sandra G. Pullen, Executive's Staff Advisor, Transportation Cabinet, 10th Floor State Office Building, Frankfort, Kentucky 40622.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sandra G. Pullen

(1) Type and number of entities affected: All persons interacting with the Department of Vehicle Regulation.

(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: Deleted requirement that stockholder information is required. Listed the specific form to be used to file financial statement.

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: Cleanup and concurrence with KRS Chapter 13A.
(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: None
TIERING: Was tiering applied? No. This administrative regulation sets forth uniform general requirements for dealing with the Department of Vehicle Regulation.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Vehicle Licensing
(Proposed Amendment)

601 KAR 9:135. Apportioned registration.

RELATES TO: KRS Chapter 186
STATUTORY AUTHORITY: KRS 186.050
NECESSITY AND FUNCTION: KRS 186.050 requires the Transportation Cabinet to promulgate regulations concerning the registration of commercial motor vehicles under the Articles of the International Registration Plan. This administrative regulation sets forth the procedures to be followed in registering a commercial motor vehicle under the provisions of the International Registration Plan. It further clarifies when a vehicle licensed under the provisions of KRS 186.050(13) shall be deemed to be licensed under the provisions of other sections of KRS 186.050.

Section 1. Definitions. [These words and terms shall have the meaning set forth when used in this administrative regulation:]
(1) "Fleet" shall mean one (1) or more apportionable vehicles;
(2) "Apportionable vehicle" shall mean any vehicle except recreational vehicles, vehicles displaying restricted plates, city pickup and delivery vehicles, and government owned vehicles, used or intended for use in two (2) or more jurisdictions that allocate or proportionally register vehicles and is used for the transportation of persons for hire or designed, used or maintained primarily for the transportation of property; and
(a) Is a power unit having a gross weight or registered gross weight in excess of 26,000 pounds; or
(b) Is a power unit having three (3) or more axles, regardless of weight; or
(c) Is used in combination and the weight of the [such] combination exceeds 26,000 pounds gross vehicle weight.

Section 2. Application for Apportioned Registration. (1) A commercial vehicle operator who operates in more than one (1) licensing jurisdiction may apply for proportional registration of his fleet in those jurisdictions in which he operates and which are members of the International Registration Plan. Vehicles, or combinations of power unit and trailers, having a gross vehicle weight of 26,000 pounds or less and two (2) axle vehicles may be apportioned registered at the option of the registrant. If the operator is based in Kentucky, he shall apply for his apportioned registration in Kentucky.
(2) The registration year is from April 1 of each year through the following March 31. An applicant for proportional registration of a fleet or other vehicle to be effective April 1 shall submit his application prior to March 1 of the same calendar year. The application shall be made on forms prescribed and furnished by the Department of Vehicle Regulation. This form, TC 96-301, IRP Apportioned Registration, Schedule A, effective August, 1991, is incorporated by reference as a part of this administrative regulation.
(3) The form, TC 96-301, may be obtained from the Transportation Cabinet's Division of Motor Vehicle Licensing, Second Floor State Office Building, 501 High Street, Frankfort, Kentucky 40622 from 8 a.m. until 4:30 p.m., local prevailing time, on regular work days of state government.

Section 3. Apportioned Mileage Reporting and Recordkeeping. (1) The fleet miles required to be reported on the application for proportional registration shall be the fleet miles traveled from July 1 through June 30 of the year immediately preceding the registration year. The mileage shall be distributed by jurisdiction. For each jurisdiction, whether or not a member of the International Registration Plan, all miles traveled in that jurisdiction by any apportioned power unit, whether the vehicle is empty or loaded, shall be reported. The mileage to be reported for any motor vehicle power unit which was added to or deleted from the apportioned fleet during the mileage reporting period shall be only those miles generated while it was part of the apportioned fleet. Mileage shall include loaded and unladen trips; intrastate and interstate trips; and miles operated under trip permits.
(2) Apportioned registrants shall maintain operational records for the current registration year and the three (3) registration years immediately prior to the current year. Operational records shall be documents supporting the reported miles traveled in each jurisdiction and the total miles traveled. The information shall be retained in an individual vehicle mileage record. The individual vehicle mileage record shall contain at a minimum the following information:
(a) Registrant's name and fleet number;
(b) Beginning and ending date of trip;
[(c) Ending date of trip;]
(c) [(d)] Trip origin and destination;
[(e) Trip destination;]
(d) [(f)] Route of travel for trip;
(e) Beginning and ending odometer or hubometer reading of each trip;
(f) [(g)] Total trip miles and mileage;
(g) [(h)] Mileage by jurisdiction for each

trip;
(h) [(i)] Vehicle unit number and vehicle identification number;
[(j) Fleet identification number;]
[(k) Trailer number, if applicable;] and
(i) [(l)] Driver's name or signature.

Section 4. Proof of Insurance and Certificate of Apportioned Registration. The applicant shall apply to the appropriate county clerk for a certificate of apportioned registration for each vehicle in the fleet and any other vehicle to be apportioned registered. The county clerk's fee for the issuance of the certificate shall be two (2) dollars for each vehicle. The applicant shall submit proof of insurance to the county clerk at the time he applies for the certificate of apportioned registration.

Section 5. Registration Fees. (1) The applicant shall submit the application for proportional registration to the Department of Vehicle Regulation for approval. This [Such] submission may either be in person or by mail. After the Department of Vehicle Regulation has approved an application, the department shall compute the proportional registration fee due each jurisdiction under the International Registration Plan. The applicant shall be given a bill for registration in all jurisdictions which do not bill the applicant directly. The applicant shall return either in person or by mail the bill and a certified check, cashier's check or money order made payable to the Kentucky State Treasurer to the department. In order to receive apportioned registration plates prior to April 1 of the registration year, the applicant shall submit the required fee prior to March 10.
(2) The required fee shall be accompanied by [the following:]
[(a)] proof of payment of the federal heavy vehicle use tax in accordance with the provisions of 601 KAR 9:115. [; and]
[(b) Payment of the ad valorem taxes due for all units to be registered.]
(3) The Department of Vehicle Regulation shall send an apportioned license plate, and IRP cab card to the registrant for each vehicle registered under the provisions of the International Registration Plan. The IRP cab card shall list those jurisdictions to which the registrant has apportioned his registration fees. The original IRP cab card shall be carried in the cab of the vehicle at all times.

Section 6. Supplemental Applications. (1) If [Should] an applicant need to add to or delete vehicles from its fleet, the department shall be notified on a supplemental application form prescribed and furnished by the department. This form shall be used for any vehicle additions, vehicle deletions, vehicle transfers or weight increases. This form, TC 96-303, "Supplemental Kentucky Application for IRP Apportioned Registration" effective November, 1988, is incorporated by reference as a part of this administrative regulation.
(2) The form, TC 96-303, may be obtained from the Transportation Cabinet's Division of Motor Vehicle Licensing, Second Floor State Office Building, 501 High Street, Frankfort, Kentucky 40622 from 8 a.m. until 4:30 p.m., local prevailing time, on regular work days of state government.
(3) [(1)] Vehicle deletions shall be accompanied by the apportioned registration plate and the certificate of apportioned registration. The registrant may, at the end of the registration month [quarter], apply for a refund of the fees which apply to the unexpired months [quarters] of the registration year.
(4) [(2)] If a vehicle is being added by a registrant at the same time he is deleting another vehicle with the same weight within the fleet, the Kentucky registration fee may be transferred from the deleted to the added vehicle. The transfer fee shall be two (2) dollars. The registrant shall be notified of the transfer fee owed to other jurisdictions.
(5) [(3)] If the declared gross weight of the vehicle is to be increased, the increased fee owed shall be prorated from the date the increased weight is allowed.

Section 7. Adding Jurisdictions to IRP Registrations. If the operation of a registrant is being expanded to include an additional jurisdiction which participates in the International Registration Plan, the registrant may amend his mileage schedule to reflect an estimate of miles to be operated in the new jurisdiction. The mileage percentages for an added jurisdiction shall be computed as added on to the actual mileages earlier reported. Percentages approved on the original application shall not be changed during the registration year. When an additional jurisdiction is added during the registration year, all vehicles in the fleet shall be changed to reflect operation in the additional jurisdiction. The Department of Vehicle Regulation shall send replacement IRP cab cards to the registrant. Upon receipt of the new cab cards the registrant shall return the outdated IRP cab cards to the department.

Section 8. Conversion to Apportioned Registration. If a vehicle is registered in Kentucky as a commercial or limited activity vehicle and the registrant intends to convert to an apportioned registration, the registrant shall first purchase an apportioned registration from the appropriate county clerk. The current commercial or limited activity license plate shall be submitted to the Department of Vehicle Regulation with the application for apportioned registration. The applicant shall be given credit for the remainder of the value of his current registration. This credit shall be applied toward fees due Kentucky on the apportioned registration. All fees due other jurisdictions and any additional fees due to Kentucky shall be paid in accordance with Section 4 of this regulation before the apportioned credentials may be issued.

Section 9. Replacement of Credentials. (1) If the owner of a vehicle registered pursuant to KRS 186.050(13) [(14)] loses his copy of a certificate of apportioned registration, he may obtain a duplicate from the Department of Vehicle Regulation by filing an affidavit upon a form furnished by the department and he shall pay to the department a fee of two (2) dollars. The form, TC 96-167, "Affidavit for Replacement-County/Affidavit for Nonexchange-County" effective June, 1988, is incorporated by reference as a part of this administrative regulation.
(2) The form, TC 96-167, may be obtained from

the Transportation Cabinet's Division of Motor Vehicle Licensing, Second Floor State Office Building, 501 High Street, Frankfort, Kentucky 40622 from 8 a.m. until 4:30 p.m., local prevailing time, on regular work days of state government.

(3) [(2)] If the owner loses a registration plate issued him under the provisions of KRS 186.050(13), [(14)] he shall report the plate as lost or stolen to his area state police post or local law enforcement agency. The enforcement agency shall report the loss in the nationwide computer system for the information of all enforcement agencies.

(4) The owner of a lost registration plate shall file a form TC 96-167, an affidavit for replacement, his certificate of apportioned registration and a two (2) dollar fee with the Department of Vehicle Regulation. [surrender his certificate of apportioned registration to the department and file therewith a written statement as to the loss of the plate. Upon the payment of the sum of two (2) dollars to the department,]

(5) The Department of Vehicle Regulation after review and acceptance of the completed forms shall issue the owner [shall be issued] another certificate of apportioned registration and a plate which shall bear a different number from that of the lost plate. The original copy of the surrendered certificate of apportioned registration shall be maintained by the department.

(6) The department shall forthwith cancel the registration corresponding to the number of the lost plate, and the cancellation shall be reported by the department to the Commissioner of the Department of State Police. Any person finding a lost registration plate shall deliver it to the Department of Vehicle Regulation or to any county clerk for forwarding it to the department.

Section 10. Apportioned Registration of Leased Vehicles. Proportional registration of leased vehicles may be accomplished in one (1) of the following ways:

(1) The owner/lessor may be the registrant and the vehicle may be registered in the name of the owner/lessor. The allocation of registration fees shall be based on the operational records of the owner/lessor. The apportioned license plate and IRP cab card shall be the property of the lessor; or

(2) The leasee may be the registrant and the vehicle may be registered by the lessee in both the owner/lessor's name and that of the leasee. The allocation of registration fees shall be based on the operational records of the lessee. The apportioned license plate and IRP cab card shall be the property of the lessee.

Section 11. Apportioned Registration of Trailers. (1) Under the International Registration Plan, trailers, semitrailers, and auxiliary axles are not apportionable vehicles. However, a member jurisdiction may file an exception to the IRP. Kentucky registrants are only required to pay trailer registration fees to Kentucky and to those member jurisdictions which have filed an exception.

(2) Kentucky [Apportioned] trailer credentials shall be obtained through the appropriate county clerk. When Kentucky trailer registrations have been purchased, the registrants may submit to the Department of Vehicle Regulation a list of all trailers apportioned registered. The fee for each IRP trailer cab card shall be two (2) dollars. After receiving the list of trailers and appropriate fee, the department shall send the registrant the IRP cab cards. In order to receive the IRP cab card by April 1 of the registration year, the registrant shall submit the list prior to March 1.

Section 12. Registration Equivalent. Registration of a motor vehicle under the provisions of KRS 186.050(13) and this administrative regulation shall be equivalent to registration of the motor vehicle under the provisions of KRS 186.050(3). All privileges afforded a motor vehicle in Kentucky when operating on KRS 186.050(3) registration shall be afforded a motor vehicle in Kentucky when operating on KRS 186.050(13) registration.

JEROME L. LENTZ, Acting Commissioner
MILO D. BRYANT, Secretary
APPROVED BY AGENCY: November 11, 1991
FILED WITH LRC: November 20, 1991 at 10 a.m.

PUBLIC HEARING: A public comment hearing will be held on this administrative regulation on January 24, 1992 at 9 a.m., local prevailing time in the Fourth Floor Hearing Room of the State Office Building located at the corner of High and Clinton Streets, Frankfort, Kentucky. Any person who intends to attend this hearing must in writing by January 19, 1992 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 January 19, 1992. Send written notification of intent to attend the public hearing or written comments on the administrative regulation to: Sandra G. Pullen, Executive's Staff Advisor, Transportation Cabinet, 10th Floor State Office Building, Frankfort, Kentucky 40622.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sandra G. Pullen

(1) Type and number of entities affected: The owners of the 14,000 vehicles registered in Kentucky under the IRP as well as all vehicles registered in other jurisdictions under the IRP who use Kentucky highways.

(a) Direct and indirect costs or savings to those affected: There will be an indirect cost savings to those persons who register their commercial vehicles under the apportioned registration statutes. That will occur because of the clearly stated policy in the new Section 12 of the administrative regulation that the registration under apportioned registration is the equivalent of registering your vehicle as a commercial vehicle. And, the privileges afforded persons who have a commercial license plate shall also be afforded to those persons with an apportioned license plate.

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: Clarification of policy will slightly reduce confusion and paperwork.
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: The do-nothing alternative was rejected because in some areas the vehicle enforcement officers were treating apportioned trucks as commercial trucks; in other areas they were not. The public demanded a uniform policy. The cleanup portions of the regulation were done in accordance with KRS Chapter 13A since this was the first time the regulation had been amended since the 1990 revisions to that chapter.
(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? Yes. Vehicles which are apportioned are tiered in that their registration fees are prorated for each of the states in which they operate.

TRANSPORTATION CABINET
Department of Highways
Division of Planning
Department of Vehicle Regulation
(Proposed Amendment)

603 KAR 5:066. Weight limits for trucks.

RELATES TO: KRS 189.222
STATUTORY AUTHORITY: KRS 174.080, 189.222
NECESSITY AND FUNCTION: KRS 189.222 authorizes the Secretary of Transportation to establish reasonable weight limits for trucks using the state maintained highway system. This regulation prescribes the maximum weight limits for each classification of roads in accordance with state and federal laws.

Section 1. Highway Classifications and Truck Types. (1) Trucking highways. All state maintained roads are assigned a classification in 603 KAR 5:096. The maximum allowable gross weight for each classification is as follows:
(a) Class "AAA" designates a maximum allowable gross weight of 80,000 pounds.
(b) Class "AA" designates a maximum allowable gross weight of 62,000 pounds.
(c) Class "A" designates a maximum allowable gross weight of 44,000 pounds.
(2) Truck types. For the purpose of posting bridges at the site and for listing bridge weight restrictions in these regulations, the following truck types have been established:
(a) Type 1. This is a single unit truck consisting of two (2) single axles.
(b) Type 2. This is a single unit truck consisting of one (1) steering axle and two (2) axles in tandem arrangement.
(c) Type 3. This is a truck consisting of one (1) steering axle and three (3) axles in tridem arrangement.
(d) Type 4. This is a tractor-semitrailer combination truck consisting of five (5) or more axles.
(e) There are numerous other axle combinations not covered in these basic truck types that are restricted by weight based on their axle spacing and weight distribution per axle.

Section 2. "AAA" Highways Except Interstates. The maximum weight limits for trucks using Class "AAA" highways, except the Interstate System, shall be as follows:
(1) Gross weight, including load, shall not exceed 80,000 pounds. Gross axle weight for a single axle shall not exceed 20,000 pounds (with axles less than forty-two (42) inches apart to be considered as a single axle);
(2) Gross weight shall not exceed 34,000 pounds on two (2) axles in tandem arrangement which are spaced forty-two (42) inches or more apart and [less than] ninety-six (96) inches or less apart;
(3) Gross weight shall not exceed 48,000 pounds on three (3) axles in tridem arrangement if the distance between axles one (1) and three (3) is more than ninety-six (96) inches [which are spaced forty-two (42) inches or more apart] but less than 120 inches apart and the distance between any two (2) adjacent axles of the tridem is forty-two (42) inches or more [. In no event shall the load on any single axle in any arrangement exceed 20,000 pounds];
(4) Gross weight shall not exceed 34,000 pounds on three (3) axles in tridem arrangement if the distance between the centers of axles one (1) and three (3) is ninety-six (96) inches or less;
(5) [(3)] Tire weight. The weight transmitted to the pavement shall not exceed the product of 600 pounds times the aggregate width in inches established from the manufacturer's stamped tire measurement for all tires;
(6) [(4)] On Class "AAA" highways if a structure or bridge has a posted load limit of less than 80,000 pounds, the posted limit shall not be exceeded.

Section 3. Interstate Highways. The maximum weight limits for trucks using Class "AAA" highways which are a part of the Interstate System shall be as follows:
(1) Gross weight, including load, shall not exceed 80,000 pounds;
(2) Gross axle weight for a single axle shall not exceed 20,000 pounds (with axles less than forty-two (42) inches apart to be considered as a single axle);
(3) [(2)] Gross weight shall not exceed 34,000 pounds on two (2) axles in tandem arrangement which are spaced forty-two (42) inches or more apart and [less than] ninety-six (96) inches or less apart;
(4) Gross weight shall not exceed 34,000 pounds on three (3) axles in tridem arrangement if the distance between the centers of one (1) and three (3) is ninety-six (96) inches or less;
(5) Gross weight shall not exceed 48,000

pounds on three (3) axles in tridem arrangement if the distance between the centers of axles one (1) and three (3) is more than ninety-six (96) inches but less than 120 inches, and the distance between any two (2) adjacent axles of the tridem is forty-two (42) inches or more, and the gross weight of the vehicle is less than or equal to 73,280 pounds;

(6) The maximum gross weight allowed on two (2) consecutive sets of tandem axles shall be 34,000 pounds each, if the distance between the first and last axles of the consecutive sets of axles is thirty-six (36) feet or more;

(7) The maximum gross weight allowed on any other vehicle configuration shall be established by the bridge weight formula: [which are spaced forty-two (42) inches or more apart but less than 120 inches apart, or as determined by formula in subsection (3) below, whichever is greater. In no event shall the load on any single axle in any arrangement exceed 20,000 pounds.]

[(3) The maximum gross weight for a truck consisting of two (2) single axles which exceeds 37,800 pounds gross weight, and for a truck consisting of one (1) single axle and two (2) axles in tandem arrangement which exceeds 52,500 pounds gross weight, or for a truck which consists of three (3) single axles which exceeds 56,700 pounds gross weight, and for a truck consisting of one (1) single axle and three (3) axles in tridem arrangement which exceeds 69,300 pounds gross weight, and for a truck consisting of two (2) single axles and two (2) axles in tandem arrangement which exceeds 71,400 pounds gross weight, or for any truck with any combination of axles which exceed 73,280 pounds gross weight shall be determined by the following formula:]

$$W = 500 (LN/N-1 + 12N + 36)$$

Where W equals gross weight, L equals distance in feet between the extreme axles of the group of consecutive axles under consideration and N equals the number of axles in the group[, except that two (2) consecutive sets of tandem axles may carry 34,000 pounds each, providing that the distance between the first and last axles of such consecutive sets of axles is thirty-six (36) feet or more]. In no event shall the load on any axle in any arrangement exceed 20,000 pounds nor the gross weight exceed 80,000 pounds.

(8) [(4)] Tire weight. The weight transmitted to the pavement shall not exceed the product of 600 pounds times the aggregate width in inches established from the manufacturer's stamped tire measurement of all tires.

(9) [(5)] On Class "AAA" highways which are part of the interstate system if a structure or bridge has a posted load limit of less than 80,000 pounds, the posted limit shall not be exceeded.

(10) [(6)] There shall be no tolerance allowed on gross weight, axle weight, or combinations of axle weights on vehicles operating over a Class "AAA" highway which is a part of the Interstate System.

Section 4. "AA" Highways. The maximum weight for trucks using Class "AA" highways shall be as follows:

(1) Gross weight, including load, shall not exceed 62,000 pounds.

(2) Gross axle weight for a single axle shall not exceed 20,000 pounds (with axles less than forty-two (42) inches apart to be considered as a single axle).

(3) Gross weight shall not exceed 34,000 pounds on two (2) axles in tandem arrangement which are spaced forty-two (42) inches or more apart and [less than] ninety-six (96) inches or less apart;

(4) Gross weight shall not exceed 34,000 pounds on three (3) axles in tridem arrangement if the distance between the centers of axles one (1) and three (3) is ninety-six (96) inches or less;

(5) Gross weight shall not exceed 48,000 pounds on three (3) axles in tridem arrangement if the distance between axles one (1) and three (3) is more than ninety-six (96) [which are spaced forty-two (42)] inches [or more apart] but less than 120 inches apart and the distance between any two (2) adjacent axles of the tridem is forty-two (42) inches or more; [. In no event shall the load on any single axle in any arrangement exceed 20,000 pounds.]

(6) [(4)] Tire weight. The weight transmitted to the pavement shall not exceed 600 pounds times the aggregate width in inches established from the manufacturer's stamped tire measurement of all tires.

(7) [(5)] On Class "AA" highways if a structure or bridge has a posted load limit of less than 62,000 pounds, the posted limit shall not be exceeded.

Section 5. "A" Highways. The maximum weight limit for trucks using Class "A" highways shall be as follows:

(1) Gross weight, including load, shall not exceed 44,000 pounds.

(2) Gross axle weight for a single axle shall not exceed 20,000 pounds (with axles less than forty-two (42) inches apart to be considered as a single axle).

(3) Gross weight shall not exceed 34,000 pounds on two (2) axles in tandem arrangement which are spaced forty-two (42) inches or more apart and [less than] ninety-six (96) inches or less apart.

(4) Tire weight. The weight transmitted to the pavement shall not exceed the product of 600 pounds times the aggregate width in inches established from the manufacturer's stamped tire measurement of all tires.

(5) On Class "A" highways if a structure or bridge has a posted load limit of less than 44,000 pounds, the posted limit shall not be exceeded.

Section 6. Tolerance. There shall be no tolerance allowed on gross weight, however, a tolerance of not more than five (5) percent shall be allowed on axle weight on all state-maintained highways which are not a part of the interstate system.

Section 7. As long as any highway remains a part of the state-maintained system, as defined by regulation 603 KAR 3:030, the classification of that highway in administrative regulation 603 KAR 5:096 constitutes a designation by the Secretary of Transportation as contemplated by KRS 189.280. City ordinances which impose less stringent limits than this administrative regulation shall not apply to the state-maintained highways, including bridges, unless specific relinquishment of this

responsibility to a city is made by the Secretary of Transportation.

JEROME L. LENTZ, Acting Commissioner
O. GILBERT NEWMAN, State Highway Engineer
MILO D. BRYANT, Secretary
APPROVED BY AGENCY: December 5, 1991
FILED WITH LRC: December 11, 1991 at 11 a.m.
PUBLIC HEARING: A public comment hearing will be held on this administrative regulation on January 24, 1992 at 9:30 a.m., local prevailing time in the 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 January 19, 1992 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 January 19, 1992. Send written notification of intent to attend the public hearing or written comments on the administrative regulation to: Sandra G. Pullen, Executive's Staff Advisor, Transportation Cabinet, 10th Floor State Office Building, Frankfort, Kentucky 40622.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sandra G. Pullen
(1) Type and number of entities affected: Operators of all trucks in the Commonwealth of Kentucky.
(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: Changing the administrative regulation so that it exactly conforms to the federal wording allows the Commonwealth of Kentucky to certify to the federal Highway Administration that Kentucky meets the federal mandate on size and weight. Unless Kentucky is able to make an acceptable certification each year, the Commonwealth will forfeit ten percent of its federal highway money or approximately $17 million each year.
1. First year: Same
2. Continuing costs or savings: Same
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None – unless consider federal highway funds as revenue – then $17 million per year.
(4) Assessment of alternative methods; reasons why alternatives were rejected: The Federal Highway Administration determined that the subject administrative regulation as it relates to interstate highways was not in compliance with 23 CFR 658.17. Even though the intention (and understanding) of the Transportation Cabinet was that it comply, the cabinet worked with FHWA staff to find a wording that provided us with our eligible grandfathering but met the federal mandate. The changes were made in the other sections for uniformity.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? Yes. Tiering was applied by separating the highways into different weight categories depending their ability to handle the weight.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 23 CFR 658.17
2. State compliance standards. This administrative regulation establishes the three highway weight classifications and sets forth the weight limits on all trucks and axles on each classification. The AAA interstate highway classification, which is the section of the administrative regulation which is under the federal mandate sets a total weight limit of 80,000 pounds; 20,000 pounds for each single axle; 34,000 gross pounds for each set of tandem axles; and 48,000 pounds for each set of tridem axles when the gross vehicle weight limit does not exceed 73,280 pounds. In other instances the weight limit both gross and axle combination is established by the bridge formula.
3. Minimum or uniform standards contained in the federal mandate. The federal mandate requires the same weight standards as established in this administrative regulation except no reference is made in the federal regulation to tridem axle configurations.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is a different, more liberal requirement relating to the weight limit on tridem axle configurations, imposed by the state regulation than the federal mandate.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The federal mandate allows states to "grandfather" weight limits on tridem axle configurations. Therefore, since Kentucky previously had a tridem weight limit in excess of the bridge weight formula, we retained the 48,000 pounds maximum. This is not a stricter requirement.

TRANSPORTATION CABINET
Department of Highways
Division of Planning
(Proposed Amendment)

603 KAR 5:070. Motor vehicle dimension limits.

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

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

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

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

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

(3) Length.

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

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

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

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

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

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

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

(b) Length.

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

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

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

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

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

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

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

The Interstate and National Defense Highway System.

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

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

Cumberland Parkway - from I-65 near Smiths Grove to US 27 west of Somerset.

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

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

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

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

Pennyrile Parkway - From US 41A in

Hopkinsville to US 41 near Henderson.
Western Kentucky Parkway - from I-24 south of Eddyville to US 31W in Hardin County.
KY 4 - The entire circle of Lexington.
KY 11 - from the junction with KY 32 in Fleming County to US 62-68 in Maysville.
KY 15 - from US 119 in Whitesburg to the Mountain Parkway at Campton.
KY 18 - from KY 338 at Burlington to KY 1017 in Florence.
KY 21 - from I-75 near Berea to US 25 south in Berea.
US 23 - from KY 1426 south of Pikeville to the Ohio state line.
US 23 - from the Virginia state line to US 119 near Jenkins.
US 23 Spur - from US 23/60 in Ashland to the Ohio state line.
US 25 - from KY 461 in Rockcastle County to I-75 in Rockcastle County.
US 25 - from US 421 south of Richmond to KY 876 in Richmond.
US 25 - from KY 418 southeast of Lexington to KY 4.
US 25 - from US 42 in Florence to Ohio state line.
US 25E - from Virginia state line to I-75 north of Corbin.
US 27 - from Tennessee state line to Ohio state line (via KY 4 in Lexington).
US 31E - from Tennessee state line to KY 90 at Glasgow (via the Scottsville Bypass and the Glasgow Bypass).
US 31W - from Tennessee state line to KY 73 north of Franklin.
US 31W - from the Green River Parkway to US 68 north of Bowling Green.
US 31W - from US 31W Bypass in Elizabethtown to I-264 in Shively.
US 31W Bypass - from Western Kentucky Parkway to US 31W in Elizabethtown.
KY 32 - from KY 11 in Fleming County to US 60 at Morehead.
KY 35 - from US 127 at Bromley to I-71 north of Sparta.
KY 36 - from I-64 south of Owingsville to US 60 at Owingsville.
KY 36 - from US 42 in Carrollton to KY 227.
US 41 - from US 68 (Main Street) in Hopkinsville to US 68 (McLean Avenue) in Hopkinsville.
US 41 - concurrent with Pennyrile Parkway from south of Nortonville to north of Madisonville.
US 41 - from Pennyrile Parkway at Henderson to Indiana state line.
US 41A - from Tennessee state line to Pennyrile Parkway at south city limits of Hopkinsville.
US 41A - from KY 112 in Earlington to KY 281 and KY 1751 in Madisonville.
US 42 - from I-264 northeast of Louisville to Oldham County line.
US 42 - from I-75 in Florence to US 25 in Florence.
US 42 - from KY 55 at Carrollton to KY 47 at Ghent.
US 45 - from the Jackson Purchase Parkway north of Mayfield to US 60 in Paducah.
US 45 Bypass - concurrent with the Jackson Purchase Parkway from southwest of Mayfield to US 45 north of Mayfield.
US 49 - Concurrent with KY 55 south of Lebanon to north of Lebanon.
US 51 - from Jackson Purchase Parkway in Fulton County to Illinois state line.
KY 52 - from KY 876 in Richmond to KY 499 at Irvine.
KY 55 - from Cumberland Parkway in Columbia to US 150 at Springfield, via US 68 and KY 49.
US 60 - from US 51 in Wickliffe to US 62 east of Paducah.
US 60 - from KY 109 at Sullivan in Union County to KY 425, the Henderson Bypass.
US 60 - from US 60 Bypass west of Owensboro to KY 69 at Hawesville.
US 60 - from KY 144 in Meade County to US 31W at Tip Top.
US 60 - from I-264 east of Louisville to KY 1531 at Eastwood.
US 60 - from US 421/460 at Frankfort to I-75 near Lexington (via Versailles and KY 4 in Lexington).
US 60 - from junction of KY 180 near Cannonsburg to US 23 in Ashland.
US 60 Bypass - from US 60 west of Owensboro to US 60 east of Owensboro.
KY [US] 61 - from Tennessee state line to KY 90 at Burkesville.
KY 61 - from the junction with US 31E in Hodgenville to US 31W in Elizabethtown.
US 62 - from US 60 east of Paducah to Western Kentucky Parkway east of Eddyville.
US 62 - from US 150 at Bardstown to KY 245 at Bardstown.
US 62 - from US 421 west of Midway to US 421 in Scott County, concurrent with US 421.
US 62 - from KY 353 southwest of Cynthiana to US 27 at Cynthiana.
US 62 - from US 68 at Washington to the Ohio state line at Maysville.
US 68 - from US 62 at Reidland to KY 284 in McCracken County.
US 68 - from I-24 in Trigg County to Green River Parkway at Bowling Green via US 41 in Hopkinsville.
US 68 - from KY 55 southwest of Campbellsville to KY 55 in Lebanon.
US 68 - from its east intersection with US 150 in Perryville to its west intersection with US 150 in Perryville.
US 68 - from US 127 south in Harrodsburg to US 127 north in Harrodsburg.
US 68 - from US 27 at Paris to US 62 at Washington (via Paris Bypass).
KY 69 - from US 60 at Hawesville to Indiana state line.
KY 70 - from I-65 west of Cave City to KY 90 southeast of Cave City.
KY 79 - from KY 1051 in Brandenburg to Indiana state line.
KY 80 - from KY 80B at Somerset to US 25 north of London.
KY 80 - from KY 15 at Hazard to US 23 at Watergap.
KY 80B - From US 27 at Somerset to KY 80 east of Somerset.
KY 90 - from KY 70 at Cave City to Cumberland Parkway at Glasgow.
KY 90 - from KY 61 at Burkesville to US 27 at Burnside.
KY 109 - from KY 670 in Webster County to US 60 in Union County.
KY 114 - from US 460 east of Salyersville to US 23/460 at Prestonsburg.
KY 118 - from US 421 and KY 80 northwest of Hyden to the Daniel Boone Parkway.
US 119 - from KY 15 at Whitesburg to US 23 at Jenkins.
US 119 - from US 25E south of Pineville to US 421 at Harlan.

US 119 - from US 23 at Pikeville to KY 1441 northeast of Pikeville.
KY 121 - from the Jackson Purchase Parkway at Mayfield to US 51 in Wickliffe.
US 127 - from KY 90 west to KY 90 east in Clinton County (concurrent with KY 90).
US 127 - from US 127 Bypass north of Danville to US 127 Bypass south of Lawrenceburg.
US 127 - from I-64 west of Frankfort to US 421 in Frankfort.
US 127 - from KY 22 in Owenton to KY 35 at Bromley.
US 127 Bypass - from US 127 south of Danville to US 127 north of Danville.
US 127 Bypass - from US 127 south of Lawrenceburg to US 127 north of Lawrenceburg.
KY 144 - from KY 448 south of Brandenburg to US 60.
US 150 - from US 62 at Bardstown to US 27 at north city limits of Stanford (via the US 150 Bypass in Danville).
US 150B - from US 127 south of Danville to US 150 east of Danville.
KY 151 - from US 127 near Lawrenceburg to I-64 near Graefenburg.
KY 180 - from I-64 near Cannonsburg to US 60 at Cannonsburg.
KY 191 - from KY 205 north to KY 205 south in Wolfe County, concurrent with KY 205.
KY 192 - from I-75 south of London to Daniel Boone Parkway east of London.
KY 205 - from Mountain Parkway at Helechawa to US 460 west in Morgan County, concurrent with KY 191.
KY 212 - from KY 20 to Greater Cincinnati Airport (Boone County).
KY 227 - from KY 355 near Worthville to KY 36 at Carrollton.
US 231 - from US 60 Bypass in Owensboro to Indiana state line.
US 231 - from I-65 east of Bowling Green to US 31W in Bowling Green.
KY 236 - from US 25 at Erlanger to KY 212 near the Greater Cincinnati Airport.
KY 237 - from KY 18 east of Burlington to I-275 in Boone County.
KY 245 - from I-65 south of Shepherdsville to US 62 at Bardstown.
KY 259 - from Western Kentucky Parkway to US 62 in Leitchfield.
KY 281 - from US 41A in Madisonville to the Pennyrile Parkway, concurrent with US 41.
KY 341 - from US 62/421 near Midway north to I-64.
KY 348 - from Jackson Purchase Parkway west of Benton to US 641 in Benton.
KY 418 - from US 25 south of Lexington to I-75.
US 421 - from 0.1 mile south of Harlan Appalachian Regional Hospital.
US 421 & KY 80 - from Daniel Boone Parkway to 2nd Street in Manchester.
US 421 - from KY 4 in Lexington to US 62 east in Scott County.
US 421 - from US 460 in Frankfort to US 127 north.
US 421 - from KY 55 in Henry County to I-71 in Henry County.
KY 425 - from US 60 at Henderson to the Pennyrile Parkway.
US 431 - from US 60 Bypass in Owensboro to US 60 (4th Street) in Owensboro.
KY 446 - from US 31W northeast of Bowling Green to I-65.
KY 448 - from KY 144 to KY 1051 at Brandenburg.
US 460 - from I-64 north of Mt. Sterling to KY 686.
US 460 - from Mountain Parkway Extension to US 23 near Paintsville.
KY 461 - from KY 80 in Pulaski County to US 25 in Rockcastle County.
KY 471 - from US 27 in Campbell County to the I-275/471 junction.
KY 546 - from I-275/KY 9 at Wilder to KY 59 south of Vanceburg.
KY 555 - from US 150 at Springfield to Bluegrass Parkway.
US 641 - from Tennessee state line to US 641A south of Benton.
US 641A - from US 641 south of Benton to the Jackson Purchase Parkway.
KY 645 - from US 23 south of Ulysses to KY 40 west of Inez.
KY 676 - from US 127 in Frankfort to US 60.
KY 686 - from US 460 north of Mt. Sterling to KY 11 south of Mt. Sterling.
KY 841 - from I-71 in Jefferson County to US 42 northeast of Louisville.
KY 841 - from US 31W (Dixie Highway) in southwestern Jefferson County to I-65.
KY 859/KY 57 - from I-64 east of Lexington to Lexington - Bluegrass Army Depot.
KY 876 - from I-75 at Richmond to KY 52 east of Richmond.
KY 922 - from KY 4 in Lexington north to I-64 and I-75.
KY 1017 - from US 25 in Florence to I-75.
KY 1051 - from KY 79 to KY 448 south of Brandenburg.
KY 1682 - from US 68 west of Hopkinsville to Pennyrile Parkway.
KY 1958 - from KY 627 south of Winchester to I-64 at Winchester.
KY 1998 - from US 27 at Cold Springs to KY 8 at Silver Grove.

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

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

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

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

Section 5. Nonstate Maintained Exceptions to One (1) Mile Automatic Access. The following

local governments have adopted ordinances which exempt for safety reasons certain locally maintained roadways from the automatic one (1) mile access provision of Section 3(3) of this regulation: The city of Anchorage in Jefferson County – the streets all within the corporate city limits of Anchorage listed in the city ordinance which shall not be used by STAA-dimensioned vehicles are:

(1) Evergreen Road;
(2) Bellewood Road;
(3) Lucas Lane; and
(4) Old Harris Creek Road.

Section 6. State-maintained Exceptions to Automatic Five (5) Mile Access. The Department of Highways has found the following road segments for safety reasons to be exempt from the five (5) mile automatic access on state-maintained highways set forth in Section 3(2) of this regulation. These road segments shall not be used by STAA-dimensioned vehicles without an overdimensional permit: KY 146 – from the west boundary of the city of Anchorage at milepoint 4.258 to the east boundary of the city of Anchorage at milepoint 5.878.

JEROME L. LENTZ, Acting Commissioner
MILO D. BRYANT, Secretary
O. GILBERT NEWMAN, State Highway Engineer
APPROVED BY AGENCY: December 5, 1991
FILED WITH LRC: December 13, 1991 at 9 a.m.

PUBLIC HEARING: A public comment hearing will be held on this administrative regulation on January 24, 1992 at 10 a.m., local prevailing time in the Fourth Floor Hearing Room of the State Office Building located at the corner of High and Holmes Streets, Frankfort, Kentucky 40622. Any person who intends to attend this hearing must in writing by January 19, 1992 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 January 19, 1992. Send written notification of intent to attend the public hearing or written comments on the administrative regulation to: Sandra G. Pullen, Executive's Staff Advisor, Transportation Cabinet, 10th Floor State Office Building, Frankfort, Kentucky 40622.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sandra G. Pullen

(1) Type and number of entities affected: All operators of STAA type vehicles in Kentucky and the U.S. Armed Forces.

(a) Direct and indirect costs or savings to those affected: After this regulation was amended to match the requirements of 23 CFR Part 658 and 603 KAR 5:250, the city of Anchorage passed ordinances restricting the use of STAA vehicles on certain local roadways. The city also required that the Transportation Cabinet examine KY 146 within the city limits. The cabinet agreed with the city that each of these road segments were unsafe for the use of larger-dimensioned STAA vehicles. There may be some vehicle operators inconvenienced by having to take a more circuitous route. However, the roads being posted for no STAA vehicles should compensate by providing advance notice that these road segments cannot safely accommodate STAA vehicles.

1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings: 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: After investigating the roads identified by the city of Anchorage, and determining that the roads were unsafe for use by STAA vehicles, the Transportation Cabinet was compelled to restrict access.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: KRS 189.221 specifies the dimension limits for local roads. The one-mile access provisions of this regulation are in conflict.

(a) Necessity of proposed regulation if in conflict: The Federal Highway Administration mandated the one-mile access on local roads.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? Yes. Tiering was applied by allowing larger vehicles to operate on those highways with geometrics conducive to the safe operation of those vehicles.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 23 CFR part 658, Truck Size and Weight; Reasonable Access requires each state to establish access provisions to the National Truck Network of Highways which meet the criteria set forth in the federal regulation and to get federal approval of the criteria.

2. State compliance standards. The state compliance standards set forth in this administrative regulation meet the federal requirements, but do not exceed them. Specifically, five-mile access on state-maintained highways and one-mile access on locally-maintained highways are allowed from the National Truck Network of Highways. However, if there are reasonable safety grounds for excluding a road segment from the access provisions, the Transportation Cabinet in accordance with 603 KAR 5:250 may do so.

3. Minimum or uniform standards contained in the federal mandate. Same as adopted in the state administrative regulation.

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.

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 1:001 [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, 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.
(1) Using the requirements of this regulation, the local district shall review proposed sites for location and site size.
(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.
(b) The minimum site size shall be:
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 along 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) 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.

(8) 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.

(9) 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) The local board of education shall certify to the chief state school officer that all reasonable sites within the approvable area have been reviewed and a decision has been made by the local board not to pursue acquisition of those sites. This certification shall list the sites reviewed and include reasons site was not acceptable. This shall be submitted to the Division of Facilities Management prior to approval of the final chosen site. [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 21, 1991
FILED WITH LRC: November 22, 1991 at 2 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 24, 1992 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 January 19, 1992, 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.

UNIVERSITY OF LOUISVILLE
Board of Trustees
(Proposed Amendment)

740 KAR 1:010. Acquisition and disbursement of funds, accounting system and reports.

RELATES TO: KRS 164A.560, 164A.565 [164A.595]

STATUTORY AUTHORITY: KRS 164A.560

NECESSITY AND FUNCTION: KRS 164A.560 permits governing boards of each public institution of higher education to elect to perform financial management functions per 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 the University of Louisville.

Section 1. The Board of Trustees of the University of Louisville elects to perform the financial management functions set forth in KRS 164A.560, Section 2, relating to the receipt, deposit, collection, retention, investment, disbursement, and accounting of all funds; and KRS 164.565 related to installation of an accrual basis accounting system, other records and reports. [receive, deposit, collect, retain, invest, disburse, and account for all funds received or due from any source including, but not limited to, state and federal appropriations for the support or maintenance of the general operations or special purpose activities of the University of Louisville.]

[(1) The treasurer of the university shall deposit, on a timely basis, all tuition fees, fees for room and board, incidental fees, contributions, gifts, donations, devices, state and federal appropriations, monies received from sales and services, admittance fees, and all other monies received from any source, in a depository bank or banks designated by the Board of Trustees.]

[(2) All disbursements shall be limited to the amounts and for the purposes for which state appropriations have been made, or for which other monies have been received. All disbursements shall be recorded in a system of accounts as set forth in this regulation. The treasurer of the university shall prescribe forms to be used with the system of accounts, and no official shall approve any disbursement document unless he determines that the disbursement is to satisfy a liability of the institution incurred for authorized purposes and that the disbursement is to be made from the unexpended balance of a proper allotment.]

[(3) These functions of the treasurer may be carried out by the Vice President for Administration and such assistants, controllers, accountants, and cashiers as the president may authorize in writing in accord with sound business practices.]

Section 2. The University of Louisville Board of Trustees elects to comply with KRS 164A.560, Section (2)(b) to limit disbursements as provided therein by requiring that all disbursements and income shall be reported on financial statements presented regularly to the Board of Trustees or its committees, consistent with generally acceptable accounting principles, institutional policies, and budget enactments of the Board of Trustees. All such financial statements shall be reconciled with the institutional accounting system. [The accounting system of the University of Louisville shall be an accrual basis accounting system conforming 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. The accounting system shall include, but not be limited to, the following fund structure:]

[(1) An operating fund group (unrestricted current funds), consisting of all monies not otherwise restricted, available for general operations including state appropriations, federal funds, and unrestricted institutional receipts. Separate accounting fund groups may be established for auxiliary enterprises, athletics, hospitals, and other similar operations.]

[(2) A restricted fund group consisting of appropriations and other receipts restricted as to purpose which shall not be included in the operating fund.]

[(3) A loan fund group consisting of gifts, grants, and other funds provided and available for loans to students.]

[(4) An endowment fund group consisting of funds the principal of which is not currently expendable.]

[(5) An agency fund group consisting of resources held by the institutions as custodian or fiscal agent for individual students, faculty, staff members and organizations.]

[(6) A plant fund group consisting of:]

[(a) Unexpended plant funds to be used for the acquisitions of long-lived assets for institutional purposes (capital construction funds);]

[(b) Funds for renewal, maintenance, and replacement of institutional buildings, equipment and other properties; and]

[(c) Funds set aside for debt service charges and retirement of indebtedness on institutional plant.]

Section 3. These functions of the treasurer may be carried out by the Vice-president for Administration and such assistants, controllers, accountants, and cashiers as the president may authorize. [A record of each general fund appropriation shall be maintained so as to identify the institutional budgets to which such funds are allotted. Any uncommitted state general funds remaining after the close of business on the last day of the fiscal year shall lapse and be returned to the treasury of the Commonwealth. Each appropriation shall be used for the intended purpose and where questions of intent arise subject to the provisions of KRS 45.750 and 45.800 in the case of capital construction projects and major items of equipment as defined by these sections, the decision of the Secretary of Finance, based upon budget work papers, shall be final.]

Section 4. 740 KAR 1:070 is hereby repealed. [A separate account showing sources of revenue and all expenditures shall be maintained for each capital construction project. At the end of

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) The local board of education shall certify to the chief state school officer that all reasonable sites within the approvable area have been reviewed and a decision has been made by the local board not to pursue acquisition of those sites. This certification shall list the sites reviewed and include reasons site was not acceptable. This shall be submitted to the Division of Facilities Management prior to approval of the final chosen site. [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 21, 1991
FILED WITH LRC: November 22, 1991 at 2 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 24, 1992 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 January 19, 1992, 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.

UNIVERSITY OF LOUISVILLE
Board of Trustees
(Proposed Amendment)

740 KAR 1:010. Acquisition and disbursement of funds, accounting system and reports.

RELATES TO: KRS 164A.560, 164A.565 [164A.595]

STATUTORY AUTHORITY: KRS 164A.560

NECESSITY AND FUNCTION: KRS 164A.560 permits governing boards of each public institution of higher education to elect to perform financial management functions per 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 the University of Louisville.

Section 1. The Board of Trustees of the University of Louisville elects to perform the financial management functions set forth in KRS 164A.560, Section 2, relating to the receipt, deposit, collection, retention, investment, disbursement, and accounting of all funds; and KRS 164.565 related to installation of an accrual basis accounting system, other records and reports. [receive, deposit, collect, retain, invest, disburse, and account for all funds received or due from any source including, but not limited to, state and federal appropriations for the support or maintenance of the general operations or special purpose activities of the University of Louisville.]

[(1) The treasurer of the university shall deposit, on a timely basis, all tuition fees, fees for room and board, incidental fees, contributions, gifts, donations, devices, state and federal appropriations, monies received from sales and services, admittance fees, and all other monies received from any source, in a depository bank or banks designated by the Board of Trustees.]

[(2) All disbursements shall be limited to the amounts and for the purposes for which state appropriations have been made, or for which other monies have been received. All disbursements shall be recorded in a system of accounts as set forth in this regulation. The treasurer of the university shall prescribe forms to be used with the system of accounts, and no official shall approve any disbursement document unless he determines that the disbursement is to satisfy a liability of the institution incurred for authorized purposes and that the disbursement is to be made from the unexpended balance of a proper allotment.]

[(3) These functions of the treasurer may be carried out by the Vice President for Administration and such assistants, controllers, accountants, and cashiers as the president may authorize in writing in accord with sound business practices.]

Section 2. The University of Louisville Board of Trustees elects to comply with KRS 164A.560, Section (2)(b) to limit disbursements as provided therein by requiring that all disbursements and income shall be reported on financial statements presented regularly to the Board of Trustees or its committees, consistent with generally acceptable accounting principles, institutional policies, and budget enactments of the Board of Trustees. All such financial statements shall be reconciled with the institutional accounting system. [The accounting system of the University of Louisville shall be an accrual basis accounting system conforming 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. The accounting system shall include, but not be limited to, the following fund structure:]

[(1) An operating fund group (unrestricted current funds), consisting of all monies not otherwise restricted, available for general operations including state appropriations, federal funds, and unrestricted institutional receipts. Separate accounting fund groups may be established for auxiliary enterprises, athletics, hospitals, and other similar operations.]

[(2) A restricted fund group consisting of appropriations and other receipts restricted as to purpose which shall not be included in the operating fund.]

[(3) A loan fund group consisting of gifts, grants, and other funds provided and available for loans to students.]

[(4) An endowment fund group consisting of funds the principal of which is not currently expendable.]

[(5) An agency fund group consisting of resources held by the institutions as custodian or fiscal agent for individual students, faculty, staff members and organizations.]

[(6) A plant fund group consisting of:]

[(a) Unexpended plant funds to be used for the acquisitions of long-lived assets for institutional purposes (capital construction funds);]

[(b) Funds for renewal, maintenance, and replacement of institutional buildings, equipment and other properties; and]

[(c) Funds set aside for debt service charges and retirement of indebtedness on institutional plant.]

Section 3. These functions of the treasurer may be carried out by the Vice-president for Administration and such assistants, controllers, accountants, and cashiers as the president may authorize. [A record of each general fund appropriation shall be maintained so as to identify the institutional budgets to which such funds are allotted. Any uncommitted state general funds remaining after the close of business on the last day of the fiscal year shall lapse and be returned to the treasury of the Commonwealth. Each appropriation shall be used for the intended purpose and where questions of intent arise subject to the provisions of KRS 45.750 and 45.800 in the case of capital construction projects and major items of equipment as defined by these sections, the decision of the Secretary of Finance, based upon budget work papers, shall be final.]

Section 4. 740 KAR 1:070 is hereby repealed. [A separate account showing sources of revenue and all expenditures shall be maintained for each capital construction project. At the end of

source; and]
[(9) Interests in real property.]

Section 2. The president shall recommend to the Board of Trustees internal policies and procedures including prescribed forms and manuals, as he deems necessary, for approval. These materials shall provide detailed instructions to administrators and staff of the university day-to-day management of the business affairs of the university as prescribed in the published regulations pertaining to financial management, applicable portions of KRS Chapters 45A, 164, 164A, and other laws. Exceptions to these internal procedures and policies shall be made only as provided for in these documents, which shall be made available to the public upon request. The president is authorized to enter into any memorandum of agreement deemed necessary to coordinate financial management responsibilities with agencies of state government. [The President of the University of Louisville, on behalf of the Board of Trustees, is authorized to negotiate with vendors who maintain a general service administration price agreement with the United States of America or any agency thereof, provided, however, that no contract executed under this provision shall authorize a price higher than is contained in the contract between General Service Administration and the vendor affected.]

[Section 3. The President of the University of Louisville shall direct the appropriate institutional officers to take and maintain inventories of plant and equipment.]

[Section 4. The President of the University of Louisville shall establish procedures to identify items of common general usage among all departments to foster volume purchasing, and shall establish and enforce schedules for purchasing supplies, materials, and equipment.]

[Section 5. The President of the University of Louisville shall have power, on behalf of the Board of Trustees, to salvage, to exchange, and to condemn supplies, equipment, and real property.]

[Section 6. Upon the approval of the Secretary of Finance and the Board of Trustees, the president may purchase or otherwise acquire, on behalf of the Board of Trustees, all real property determined to be needed for the institution's use. The amount paid shall not exceed the appraised value as determined by a qualified appraiser or the value set by the eminent domain procedure.]

[Section 7. The Board of Trustees of the University of Louisville, acting through the president, shall sell or otherwise dispose of all real or personal property of the institution which is not needed or has become unsuitable for public use, or would be more suitable consistent with the public interest for some other use, as determined by the Board. The determination of the Board shall be set forth in an order, and shall be reached only after review of a written request by the institution desiring to dispose of the property. Such request shall describe the property and state the reasons why the institution believes disposal should be effected. All instruments required by law to be recorded which convey any interest in any such real property so disposed of shall be executed and signed by the appropriate officer of the Board. Unless the Board deems it in the best interest of the university to proceed otherwise, all such real or personal property shall be sold either by invitation of sealed bids or by public auction, provided, however, that the selling price of any interest in real property shall not be less than the appraised value thereof as determined by the Finance and Administration Cabinet or the Transportation Cabinet for such requirements of that department.]

[Section 8. Real property or any interest therein may, subject to the provisions of KRS Chapter 45A, be purchased, leased, or otherwise acquired from any officer or employee of any board of the university, based upon a written application by the grantor or leasor approved by the Board, that the employee has not either himself or through any other person influenced or attempted to influence the board requesting the purchase of the property. In any case in which such an acquisition is consummated, the said request and finding shall be recorded and kept by the Secretary of State along with the other documents recorded pursuant to the provisions of KRS Chapter 56.]

[Section 9. For capital construction projects, the bidding may be on a total design-bid basis, a package system commonly referred to as "turnkey," or construction management, whichever in the judgment of the Board offers the lowest real cost to the taxpayer. Bids shall be reviewed by the institution's engineering staff to assure quality and value, and compliance with the bid procedures. All specifications shall be written to promote competition.]

[Section 10. The Board of Trustees shall attempt in every practicable way to insure the university's supplying its real needs at the lowest possible cost. To accomplish this the Board authorizes the president, on its behalf, to enter into cooperative agreements with other public or private institutions of education or health care.]

[Section 11. The president, on behalf of the Board of Trustees, shall have control and supervision over all purchases of energy-consuming equipment, supplies and related equipment purchased or acquired by the university. All energy-consuming items will be purchased so as to promote energy conservation and acquisition of energy-efficient products; this is to be accomplished by having the Director of Physical Plant review all such purchases in terms of energy conservation plans of the university and advise the president or his purchasing delegate accordingly.]

[Section 12. The president is authorized on behalf of the Board of Trustees to negotiate directly for the purchase of contractual services, supplies, materials, or equipment in bona fide emergencies regardless of estimated costs. The existence of the emergency must be fully explained, in writing, by the Vice President for Administration and such explanation must be approved by the university president. The letter and approval shall be filed with the record of all such purchases.

Where practical, standard specifications shall be followed in making emergency purchases. A good faith effort shall be made to effect a competitively-established price for emergency purchase.]

[Section 13. The president shall recommend to the Board of Trustees internal policies and procedures including prescribed forms and manuals, as he deems necessary, for approval. These materials shall provide detailed instructions to administrators and staff of the university day-to-day management of the business affairs of the university as prescribed in the published regulations pertaining to financial management, applicable portions of KRS Chapters 45A, 164, 164A and other laws. Exceptions to these internal procedures and policies shall be made only as provided for in these documents, which shall be made available to the public upon request. The president is authorized to enter into any memorandum of agreement deemed necessary to coordinate financial management responsibilities with agencies of state government.]

ROBERT BENSON, Chairman
APPROVED BY AGENCY: December 13, 1991
FILED WITH LRC: December 13, 1991 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Thursday, January 23, 1992 at 3 p.m. at Grawemeyer Hall, University of Louisville Belknap Campus, in the Jefferson Room. Individuals interested in being heard at this hearing shall notify the University of Louisville in writing by January 17, 1992, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Thomas H. Lyons, University Counsel, 206 Grawemeyer Hall, University of Louisville, Louisville, Kentucky 40292.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Thomas H. Lyons
(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: None
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None (no tax or fee impact).
(4) Assessment of alternative methods; reasons why alternatives were rejected: Only alternative available according to statute.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None, proposed amendment made for the sole purpose of complying with the existing statute by eliminating duplication of the wording of existing statutes.
(a) Necessity of proposed regulation if in conflict: N/A
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A
(6) Any additional information or comments: This proposed amendment essentially replaces the existing regulation for the purpose of complying with the 1988 version of KRS 13A.120(1)(e), which requires that no administrative body repeat statutory language. The proposed amendment was made at the request of the Interim Joint Committee on Education, based on their quadrennial review.
TIERING: Was tiering applied? Tiering was not applied since this amendment only simplifies the language of the existing regulation by deleting repetition of statutory language, and does not change it in any substantial way.

UNIVERSITY OF LOUISVILLE
Board of Trustees
(Proposed Amendment)

740 KAR 1:040. Disposal of property proceeds; title.

RELATES TO: KRS 164.410
STATUTORY AYTHORITY: KRS 164A.560
NECESSITY AND FUNCTION: KRS 164A.560 permits the governing boards of public institutions of higher education to elect to perform financial management functions per KRS 164A.555 to 164A.630 by issuing regulations to do so. This regulation implements the provisions of KRS 164.410 at the University of Louisville.

Section 1. The University of Louisville Board of Trustees elects to dispose of surplus property in accordance with the provisions of KRS 164.410, Sections (1), (2), and (3). [The Board of Trustees of the University of Louisville shall periodically review the assets of the university and shall sell and convey those assets not necessary for implementing the institutional mission. Proceeds from the disposition shall be deposited in the unexpended plant fund account or in the fund for excellence authorized by KRS 164A.620.]

[Section 2. Any real property acquired by the Board of Trustees of the University of Louisville pursuant to KRS 164.410 shall be in the name of the Commonwealth of Kentucky for the use and benefit of the University of Louisville.]

ROBERT BENSON, Chairman
APPROVED BY AGENCY: December 13, 1991
FILED WITH LRC: December 13, 1991 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Thursday, January 23, 1992 at 3 p.m. at

Grawemeyer Hall, University of Louisville Belknap Campus, in the Jefferson Room. Individuals interested in being heard at this hearing shall notify the University of Louisville in writing by January 17, 1992, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Thomas H. Lyons, University Counsel, 206 Grawemeyer Hall, University of Louisville, Louisville, Kentucky 40292.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Thomas H. Lyons
(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: None
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None (no tax or fee impact).
(4) Assessment of alternative methods; reasons why alternatives were rejected: Only alternative available according to statute.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None, proposed amendment made for the sole purpose of complying with the existing statute by eliminating duplication of the wording of existing statutes.
(a) Necessity of proposed regulation if in conflict: N/A
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A
(6) Any additional information or comments: This proposed amendment essentially replaces the existing regulation for the purpose of complying with the 1988 version of KRS 13A.120(1)(e), which requires that no administrative body repeat statutory language. The proposed amendment was made at the request of the Interim Joint Committee on Education, based on their quadrennial review.
TIERING: Was tiering applied? Tiering was not applied since this amendment only simplifies the language of the existing regulation by deleting repetition of statutory language, and does not change it in any substantial way.

UNIVERSITY OF LOUISVILLE
Board of Trustees
(Proposed Amendment)

740 KAR 1:050. Management of capital construction projects.

RELATES TO: KRS 164A.580
STATUTORY AUTHORITY: KRS 164A.560
NECESSITY AND FUNCTION: KRS 164A.560 permits the governing boards of public institutions of higher education to elect to perform financial management functions per KRS 164A.555 to 164A.630 by issuing regulations to do so. This regulation implements the provisions of KRS 164A.580 at the University of Louisville.

Section 1. Subject to the provisions of KRS 45.750 through 45.800 and 56.870 to 56.874, the University of Louisville Board of Trustees elects to adopt the management and administration procedures set forth in KRS 164A.580, Sections (1), (2), (3), (4), (5), (6), (7), and (8). [President of the University of Louisville on behalf of the Board of Trustees, shall provide for the management and administration of capital construction projects authorized for the University of Louisville including, but not limited to:]
[(1) The procurement of necessary consulting services;]
[(2) The supervision and control of the making of all contracts for building projects, renovation projects, repair projects, and supervision of same;]
[(3) The prescription of the amount and form of evidences of indebtedness submitted in connection with bids and contracts when not otherwise provided by law;]
[(4) The preparation of plans and specifications for any construction, alteration, or enlargement of buildings, structures, and other improvements;]
[(5) The advertisement of bids and the awarding of contracts in connection with such projects;]
[(6) The supervision and inspection of all related work;]
[(7) The approval of changes in plans or specifications; and]
[(8) The acceptance of such improvements when completed according to such plans and specifications.]

ROBERT BENSON, Chairman
APPROVED BY AGENCY: December 13, 1991
FILED WITH LRC: December 13, 1991 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Thursday, January 23, 1992 at 3 p.m. at Grawemeyer Hall, University of Louisville Belknap Campus, in the Jefferson Room. Individuals interested in being heard at this hearing shall notify the University of Louisville in writing by January 17, 1992, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing,

you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Thomas H. Lyons, University Counsel, 206 Grawemeyer Hall, University of Louisville, Louisville, Kentucky 40292.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Thomas H. Lyons
(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: None
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None (no tax or fee impact).
(4) Assessment of alternative methods; reasons why alternatives were rejected: Only alternative available according to statute.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None, proposed amendment made for the sole purpose of complying with the existing statute by eliminating duplication of the wording of existing statutes.
(a) Necessity of proposed regulation if in conflict: N/A
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A
(6) Any additional information or comments: This proposed amendment essentially replaces the existing regulation for the purpose of complying with the 1988 version of KRS 13A.120(1)(e), which requires that no administrative body repeat statutory language. The proposed amendment was made at the request of the Interim Joint Committee on Education, based on their quadrennial review.
TIERING: Was tiering applied? Tiering was not applied since this amendment only simplifies the language of the existing regulation by deleting repetition of statutory language, and does not change it in any substantial way.

UNIVERSITY OF LOUISVILLE
Board of Trustees
(Proposed Amendment)

740 KAR 1:060. Contracting for capital construction projects.

RELATES TO: KRS 164A.585, 164A.590, 164A.595, 164A.600
STATUTORY AUTHORITY: KRS 164A.560
NECESSITY AND FUNCTION: KRS 164A.560 permits governing boards of public institutions of higher education to elect to perform financial management functions per KRS 164A.555 to 164A.630 by issuing regulations to do so. This regulation implements the provisions of KRS 164A.585 at the University of Louisville.

Section 1. The University of Louisville Board of Trustees, under the provisions of KRS 164A.560, elects to manage and administer capital construction projects in accordance with 164A.585, 164A.590, 164A.595, and 164A.600. [Subject to authorization by the General Assembly, the president is authorized, on behalf of the Board of Trustees, to make plans and specifications, advertise for bids, let contracts or incur any financing commitments, either in the way of a charge against institution funds or in the way of negotiations for issuance of revenue bonds, for any capital construction projects involving the improvement of lands or the construction, alteration, reconstruction, or major repair of any building or other structure, or sewage disposal, water supply system, or other utility system.]

[Section 2. Review of construction plans for conformance with the uniform state building code shall be conducted by the Department of Housing, Buildings and Construction. The president shall not approve any such project on behalf of the Board of Trustees in any instance where it is found that the project is not needed, or that the proposed method of financing is not sound, or in cases where the project will exceed the amount of the funds available therefor, or the work contemplated will be insufficient to accomplish the purpose of the project, or that after providing for the ordinary recurring expenses of administration and debt service or for payments under existing allotments for extraordinary expenses and capital outlay, cash will not be available in the treasury to promptly pay for the work or that the work is to be done by employees of the university.]

[Section 3. Any capital construction project, except as provided in Section 4 of this regulation, shall be contracted for on a competitive bid basis, and the execution of such contracts shall be approved and authorized by the president for contracts of $100,000 or less, but contracts in excess of $100,000 shall be authorized by the Board of Trustees. When a capital construction project has been approved as provided in this section, in whole or in part, the president, on behalf of the Board of Trustees, shall prepare the plans and specifications, advertise for bids, award the contracts, supervise the construction and handle the financial negotiations.]

[Section 4. A capital construction project, the total cost of completion of which will not exceed $75,000, may be performed by the employees of the institution or by individuals hired specifically for the project. Necessary materials and supplies shall be procured in accordance with the standard purchasing procedures and policies of the University of Louisville as defined in 740 KAR 1:030.]

ROBERT BENSON, Chairman
APPROVED BY AGENCY: December 13, 1991
FILED WITH LRC: December 13, 1991 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Thursday, January 23, 1992 at 3 p.m. at

Grawemeyer Hall, University of Louisville Belknap Campus, in the Jefferson Room. Individuals interested in being heard at this hearing shall notify the University of Louisville in writing by January 17, 1992, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Thomas H. Lyons, University Counsel, 206 Grawemeyer Hall, University of Louisville, Louisville, Kentucky 40292.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Thomas H. Lyons
(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: None
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None (no tax or fee impact).
(4) Assessment of alternative methods; reasons why alternatives were rejected: Only alternative available according to statute.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None, proposed amendment made for the sole purpose of complying with the existing statute by eliminating duplication of the wording of existing statutes.
(a) Necessity of proposed regulation if in conflict: N/A
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A
(6) Any additional information or comments: This proposed amendment essentially replaces the existing regulation for the purpose of complying with the 1988 version of KRS 13A.120(1)(e), which requires that no administrative body repeat statutory language. The proposed amendment was made at the request of the Interim Joint Committee on Education, based on their quadrennial review.
TIERING: Was tiering applied? Tiering was not applied since this amendment only simplifies the language of the existing regulation by deleting repetition of statutory language, and does not change it in any substantial way.

UNIVERSITY OF LOUISVILLE
Board of Trustees
(Proposed Amendment)

740 KAR 1:080. Affiliated corporations [Carrying out of capital construction projects].

RELATES TO: KRS 164A.610 [164A.595]
STATUTORY AUTHORITY: KRS 164A.560
NECESSITY AND FUNCTION: KRS 164A.560 permits [the] governing boards of public institutions of higher education to elect to perform financial management functions per KRS 164A.555 to 164A.630 by issuing regulations to do so. This regulation implements the provisions of KRS 164A.610 [164A.595] at the University of Louisville.

Section 1. The University of Louisville Board of Trustees, under provisions of KRS 164A.560, elects to organize and operate one (1) or more affiliated corporations in accordance with KRS 164A.610. [Subject to the provisions of KRS 45.750 through 45.800, the president, on behalf of the Board of Trustees of the University of Louisville, may acquire, erect, construct, reconstruct, improve, rehabilitate, remodel, repair, complete, extend, enlarge, equip, furnish, and operate any buildings, structures, improvements, or facilities, including any utilities, other related services and appurtenances and land required as the board shall deem necessary for carrying on the educational, research or public service programs or discharging the statutory responsibilities of the University of Louisville and various divisions under the jurisdiction of its Board of Trustees, or for the management, operation, or servicing of the University of Louisville.]

[Section 2. The president, on behalf of the Board of Trustees of the University of Louisville, may acquire real or personal property, by purchase, lease, sublease, condemnation, trade or exchange, gift, devise, or otherwise, and improve such property whenever in the judgment of the Board of Trustees it shall be necessary. The title to any real estate acquired under this section shall vest in the Commonwealth of Kentucky for the use and benefit of the University of Louisville.]

ROBERT BENSON, Chairman
APPROVED BY AGENCY: December 13, 1991
FILED WITH LRC: December 13, 1991 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Thursday, January 23, 1992 at 3 p.m. at Grawemeyer Hall, University of Louisville Belknap Campus, in the Jefferson Room. Individuals interested in being heard at this hearing shall notify the University of Louisville in writing by January 17, 1992, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written

notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Thomas H. Lyons, University Counsel, 206 Grawemeyer Hall, University of Louisville, Louisville, Kentucky 40292.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Thomas H. Lyons
(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: None
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None (no tax or fee impact).
(4) Assessment of alternative methods; reasons why alternatives were rejected: Only alternative available according to statute.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None, proposed amendment made for the sole purpose of complying with the existing statute by eliminating duplication of the wording of existing statutes.
(a) Necessity of proposed regulation if in conflict: N/A
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A
(6) Any additional information or comments: This proposed amendment essentially replaces the existing regulation for the purpose of complying with the 1988 version of KRS 13A.120(1)(e), which requires that no administrative body repeat statutory language. The proposed amendment was made at the request of the Interim Joint Committee on Education, based on their quadrennial review.
TIERING: Was tiering applied? Tiering was not applied since this amendment only simplifies the language of the existing regulation by deleting repetition of statutory language, and does not change it in any substantial way.

UNIVERSITY OF LOUISVILLE
Board of Trustees
(Proposed Amendment)

740 KAR 1:090. Fund for excellence [Procedures and limitations of KRS 45.750 through 45.800 apply; projects limited to scope authorized by General Assembly].

RELATES TO: KRS 164A.410, 164A.620 [164A.600]
STATUTORY AUTHORITY: KRS 164A.560
NECESSITY AND FUNCTION: [KRS 164A.560 permits] The governing boards of public institutions of higher education may [to] elect to perform financial management functions of [per] KRS 164A.555 to 164A.630 by issuing regulations to do so. This regulation implements the provision[s] of KRS 164A.620 [164A.600] at the University of Louisville.

Section 1. The University of Louisville Board of Trustees, under the provisions of KRS 164A.560, elects and authorizes the establishment of a fund for excellence under the conditions and for the purpose as set forth in KRS 164A.620. [The procedures and limitations related to capital construction and equipment purchases set forth in KRS 45.750 through 45.800 shall apply to the University of Louisville. There is established a contingency fund and an emergency repair, maintenance and replacement fund in the University of Louisville plant fund records. Transfer and use of these funds shall be governed by the provisions of KRS 45.770 and 45.780, as appropriate, except that the president, on behalf of the Board of Trustees of the University of Louisville, shall perform the functions assigned to the Finance and Administration Cabinet in KRS 45.770 and 45.780.]

[Section 2. Capital construction and equipment purchase projects established by the Board of Trustees of the University of Louisville shall be limited to the scope authorized by the General Assembly, and the total costs of each project shall not exceed the appropriation; except for emergency projects that may arise. In such instances, the president, on behalf of the Board of Trustees, may transfer funds from other projects or from operating funds; however, each emergency project that is authorized by the president on behalf of the Board of Trustees and sources of funds shall be promptly reported to the Capital Construction and Equipment Purchase Oversight Committee.]

ROBERT BENSON, Chairman
APPROVED BY AGENCY: December 13, 1991
FILED WITH LRC: December 13, 1991 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Thursday, January 23, 1992 at 3 p.m. at Grawemeyer Hall, University of Louisville Belknap Campus, in the Jefferson Room. Individuals interested in being heard at this hearing shall notify the University of Louisville in writing by January 17, 1992, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Thomas H. Lyons, University Counsel, 206 Grawemeyer Hall, University of Louisville, Louisville, Kentucky 40292.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Thomas H. Lyons
(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: None
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None (no tax or fee impact).
(4) Assessment of alternative methods; reasons why alternatives were rejected: Only alternative available according to statute.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None, proposed amendment made for the sole purpose of complying with the existing statute by eliminating duplication of the wording of existing statutes.
(a) Necessity of proposed regulation if in conflict: N/A
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A
(6) Any additional information or comments: This proposed amendment essentially replaces the existing regulation for the purpose of complying with the 1988 version of KRS 13A.120(1)(e), which requires that no administrative body repeat statutory language. The proposed amendment was made at the request of the Interim Joint Committee on Education, based on their quadrennial review.
TIERING: Was tiering applied? Tiering was not applied since this amendment only simplifies the language of the existing regulation by deleting repetition of statutory language, and does not change it in any substantial way.

UNIVERSITY OF LOUISVILLE
Board of Trustees
(Proposed Amendment)

740 KAR 1:100. Issuance of bonds.

RELATES TO: KRS 164A.605
STATUTORY AUTHORITY: KRS 164A.560
NECESSITY AND FUNCTION: KRS 164A.560 permits the governing boards of public institutions of higher education to elect to perform financial management functions per KRS 164A.555 to 164A.630 by issuing regulations to do so. This regulation implements the provisions of KRS 164A.605 at the University of Louisville.

Section 1. The University of Louisville Board of Trustees, under the provisions of KRS 164A.560, elects the authority to issue bonds subject to the conditions as set forth in KRS 164A.605. [Subject to the provisions of KRS 45.750 to 45.800 and KRS 56.870 to 56.874, the Board of Trustees of the University of Louisville may issue, under the provisions of KRS 162.340 to 162.380, consolidated educational building revenue bonds, housing bonds, or bond anticipation notes. The president, on behalf of the Board of Trustees of the University of Louisville, shall submit to the State Property and Buildings Commission a request for approval of the project before any financial commitment of any sort may be made in connection therewith, including employment of architects, engineers, fiscal agents or attorneys. Personal service contracts for fiscal agents and bond counsel shall be subject to KRS 45.700 to 45.720 and architects and engineers shall be selected as provided in 740 KAR 1:030. After approval by the commission, the Board of Trustees of the University of Louisville, upon recommendation of the president, shall appoint fiscal agents,.bond counsel, architects and engineers as may be required to make plans and specifications or financial arrangements for the project. The date of sale on such issues shall be coordinated with the Finance and Administration Cabinet to avoid a conflict with other state bond issues.]

ROBERT BENSON, Chairman
APPROVED BY AGENCY: December 13, 1991
FILED WITH LRC: December 13, 1991 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Thursday, January 23, 1992 at 3 p.m. at Grawemeyer Hall, University of Louisville Belknap Campus, in the Jefferson Room. Individuals interested in being heard at this hearing shall notify the University of Louisville in writing by January 17, 1992, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Thomas H. Lyons, University Counsel, 206 Grawemeyer Hall, University of Louisville, Louisville, Kentucky 40292.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Thomas H. Lyons
(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: None
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None (no tax or fee impact).
(4) Assessment of alternative methods; reasons why alternatives were rejected: Only alternative available according to statute.
(5) Identify any statute, administrative

regulation or government policy which may be in conflict, overlapping, or duplication: None, proposed amendment made for the sole purpose of complying with the existing statute by eliminating duplication of the wording of existing statutes.

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(6) Any additional information or comments: This proposed amendment essentially replaces the existing regulation for the purpose of complying with the 1988 version of KRS 13A.120(1)(e), which requires that no administrative body repeat statutory language. The proposed amendment was made at the request of the Interim Joint Committee on Education, based on their quadrennial review.

TIERING: Was tiering applied? Tiering was not applied since this amendment only simplifies the language of the existing regulation by deleting repetition of statutory language, and does not change it in any substantial way.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance
(Proposed Amendment)

806 KAR 17:066. Medicare supplement insurance policies.

RELATES TO: KRS 304.12-020, 304.14-500 to 304.14-550, 304.17-305, 304.17-318, 304.18-036, 304.18-095, 304.18-110, 304.32-157, 304.32-165, 304.32-270, 304.38-193, 304.38-196, 304.38-200

STATUTORY AUTHORITY: KRS 304.2-110, 304.14.510, 304.32-250, 304.38-150

NECESSITY AND FUNCTION: KRS 304.2-110 provides that the Commissioner of Insurance may make reasonable regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.14-510 provides that the Commissioner of Insurance may make reasonable regulations establishing minimum standards for Medicare supplement insurance policies. KRS 304.32-250 provides that the Commissioner of Insurance may make reasonable regulations which he deems necessary for the proper administration of KRS 304.32. KRS 304.38-150 provides that the Commissioner of Insurance may make reasonable regulations which he deems necessary for the proper administration of KRS Chapter 304.38. This regulation establishes minimum standards for Medicare supplement insurance policies.

Section 1. Definitions. For the purposes of this regulation:

(1) "Applicant" means:

(a) In the case of an individual Medicare supplement policy, the person who seeks to contract for insurance benefits; and

(b) In the case of a group Medicare supplement policy, the proposed certificate holder.

(2) "Certificate" means any certificate delivered to or issued under a group Medicare supplement policy[, which certificate has been delivered or issued for delivery in this state].

(3) "Certificate form" means the form on which the certificate is delivered or issued for delivery by the insurer.

(4) [(3)] "Commissioner" means the Commissioner of the Kentucky Department of Insurance.

(5) [(4)] "Insurance policy" means an insurance policy, a subscriber contract issued by a nonprofit hospital, medical-surgical, dental, and health service corporation, and an enrollee contract issued by a health maintenance organization.

(6) "Issuer" includes insurance companies, fraternal benefit societies, health care service plans, health maintenance organizations, and any other entity delivery or issuing for delivery in this state Medicare supplement polices or certificates.

(7) "Medicare" means the "Health Insurance for the Aged Act," "Title XVIII of the Social Security Amendments of 1965," as then constituted or later amended.

(8) [(5)] "Medicare supplement policy" means a group or individual policy of insurance, a subscriber contract issued by a nonprofit hospital, medical-surgical, dental, and health service corporation, or an enrollee contract issued by a health maintenance organization, other than as policy issued pursuant to a contract under Section 1876 or Section 1833 of the federal Social Security Act (42 USC Section 1395 et.seq.) or an issued policy under a demonstration project authorized pursuant to amendments to the federal Social Security Act, which is advertised, marketed, or designed primarily as a supplement to reimbursements under Medicare for the hospital, medical, or surgical expenses of persons eligible for Medicare by reason of age.

(9) "Policy form" means the form on which the policy is delivered or issued for delivery by the issuer.

Section 2. Purpose, Applicability, and Scope. (1) The purpose of this regulation is to provide for the reasonable standardization of coverages and simplification of terms and benefits of Medicare supplement policies, to facilitate public understanding and comparison of such policies, to eliminate provisions contained in such policies which may be misleading or confusing in connection with the purchase of such policies or in connection with the settlement of claims, and to provide for full disclosure in the sale of health insurance coverages to persons eligible for Medicare by reason of age.

(2) Except as otherwise specifically provided in Sections 11 and 12 [8 and 9] of this regulation, this regulation shall apply to:

(a) All Medicare supplement policies delivered or issued for delivery in this state on or after the effective date of this regulation; and

(b) All certificates issued under group Medicare supplement policies, which certificates have been delivered or issued for delivery in this state.

(3) This regulation shall not apply to a policy or contract of one (1) or more employers or labor organizations, or of the trustees of a fund established by one (1) or more employers or labor organizations, or combination thereof, for employees or former employees, or a combination thereof, or for members or former members, or a combination thereof, of the labor organizations.

Section 3. Policy Definitions and Terms. No [insurance] policy or certificate shall be advertised, solicited, or issued for delivery in

Kentucky as a Medicare supplement policy or certificate unless the policy or certificate contains [subject to this regulation shall contain] terms or definitions which [do not] conform to those in this section.

(1) "Accident," "accidental injury," or "accidental means" shall be defined to employ "result" language and shall not include words which establish an accidental means test or use words such as "external, violent, visible wounds" or similar words of description or characterization.

(a) The definition shall not be more restrictive than the following: "injury or injuries for which benefits are provided means accidental bodily injury sustained by the injured person which is a direct result of an accident, independent of disease or bodily infirmity or any other cause, and occurs while insurance coverage is in force."

(b) Such definition may provide that injury shall not include injuries for which benefits are provided or available under any workers' compensation, employer's liability, or similar law, or motor vehicle no-fault insurance plan, unless such a definition is prohibited by law.

(2) "Benefit period," or "Medicare benefit period," shall not be defined as more restrictive than as that defined in the Medicare program.

(3) "Convalescent nursing home," "extended care facility," or "skilled nursing facility" shall not be defined more restrictively than as defined in the Medicare program. [in relation to its status, facilities, and available resources.]

[(a) A definition of such home or facility shall not be more restrictive than one requiring that it:]

[1. Be operated pursuant to law;]

[2. Be approved for payment of Medicare benefits or be qualified to receive such approval, if so requested;]

[3. Be primarily engaged in providing, in addition to room and board accommodations, skilled nursing care under the supervision of a duly licensed physician;]

[4. Provide continuous twenty-four (24) hours a day nursing service by or under the supervision of a registered graduate professional nurse (R.N.); and]

[5. Maintain a daily medical record of each patient.]

[(b) The definition of such home or facility may provide that such term not be inclusive of:]

[1. Any home, facility, or part thereof used primarily for rest;]

[2. A home or facility for the aged or for the care of drug addicts or alcoholics; or]

[3. A home or facility used primarily for the care and treatment of mental diseases or disorders, or custodial or educational care.]

(4) "Health care expenses" means expenses of health maintenance organizations associated with the delivery of health care services, which expenses are analogous to incurred losses of insurers.

(a) These [Such] expenses shall not include:

1. [(a)] Home office and overhead costs;

2. [(b)] Advertising costs;

3. [(c)] Commissions and other costs of acquiring insurance business;

4. [(d)] Taxes;

5. [(e)] Capital costs;

6. [(f)] Administrative costs; and [or]

7. [(g)] Claims processing costs.

(5) "Hospital" may be defined in relation to its status, facilities, and available services or to reflect its accreditation by the Joint Commission on Accreditation of Hospitals, but shall not be defined more restrictively than as defined in the Medicare program.

[(a) The definition of the term "hospital" shall not be more restrictive than one requiring that the hospital:]

[1. Be an institution operated pursuant to law;]

[2. Be primarily and continuously engaged in providing or operating, either on its premises or in facilities available to the hospital on a prearranged basis and under the supervision of a staff of duly licensed physicians, medical, diagnostic, and major surgical facilities for the medical care and treatment of sick or injured persons on an inpatient basis for which charges made; and]

[3. Provide twenty-four (24) hour nursing service by or under the supervision of registered graduate professional nurses (R.N.s).]

[(b) The definition of the term "hospital" may state that such term shall not include:]

[1. Convalescent homes, convalescent, rest, or nursing facilities;]

[2. Facilities primarily affording custodial, educational, or rehabilitory care;]

[3. Facilities for the aged, drug addicts, or alcoholics; or]

[4. Any military or veterans hospital or soldiers home or any hospital contracted for or operated by any national government or agency thereof for the treatment of members or ex-members of the armed forces, except for services rendered on an emergency basis where a legal liability exists for charges made to the individual for such services.]

(6) "Medicare" shall be defined in the policy and certificate. Medicare may be substantially defined as "the Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965 as then constituted or later amended," or Title I, Part I of P.L. 89-97, as enacted by the 89th Congress of the United States of America and properly known as the Health Insurance for the Aged Act, as then constituted and any later amendments or substitutes thereof, or words of similar import.

(7) "Medicare eligible expenses" shall mean [health care] expenses of the kinds covered by Medicare, to the extent recognized as reasonable and medically necessary by Medicare. [Payment of benefits by insurers for Medicare eligible expenses may be conditioned upon the same or less restrictive payment conditions, including determinations of medical necessity as are applicable to Medicare claims.]

[(8) "Mental or nervous disorders" shall not be defined more restrictively than a definition including neurosis, psychoneurosis, psychopathy, psychosis, or mental or emotional disease or disorder of any kind.]

[(9) "Nurses" may be defined so that the description of nurse is restricted to a type of nurse, such as a registered graduate professional nurse (R.N.), a licensed practical nurse (L.P.N.), or a licensed vocational nurse (L.V.N.). If the words "nurse," "trained nurse," or "registered nurse," are used without specific instruction, then the use of such terms requires the insurer to recognize the services of any individual who qualified under such terminology in accordance with the statutes and regulations

administered by the Kentucky Board of Nursing.]

(8) [(10)] "Physician" shall not [may] be defined more restrictively than as defined in the Medicare program. [by including the words such as "duly qualified physician" or "duly licensed physician." The use of such terms requires an insurer to recognize and to accept, to the extent of its obligations under the contract, all providers of medial care and treatment when such services are within the scope of the provider's licensed authority and are provided pursuant to applicable laws.]

(9) [(11)] "Sickness" shall not be defined to be more restrictive than the following: "sickness means illness [sickness] or disease of an insured person which first manifests itself after the effective date of insurance and while the insurance is in force." The definition may be further modified to exclude sicknesses or diseases for which benefits are provided under any workers' compensation, occupational disease, or employer's liability, or similar law.

Section 4. [Prohibited] Policy Provisions. (1) Except for permitted preexisting condition clauses as described in Sections 5(1)(a) and 6(1)(a) of this regulation, no policy or certificate may be advertised, solicited or issued for delivery in this state as a Medicare supplement policy if such policy or certificate contains limitations or exclusions on coverage that are more restrictive than those of Medicare.

(2) [(1)] A Medicare supplement policy shall not contain a probationary or elimination period.

[(2) No insurance policy may be advertised, solicited, or issued for delivery in this state as a Medicare supplement policy if such policy limits or excludes coverage by type of illness, or accident, treatment, or medical condition, except as follows:]

[(a) Foot care in connection with corns, calluses, flat feet, fallen arches, weak feet, chronic foot strain, or symptomatic complaints of the feet;]

[(b) Mental or emotional disorders, alcoholism and drug addiction, unless coverage for such conditions is purchased as an option;]

[(c) Illness, treatment, or medical condition arising out of:]

[1. War or act of war (whether declared or undeclared); participation in a felony, riot, or insurrection; service in the armed forces or units auxiliary thereto;]

[2. Suicide (sane or insane), attempted suicide, or intentionally self-inflicted injury; or]

[3. Aviation.]

[(d) Cosmetic surgery, except that cosmetic surgery shall not include reconstructive surgery when such service is incidental to or follows surgery resulting from trauma, infection, or other diseases of the involved body part;]

[(e) Care in connection with the detection and correction of manual or mechanical means of structural imbalance, distortion, or subluxation in the human body for purposes of removing nerve interference and the effect thereof, or such interference is the result of or related to distortion, misalignment, or subluxation of or in the vertebral column, except that such coverage must be provided to the extent required by law;]

[(f) Treatment provided in a governmental hospital; benefits provided under Medicare or other governmental program (except Medicaid), any state or federal workers' compensation, employer's liability for occupational disease, or any motor vehicle no-fault insurance law (except where prohibited by law); services rendered by employees of hospitals, laboratories, or other institutions; services performed by a member of the covered person's immediate family and services for which no charge is normally made in the absence of insurance;]

[(g) Dental care or treatment;]

[(h) Eye glasses, hearing aids, and examination for the prescription or fitting thereof;]

[(i) Rest cures, custodial care, transportation, and routine physical examinations; or]

[(j) Territorial limitations outside the United States.]

[However, Medicare supplement policies shall not contain, when issued, limitations or exclusions of the type enumerated in paragraphs (a), (e), (i), or (j) of this subsection that are more restrictive than those of Medicare. Medicare supplement policies may exclude coverage for any expense to the extent of any benefit available to the insured under Medicare.]

(3) A [No] Medicare supplement policy or certificate shall not [may] use waivers to exclude, limit, or reduce coverage or benefits for specifically named or described preexisting diseases or physical conditions.

[(4) The terms "Medicare supplement," "medigap," and words of similar import shall not be used unless the policy is issued in compliance with KRS 304.14-500 to 304.14-550 and this regulation.]

(4) [(5)] No Medicare supplement insurance policy in force in this state shall contain benefits which duplicate benefits provided by Medicare.

[Section 5. Benefit Conversion Requirements. (1) Effective January 1, 1990, no Medicare supplement insurance policy, contract, or certificate in force in Kentucky shall contain benefits which duplicate benefits provided by Medicare.]

[(2) Benefits eliminated by operation of the Medicare Catastrophic Coverage Act of 1988 transition provisions shall be restored.]

[(3) For Medicare supplement policies subject to the minimum standards adopted by the states pursuant to the Medicare Catastrophic Coverage Act of 1988, the minimum benefits shall be:]

[(a) Coverage of Part A Medicare eligible expenses for hospitalization to the extent not covered by Medicare from the 61st day through the 90th day in any Medicare benefit period.]

[(b) Coverage for either all or none of the Medicare Part A inpatient deductible amount.]

[(c) Coverage of Part A Medicare eligible expenses incurred as daily hospital charges during use of Medicare's lifetime hospital inpatient reserve days.]

[(d) Upon exhaustion of all Medicare hospital inpatient coverage including the lifetime reserve days, coverage is ninety (90) percent of all Medicare Part A eligible expenses for hospitalization not covered by Medicare subject to a lifetime maximum benefit of an additional 365 days.]

[(e) Coverage under Medicare Part A for the reasonable cost of the first three (3) pints of blood (or equivalent quantities of packed red

blood cells, as defined under federal regulations) unless replaced in accordance with federal regulations or already paid for under Part B.]

[(f) Coverage for the coinsurance amount of Medicare eligible expenses under Part B regardless of hospital confinement, subject to a maximum calendar year out of pocket amount equal to Medicare Part B deductible.]

[(g) Effective January 1, 1990, coverage under Medicare Part B for the reasonable cost of the first three (3) pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations), unless replaced in accordance with federal regulations or already paid for under Part A, subject to the Medicare deductible amount.]

Section 5. [6.] Minimum Benefit Standards. (1) A [An insurance] policy or certificate shall not be advertised, solicited, or issued for delivery in Kentucky as a Medicare supplement policy or certificate if it does not meet or exceed the following minimum standards. These are minimum standards and do not preclude the inclusion of other provisions or benefits which are consistent with these standards. This section applies to Medicare supplement policies issued prior to January 1, 1992.

(2) [(1)] General standards. The following standards apply to Medicare supplement policies and certificates and are in addition to all other requirements of this regulation.

(a) A Medicare supplement policy or certificate shall not exclude or limit benefits [deny a claim] for losses incurred more than six (6) months from the effective date of coverage because it involved [for] a preexisting condition. The policy or certificate shall not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six (6) months before the effective date of coverage.

(b) A Medicare supplement policy or certificate shall not indemnify against losses resulting from sickness on a different basis than losses resulting from accidents.

(c) A Medicare supplement policy or certificate shall provide that benefits designed to cover cost sharing amounts under Medicare will be changed automatically to coincide with any changes in the applicable Medicare deductible amount and copayment percentage factors. Premiums may be modified to correspond with these [such] changes.

(d) A "noncancellable," "guaranteed renewable," or "noncancellable and guaranteed renewable" Medicare supplement policy shall not:

1. Provide for termination of coverage of a spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than nonpayment of premium; or

2. Be cancelled or nonrenewed by the insurer solely on the grounds of deterioration of health.

(e)1. Except as authorized by the commissioner, an issuer [insurer] shall neither cancel nor nonrenew a Medicare supplement policy or certificate for any reason other than nonpayment of premium or material misrepresentation.

2. If a group Medicare supplement insurance policy is terminated by the group policyholder and not replaced as provided in subparagraph 4 of this paragraph, the issuer [insurer] shall offer certificate holders an individual Medicare supplement policy. The issuer [insurer] shall offer the certificate holder at least the following choices:

a. An individual Medicare supplement policy currently offered by the issuer having comparable benefits to those contained in the terminated group Medicare supplement policy [which provides for continuation of the benefits contained in the group policy]; and

b. An individual Medicare supplement policy which provides only such benefits as are required to meet the minimum standards as defined in Section 6(2) of this regulation.

3. If membership in the group is terminated, the insurer shall:

a. Offer the certificate holder the conversion opportunities described in subparagraph 2 of this paragraph; or

b. Offer the certificate holder continuation of coverage under the group policy.

4. If a group Medicare supplement policy is replaced by another group Medicare supplement policy purchased by the same policyholder, the succeeding insurer shall offer coverage to all persons covered under the old group policy on its date of termination. Coverage under the new group policy shall not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced.

(f) Termination of a Medicare supplement policy or certificate shall be without prejudice to any continuous loss which commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be predicated upon continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or to payment of the maximum benefits.

(2) Minimum benefit standards.

(a) Coverage of Part A Medicare eligible expenses for hospitalization to the extent not covered by Medicare from the 61st day through the 90th day in any Medicare benefit period;

(b) Coverage for either all or none of Medicare Part A inpatient hospital deductible amount;

(c) Coverage of Part A Medicare eligible expenses incurred as daily hospital charges during use of Medicare's lifetime hospital inpatient reserve days;

(d) Upon exhaustion of all Medicare hospital inpatient coverage including the lifetime reserve days, coverage of ninety (90) percent of all Medicare Part A eligible expenses for hospitalization not covered by Medicare subject to a lifetime maximum benefit of an additional 365 days;

(e) Coverage under Medicare Part A for the reasonable cost of the first three (3) pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations) unless replaced in accordance with federal regulations or already paid for under Part B; and

(f) Coverage for the coinsurance amount of Medicare eligible expenses under Part B regardless of hospital confinement, subject to a maximum calendar year out of pocket amount equal to the Medicare Part B deductible maximum benefit.

(g) Effective January 1, 1990, coverage under Medicare Part B for the reasonable cost of the first three (3) pints of blood (or equivalent

quantities of packed red blood cells, as defined under federal regulations), unless replaced in accordance with federal regulations or already paid for under Part A, subject to the Medicare deductible amount.

[(4) Medicare eligible expenses. Medicare eligible expenses shall mean health care expenses of the kinds covered by Medicare, to the extent recognized as reasonable by Medicare. Payment of benefits by insurers for Medicare eligible expenses may be conditioned upon the same or less restrictive payment conditions, including determinations of medical necessity, as are applicable to Medicare claims.]

Section 6. Benefit Standards for Policies or Certificates Issued or Delivered on or after January 1, 1992. The following standards are applicable to all Medicare supplement policies or certificates delivered or issued for delivery in Kentucky on or after January 1, 1992. A policy or certificate shall not be advertised, solicited, delivered, or issued for delivery in Kentucky as a Medicare supplement policy or certificate unless it complies with these benefit standards.

(1) General standards. The following standards apply to Medicare supplement policies and certificates and are in addition to all other requirements of this regulation:

(a) A Medicare supplement policy or certificate shall not exclude or limit benefits for losses incurred more than six (6) months from the effective date of coverage because it involved a preexisting condition. The policy or certificate shall not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six (6) months before the effective date of coverage.

(b) A Medicare supplement policy or certificate shall not indemnify against losses resulting from sickness on a different basis than losses resulting from accidents, and shall not contain a probationary or elimination period.

(c) A Medicare supplement policy or certificate shall provide that benefits designed to cover cost-sharing amounts under Medicare shall be changed automatically to coincide with any changes in the applicable Medicare deductible amount and copayment percentage factors. Premiums may be modified to correspond with such changes.

(d) A Medicare supplement policy or certificate shall not provide for termination of coverage of a spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than the nonpayment of premium.

(e) Each Medicare supplement policy shall be guaranteed renewable; and

1. The issuer shall not cancel or nonrenew the policy solely on the ground of health status of the individual; and

2. The issuer shall not cancel or nonrenew the policy for any reason other than nonpayment of premium or material misrepresentation.

3. If the Medicare supplement policy is terminated by the group policyholder and is not replaced as provided under subparagraph 5 of this paragraph, the issuer shall offer certificateholders an individual Medicare supplement policy which (at the option of the certificateholder):

a. Provides for continuation of the benefits contained in the group policy; or

b. Provides for benefits which otherwise meet the requirements of this subsection.

4. If an individual is a certificate holder in a group Medicare supplement policy and the individual terminates membership in the group, the issuer shall offer continuation and conversion coverages in accordance with KRS 304.18-110 and subparagraph 3 of this paragraph.

5. If a group Medicare supplement policy is replaced by another group Medicare supplement policy purchased by the same policyholder, the succeeding issuer shall offer coverage to all persons covered under the old group policy on its date of termination. Coverage under the new policy shall not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced.

(f) Termination of a Medicare supplement policy or certificate shall be without prejudice or any continuous loss which commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be conditioned upon the continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or payment of the maximum benefits.

(g)1. A Medicare supplement policy or certificate shall provide that benefits and premiums under the policy or certificate shall be suspended at the request of the policyholder or certificateholder for the period (not to exceed twenty-four (24) months) in which the policyholder or certificateholder has applied for and is determined to be entitled to medical assistance under Title XIX of the Social Security Act, but only if the policyholder or certificateholder notifies the issuer of such policy or certificate within ninety (90) days after the date the individual becomes entitled to such assistance. Upon receipt of timely notice, the issuer shall return to the policyholder or certificateholder that portion of the premium attributable to the period of Medicaid eligibility, subject to adjustment for paid claims.

2. If the suspension occurs and if the policyholder or certificateholder loses entitlement to medical assistance, the policy or certificate shall be automatically reinstituted (effective as of the date of termination of the entitlement to medical assistance) as of the termination of the entitlement if the policyholder or certicateholder provides notice of loss of the entitlement within ninety (90) days after the date of the loss and pays the premium attributable to the period, effective as of the date of termination of the entitlement.

3. Reinstitution of coverages:

(i) Shall not provide for any waiting period with respect to treatment of preexisting conditions;

(ii) Shall provide for coverage which is substantially equivalent to coverage in effect before the date of suspension; and

(iii) Shall provide for classification of premiums on terms at least as favorable to the policyholder or certificateholder as the premium classification terms that would have applied to the policyholder or certificateholder had the coverage not been suspended.

(2) Standards for basic ("core") benefits common to all benefit plans. Every issuer shall

make available a policy or certificate including only the following basic "core" package of benefits to each prospective insured. An issuer may make available to prospective insureds any of the other Medicare supplement insurance benefit plans in addition to the basic "core" package, but not in lieu thereof.

(a) Coverage of Part A Medicare eligible expenses for hospitalization to the extent not covered by Medicare from the 61st day through the 90th day in any Medicare benefit period;

(b) Coverage of Part A Medicare eligible expenses incurred for hospitalization to the extent not covered by Medicare for each Medicare lifetime inpatient reserve day used;

(c) Upon exhaustion of the Medicare hospital inpatient coverage including the lifetime reserve days, coverage of the Medicare Part A eligible expenses for hospitalization paid at the diagnostic related group (DRG) day outlier per diem or other appropriate standard of payment, subject to a lifetime maximum benefit of an additional 365 days;

(d) Coverage under Medicare Parts A and B for the reasonable cost of the first three (3) pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations) unless replaced in accordance with federal regulations; and

(e) Coverage for the coinsurance amount of Medicare eligible expenses under Part B regardless of hospital confinement, subject to the Medicare Part B deductible.

(3) Standards for additional benefits. The following additional benefits shall be included in Medicare supplement benefit Plans "B" through "J" only as provided by Section 7 of this regulation.

(a) Medicare Part A deductible: coverage for all of the Medicare Part A inpatient hospital deductible amount per benefit period;

(b) Skilled nursing facility care: coverage for the actual billed charges up to the coinsurance amount from the 21st day through the 100th day in a Medicare benefit period for posthospital skilled nursing facility care eligible under Medicare Part A;

(c) Medicare Part B deductible: coverage for all of the Medicare Part B deductible amount per calendar year regardless of hospital confinement;

(d) Eighty (80) percent of the Medicare Part B excess charges: coverage for eighty (80) percent of the difference between the actual Medicare Part B charges as billed, not to exceed any charge limitation established by the Medicare program or state law, and the Medicare-approved Part B charge;

(e) 100 percent of the Medicare Part B excess charges: coverage for all of the difference between the actual Medicare Part B charge as billed, not to exceed any charge limitation established by the Medicare program or state law, and the Medicare-approved Part B charge;

(f) Basic outpatient prescription drug benefit: coverage for fifty (50) percent of outpatient prescription drug charges, after a $250 calendar year deductible, to a maximum of $1,250 in benefits received by the insured per calendar year, to the extent not covered by Medicare.

(g) Extended outpatient prescription drug benefit: coverage for fifty (50) percent of outpatient prescription drug charges, after a $250 calendar year deductible to a maximum of $3,000 in benefits received by the insured per calendar year, to the extent not covered by Medicare.

(h) Medically necessary emergency care in a foreign country: coverage to the extent not covered by Medicare for eighty (80) percent of the billed charges for Medicare-eligible expenses for medically necessary emergency hospital, physician and medical care received in a foreign country, which care would have been covered by Medicare if provided in the United States and which care began during the first sixty (60) consecutive days of each trip outside the United States, subject to a calendar year deductible of $250, and a lifetime maximum benefit of $50,000. For purposes of this benefit, "emergency care" shall mean care needed immediately because of an injury or an illness of sudden and unexpected onset.

(i) Preventive medical care benefit: coverage for the following preventive health services:

1. An annual clinical preventive medical history and physical examination that may include tests and services from subparagraph 2 of this paragraph and patient education to address preventive health care measures.

2. Any one (1) or a combination of the following preventive screening tests or preventive services, the frequency of which is considered medically appropriate:

a. Fecal occult blood test and/or digital rectal examination;

b. Mammogram;

c. Dipstick urinalysis for hematuria, bacteriuria and proteinauria;

d. Pure tone (air only) hearing screening test, administered or ordered by a physician;

e. Serum cholesterol screening (every five (5) years);

f. Thyroid function test; or

g. Diabetes screening.

3. Influenza vaccine administered at any appropriate time during the year and tetanus and diptheria booster (every ten (10) years).

4. Any other tests or preventive measure determined appropriate by the attending physician.

Reimbursement shall be for the actual charges up to 100 percent of the Medicare-approved amount for each service, as if Medicare were to cover the service as identified in American Medical Association Current Procedural Terminology (AMA CPT) codes, to a maximum of $120 annually under this benefit. This benefit shall not include payment for any procedure covered by Medicare.

(j) At-home recovery benefit: coverage for services to provide short-term, at-home assistance with activities of daily living for those recovering from an illness, injury, or surgery.

1. For purposes of this benefit, the following definitions shall apply:

a. "Activities of daily living" include, but are not limited to bathing, dressing, personal hygiene, transferring, eating, ambulating, assistance with drugs that are normally self-administered, and changing bandages or other dressings.

b. "Care provider" means a duly qualified or licensed home health aide/homemaker, personal care aide or nurse provided through a licensed home health care agency or referred by a licensed referral agency or licensed nurses registry.

c. "Home" shall mean any place used by the

insured as a place of residence, provided that such place would qualify as a residence for home health care services covered by Medicare. A hospital or skilled nursing facility shall not be considered the insured's place of residence.

d. "At-home recovery visit" means the period of a visit required to provide at-home recovery care, without limit on the duration of the visit, except each consecutive four (4) hours in a twenty-four (24) hour period of services provided by a care provider is one (1) visit.

2. Coverage requirements and limitations:

a. At-home recovery services provided must be primarily services which assist in activities of daily living.

b. The insured's attending physician must certify that the specific type and frequency of at-home recovery services are necessary because of a condition for which a home care plan of treatment was approved by Medicare.

c. Coverage is limited to:

(i) No more than the number and type of at-home recovery visits certified as necessary by the insured's attending physician. The total number of at-home recovery visits shall not exceed the number of Medicare-approved home health care visits under a Medicare-approved home care plan of treatment.

(ii) The actual charges for each visit up to a maximum reimbursement of forty (40) dollars per visit.

(iii) $1,600 per calendar year.

(iv) Seven (7) visits in any one (1) week.

(v) Care furnished on a visiting basis in the insured's home.

(vi) Services provided by a care provider as defined in this section.

(vii) At-home recovery visits while the insured is covered under the policy or certificate and not otherwise excluded.

(viii) At-home recovery visits received during the period the insured is receiving Medicare-approved home care services or no more than eight (8) weeks after the service date of the last Medicare-approved home health care visit.

3. Coverage is excluded for:

a. Home care visits paid for by Medicare or other government programs; and

b. Care provided by family members, unpaid volunteers, or providers who are not care providers.

(k) New or innovative benefits: an issuer may, with the prior approval of the commissioner, offer polices or certificates with new or innovative benefits in addition to the benefits provided in a policy or certificate that otherwise complies with the applicable standards. New or innovative benefits may include benefits that are appropriate to Medicare supplement insurance, new or innovative, not otherwise available, cost-effective, and offered in a manner which is consistent with the goal of a simplification of Medicare supplement policies.

Section 7. Standard Medicare Supplement Benefit Plans. (1) An issuer shall make available to each prospective policyholder and certificateholder a policy form or certificate form containing only the basic "core" benefits, as defined in Section 6(2) of this regulation.

(2) Groups, packages, or combinations of Medicare supplement benefits other than those listed in this section shall not be offered for sale in this state, except as may be permitted in Sections 6(3)(k) and 8 of this regulation.

(3) Benefit plans shall be uniform in structure, language, designation, and format to the standard benefit Plans "A" through "J" listed in this subsection and conform to the definitions in Section 8 of this regulation. Each benefit shall be structured in accordance with the format provided in Section 6(2) and (3) of this regulation and list the benefits in the order shown in this subsection. For purposes of this section, "structure, language, and format" means style, arrangement and overall content of a benefit.

(4) An issuer may use, in addition to the benefit plan designations required in subsection (3) of this section, other designations to the extent permitted by law.

(5) Make-up of benefit plans:

(a) Standardized Medicare supplement benefit Plan "A" shall be limited to the basic ("core") benefits common to all benefit plans, as defined in Section 6(2) of this regulation.

(b) Standardized Medicare supplement benefit Plan "B" shall include only the following: the core benefit as defined in Section 6(2) of this regulation, plus the Medicare Part A deductible as defined in Section 6(3)(a) of this regulation.

(c) Standardized Medicare supplement benefit Plan "C" shall include only the following: the core benefit as defined in Section 6(2) of this regulation, plus the Medicare Part A deductible, skilled nursing facility care, Medicare Part B deductible, and medically necessary emergency care in a foreign country as defined in Section 6(3)(a), (b), (c), and (h) of this regulation, respectively.

(d) Standardized Medicare supplement benefit Plan "D" shall include only the following: the core benefit as defined in Section 6(2) of this regulation, plus the Medicare Part A deductible, skilled nursing facility care, medically necessary emergency care in a foreign country, and the at-home recovery benefit as defined in Section 6(3)(a), (b), (h), and (j) of this regulation, respectively.

(e) Standardized Medicare supplement benefit Plan "E" shall include only the following: the core benefit as defined in Section 6(2) of this regulation, plus the Medicare Part A deductible, skilled nursing facility care, medically necessary emergency care in a foreign country, and preventive medical care as defined in Section 6(3)(a), (b), (h), and (i) of this regulation, respectively.

(f) Standardized Medicare supplement benefit Plan "F" shall include only the following: the core benefit as defined in Section 6(2) of this regulation, plus the Medicare Part A deductible, the skilled nursing facility care, the Part B deductible, 100 percent of the Medicare Part B excess charges, and medically necessary emergency care in a foreign country as defined in Section 6(3)(a), (b), (c), (f), and (h) of this regulation, respectively.

(g) Standardized Medicare supplement benefit Plan "G" shall include only the following: the core benefit as defined in Section 6(2) of this regulation, plus the Medicare Part A deductible, skilled nursing facility care, eighty (80) percent of the Medicare Part B excess charges, medically necessary emergency care in a foreign country, and the at-home recovery benefit as defined in Section 6(3)(a), (b), (d), (h), and (j) of this regulation, respectively.

(h) Standardized Medicare supplement benefit Plan "H" shall consist of only the following: the core benefit as defined in Section 6(2) of this regulation, plus the Medicare Part A deductible, skilled nursing facility care, basic prescription drug benefit, and medically necessary emergency care in a foreign country as defined in Section 6(3)(a), (b), (f), and (h) of this regulation, respectively.

(i) Standardized Medicare supplement benefit Plan "I" shall consist of only the following: the core benefit as defined in Section 6(2) of this regulation, plus the Medicare Part A deductible, skilled nursing facility care, 100 percent of the Medicare Part B excess charges, basic prescription drug benefit, medically necessary emergency care in a foreign country, and at-home recovery benefit as defined in Section 6(3)(a), (b), (e), (f), (h), and (j) of this regulation, respectively.

(j) Standardized Medicare supplement benefit Plan "J" shall consist of only the following: the core benefit as defined in Section 6(2) of this regulation, plus the Medicare part A deductible, skilled nursing facility care, Medicare Part B deductible, 100 percent of the Medicare Part B excess charges, extended prescription drug benefit, medically necessary emergency care in a foreign country, preventive medical care, and at-home recovery benefit as defined in Section 6(3)(a), (b), (c), (e), (g), (h), (i), and (j) of this regulation, respectively.

Section 8. Medicare Select Policies and Certificates. (1)(a) This section shall apply to Medicare select policies and certificates, as defined in this section.

(b) No policy or certificate may be advertised as a Medicare select policy or certificate unless it meets the requirements of this section.

(2) For the purpose of this section:

(a) "Complaint" means any dissatisfaction expressed by an individual concerning a Medicare select issuer or its network providers.

(b) "Grievance" means dissatisfaction expressed in writing by an individual insured under a Medicare select policy or certificate with the administration, claims practices, or provision of services concerning a Medicare select issuer or its network providers.

(c) "Medicare select issuer" means an issuer offering, or seeking to offer, a Medicare select policy or certificate.

(d) "Medicare select policy" or "Medicare select certificate" means respectively a Medicare supplement policy or certificate that contains restricted network provisions.

(e) "Network provider" means a provider of health care, or a group of providers of health care, which has entered into a written agreement with the issuer to provide benefits insured under a Medicare select policy.

(f) "Restricted network provision" means any provision which conditions the payment of benefits, in whole or in part, on the use of network providers.

(g) "Service area" means the geographic area approved by the commissioner within which an issuer is authorized to offer a Medicare select policy.

(3) The commissioner may authorize an issuer to offer a Medicare select policy or certificate, pursuant to this section and Section 4358 of the Omnibus Budget Reconciliation Act (OBRA) of 1990, if the commissioner finds that the issuer has satisfied all of the requirements of this regulation.

(4) A Medicare select issuer shall not issue a Medicare select policy or certificate in this state until its plan of operation has been approved by the commissioner.

(5) A Medicare select issuer shall file a proposed plan of operation with the commissioner in a format prescribed by the commissioner. The plan of operation shall contain at least the following information:

(a) Evidence that all covered services that are subject to restricted network provisions are available and accessible through network providers, including a demonstration that:

1. Covered services can be provided by network providers with reasonable promptness with respect to geographic location, hours of operation, and after-hour care. The hours of operation and availability of after-hour care shall reflect usual practice in the local area. Geographic availability shall reflect the usual travel times within the community.

2. The number of network providers in the service area is sufficient, with respect to current and expected policyholders, either:

a. To deliver adequately all services that are subject to a restricted network provision; or

b. To make appropriate referrals.

3. There are written agreements with network providers describing specific responsibilities.

4. Emergency care is available twenty-four (24) hours per day and seven (7) days per week.

5. In the case of covered services that are subject to a restricted network provision and are provided on a prepaid basis, there are written agreements with network providers prohibiting the providers from billing or otherwise seeking reimbursement from or recourse against any individual insured under a Medicare select policy or certificate. This paragraph shall not apply to supplemental charges or coinsurance amounts as stated in the Medicare select policy or certificate.

(b) A statement or map providing a clear description of the service area.

(c) A description of the grievance procedure to be utilized.

(d) A description of the quality assurance program, including:

1. The formal organizational structure;

2. The written criteria for selection, retention and removal of network providers; and

3. The procedures for evaluating quality of care provided by network providers, and the process to initiate corrective action when warranted.

(e) A list and description, by specialty, of the network providers.

(f) Copies of the written information proposed to be used by the issuer to comply with paragraph (9) of this subsection.

(g) Any other information requested by the commissioner.

(6)(a) A Medicare select issuer shall file any proposed changes to the plan of operation, except for changes to the list of network providers, with the commissioner prior to implementing any changes. Any changes shall be considered approved by the commissioner thirty (30) days after filing unless specifically disapproved by the commissioner.

(b) An updated list of network providers shall be filed with the commissioner at least

quarterly.

(7) A Medicare select policy or certificate shall not restrict payment for covered services provided by nonnetwork providers if:

(a) The services are for symptoms requiring emergency care or are immediately required for an unforeseen illness, injury, or a condition; and

(b) It is not reasonable to obtain these services through a network provider.

(8) A Medicare select policy or certificate shall provide payment for full coverage under the policy for covered services that are not available through network providers.

(9) A Medicare select issuer shall make full and fair disclosure in writing of the provisions, restrictions, and limitations of the Medicare select policy or certificate to each applicant. This disclosure shall include at least the following:

(a) An outline of coverage sufficient to permit the applicant to compare the coverage and premiums of the Medicare select policy or certificate with:

1. Other Medicare supplement policies or certificates offered by the issuer; and

2. Other Medicare select policies or certificates.

(b) A description (including address, phone number, and hours of operation) of the network providers, including primary care physicians, specialty physicians, hospitals, and other providers.

(c) A description of the restricted network provisions, including payments for coinsurance and deductibles when providers other than network providers are utilized.

(d) A description of coverage for emergency and urgently needed care and other out-of-service area coverage.

(e) A description of limitations on referrals to restricted network providers and to other providers.

(f) A description of the policyholder's rights to purchase any other Medicare supplement policy or certificate otherwise offered by the issuer.

(g) A description of the Medicare select issuer's quality assurance program and grievance procedure.

(10) Prior to the sale of a Medicare select policy or certificate, a Medicare select issuer shall obtain from the applicant a signed and dated form stating that the applicant has received the information provided pursuant to subsection (9) of this section and that the applicant understands the restrictions of the Medicare select policy or certificate.

(11) A Medicare select issuer shall have and use procedures for hearing complaints and resolving written grievances from the subscribers. These procedures shall be aimed at mutual agreement for settlement and may include arbitration procedures.

(a) The grievance procedure shall be described in the policy and certificates and in the outline of coverage.

(b) At the time the policy or certificate is issued, the issuer shall provide detailed information to the policyholder describing how a grievance may be registered with the issuer.

(c) Grievances shall be considered in a timely manner and shall be transmitted to appropriate decision-makers who have authority to fully investigate the issue and take corrective action.

(d) If a grievance is found to be valid, corrective action shall be taken promptly.

(e) All concerned parties shall be notified about the results of a grievance.

(f) The issuer shall report no later than each March 31st to the commissioner regarding its grievance procedure. The report shall be in a format prescribed by the commissioner and shall contain the number of grievances filed in the past year and a summary of the subject, nature and resolution of such grievances.

(12) At the time of initial purchase, a Medicare select issuer shall make available to each applicant for a Medicare select policy or certificate the opportunity to purchase any Medicare supplement policy or certificate otherwise offered by the issuer.

(13)(a) At the request of an individual insured under a Medicare select policy or certificate, a Medicare select issuer shall make available to the individual insured the opportunity to purchase a Medicare supplement policy or certificate offered by the issuer which has comparable or lesser benefits and which does not contain a restricted network provision. The issuer shall make these policies or certificates available without requiring evidence of insurability after the Medicare supplement policy or certificate has been in force for six (6) months.

(b) For the purpose of this subsection, a Medicare supplement policy or certificate shall be considered to have comparable or lesser benefits unless it contains one (1) or more significant benefits not included in the Medicare select policy or certificate being replaced. For the purposes of this paragraph, a significant benefit means coverage for the Medicare Part A deductible, coverage for prescription drugs, coverage for at-home recovery services, or coverage for Part B excess charges.

(14) Medicare select policies and certificates shall provide for continuation of coverage in the event the Secretary of the United States Department of Health and Human Services determines that Medicare select policies and certificates issued pursuant to this section should be discontinued due to either the failure of the Medicare select program to be reauthorized under law or its substantial amendment.

(a) Each Medicare select issuer shall make available to each individual insured under a Medicare select policy or certificate the opportunity to purchase any Medicare supplement policy or certificate offered by the issuer which has comparable or lesser benefits and which does not contain a restricted network provision. The issuer shall make such policies and certificates available without requiring evidence of insurability.

(b) For the purposes of this subsection, a Medicare supplement policy or certificate shall be considered to have comparable or lesser benefits unless it contains one (1) or more significant benefits not included in the Medicare select policy or certificate being replaced. For the purposes of this paragraph, a significant benefit means coverage for the Medicare Part A deductible, coverage for prescription drugs, coverage for at-home recovery services, or coverage for Part B excess charges.

(15) A Medicare select issuer shall comply with reasonable requests for data made by state

or federal agencies, including the United States Department of Health and Human Services, for the purpose of evaluating the Medicare select program.

Section 9. Open Enrollment. (1) No issuer shall deny or condition the issuance or effectiveness of any Medicare supplement policy or certificate available for sale in Kentucky, nor discriminate in the pricing of a Medicare supplement policy or certificate because of the health status, claims experience, receipt of health care, or medical condition of an applicant where an application for such policy or certificate is submitted during the six (6) month period beginning with the first month in which an individual (who is sixty-five (65) years of age or older) first enrolled for benefits under Medicare Part B. Each Medicare supplement policy and certificate currently available from an insurer shall be made available to all applicants who qualify under this subsection without regard to age.

(2) Subsection (1) of this section shall not be construed as preventing the exclusion of benefits under a policy, during the first six (6) months, based on a preexisting condition for which the policyholder or certificateholder received treatment or was otherwise diagnosed during the six (6) months before it became effective.

Section 10. [7.] Standards for Claims Payment. (1) An issuer shall comply with section 1882(e)(3) of the Social Security Act (as enacted by section 4081(b)(2)(C) of the Omnibus Budget Reconciliation Act of 1987, PL No. 100-203) by:

(a) Accepting a notice from a Medicare carrier on dually assigned claims submitted by participating physicians and suppliers as a claim for benefits in place of any other claim form otherwise required and making a payment determination on the basis of the information contained in that notice;

(b) Notifying the participating physician or supplier and the beneficiary of the payment determination;

(c) Paying the participating physician or supplier directly;

(d) Furnishing, at the time of enrollment, each enrollee with a card listing the policy name, number, and a central mailing address to which notices from a Medicare carrier may be sent;

(e) Paying user fees for claim notices that are transmitted electronically or otherwise; and

(f) Providing to the Secretary of the United States Department of Health and Human Services, at least annually, a central mailing address to which all claims may be sent by Medicare carriers. [under Section 4081 of the Omnibus Budget Reconciliation Act of 1987 (PL 100-203).

(1) Every person providing Medicare supplement policies shall comply with all provisions of Section 4081 of the Omnibus Budget Reconciliation Act of 1987 (PL 100-203).]

(2) Compliance with the requirements set forth in subsection (1) of this section shall [must] be certified on the Medicare Supplement Insurance Experience Reporting Form.

Section 11. [8.] Loss Ratio Standards and Refund or Credit of Premium. (1) Loss ratio standards. A Medicare supplement policy form or certificate form shall not be delivered or issued for delivery in Kentucky unless it can be expected, as estimated [policies shall return to policyholders in the form of aggregate benefits under the policy,] for the entire period for which rates are computed to provide coverage, to return to policyholders and certificateholders in the form of aggregate benefits (not including anticipated refunds or credits) provided under the policy form or certificate form:

1. At least seventy-five (75) percent of the aggregate amount of premiums earned in the case of group policies; or

2. At least sixty-five (65) percent of the aggregate amount of premiums earned in the case of individual policies, calculated on the basis of incurred claims experience or incurred health care expenses where coverage is provided by a health maintenance organization on a service rather than reimbursement basis, and earned premiums for such period and in accordance with accepted actuarial principles and practices. [:]

[(a) At least seventy-five (75) percent of the aggregate amount of premiums earned in the case of group policies; and]

[(b) At least sixty (60) percent of the aggregate amount of premiums earned in the case of individual policies.]

[(c) All filings and rate schedules shall demonstrate that actual and expected losses in relation to premiums comply with the requirements of this section.]

(b) All filings of rates and rating schedules shall demonstrate that expected claims in relation to premiums comply with the requirements of this section when combined with actual experience to date. Filings of rate revisions shall also demonstrate that the anticipated loss ratio over the entire future period for which the revised rates are computed to provide coverage can be expected to meet the appropriate loss ratio standards.

(c) For purposes of applying subsection (1)(a) of this section and Section 3(c) of this regulation only, policies issued as a result of solicitations of individuals through the mails or by mass media advertising (including both print and broadcast advertising) shall be deemed to be individual policies.

(2) Refund or credit calculation.

(a) An issuer shall collect and file with the commissioner by May 31 of each year the data contained in the reporting form contained in Appendix A for each type in a standard Medicare supplement benefit plan.

(b) If on the basis of the experience as reported the benchmark ratio since inception (ratio 1) exceeds the adjusted experience ratio since inception (ratio 3), then a refund of credit calculation is required. The refund calculation shall be done on a statewide basis for each type in a standard Medicare supplement benefit plan. For purposes of the refund or credit calculation, experience on policies issued within the reporting year shall be excluded.

(c) A refund or credit shall be made only when the benchmark loss ratio exceeds the adjusted experience loss ratio and the amount to be refunded or credited exceeds a de minimis level. The refund shall include interest from the end of the calendar year to the date of the refund or credit at a rate specified by the Secretary of the United States Department of Health and Human Services, but shall not be less than the

average rate of interest for thirteen (13) week treasury notes. A refund or credit against premiums due shall be made by September 30 following the experience year upon which the refund or credit is based.

(3) [(2)] Annual filing of premium rates. An issuer of [Every person providing] Medicare supplement policies and certificates issued before or after January 1, 1992, in this state shall file annually its rates, rating schedule, and supporting documentation, including ratios of incurred losses to earned premiums by [number of years of] policy duration for approval by the commissioner in accordance with the filing requirements and procedures prescribed by the commissioner. The supporting documentation shall also demonstrate in accordance with actuarial standards of practice using reasonable assumptions that the appropriate loss ratio standards can be expected to be met over the entire period for which rates are computed. The demonstration shall exclude active life reserves. An expected third year loss ratio which is greater than or equal to the applicable percentage shall be demonstrated for policies or certificates in force less than three (3) years. [demonstrating that it is in compliance with the foregoing applicable loss ratio standards and that the period for which the policy is rated is reasonable in accordance with accepted actuarial principles and experience.]

[(3) For the purposes of this section, policy forms shall be deemed to comply with the loss ratio standards if:]

[(a) For the most recent year, the ratio of incurred losses to earned premiums for policies or certificates which have been in force for three (3) years or more is greater than or equal to the applicable percentages contained in this section; and]

[(b) The expected losses in relation to premiums over the entire period for which the policy is rated comply with the requirements of this section.]

[An expected third year loss ratio which is greater than or equal to the applicable percentage shall be demonstrated for policies or certificates in force less than three (3) years.]

(a) [(4)] As soon as practicable prior to the effective date of enhancements in Medicare benefits [changes], every issuer of [person providing] Medicare supplement policies or certificates in Kentucky shall file with the commissioner, in accordance with applicable filing procedures:

1. [(a)] Appropriate premium adjustments necessary to produce loss ratios as [originally] anticipated for the current premium for the applicable Medicare supplement policies or certificates. [Such] Supporting documents as necessary to justify the adjustment shall accompany the filing. An issuer [Every person providing Medicare supplement policies to residents of Kentucky] shall make [such] premium adjustments as are necessary to produce an expected loss ratio under the [such] policies and certificates as will conform to the minimum loss ratio standards for Medicare supplement policies and which are expected to result in a loss ratio at least as great as that originally anticipated in the rates used to produce current premiums by the issuer for [such] Medicare supplement policies or certificates. No premium adjustment which would modify the loss ratio experience under the policy other than the adjustments described in this subsection should be made with respect to a policy at any time other than upon its renewal date or anniversary date. If an issuer fails to make premium adjustments acceptable to the commissioner, he may order premium adjustments, refunds, or premium credit deemed necessary to achieve the loss ratios required by this section. [Premium adjustments shall be in the form of refunds or premium credits and shall be made no later than upon renewal if a credit is given, or within sixty (60) days of the renewal date or anniversary date if a refund is provided to the insured or other person paying the premium. Premium adjustments shall be calculated for the period commencing with Medicare benefit changes; and]

(b) Any appropriate riders, endorsements, or policy forms needed to accomplish the Medicare supplement policy or certificate [insurance] modifications necessary to eliminate benefit duplications with Medicare. These [Any such] riders, endorsements, or policy forms shall provide a clear description of the Medicare supplement insurance benefits provided by the Medicare supplement policy or certificate.

(4) Public hearings. The commissioner may conduct a public hearing to gather information concerning a request by an issuer for an increase in a rate for a policy form or certificate form issued before or after January 1, 1992, if the experience of the form for the previous reporting period is not in compliance with the applicable loss ratio standard. The determination of compliance is made without consideration of any refund or credit for the reporting period. Public notice of the hearing shall be furnished in accordance with KRS Chapter 304.2.

Section 12. Filing and Approval of Policies and Certificates and Premium Rates. (1) An issuer shall not deliver or issue for delivery a policy or certificate to a resident of this state unless the policy form or certificate form has been filed with and approved by the commissioner in accordance with filing requirements and procedures prescribed by the commissioner.

(2) An issuer shall not use or change premium rates for a Medicare supplement policy or certificate unless the rates, rating schedule, and supporting documentation have been filed with and approved by the commissioner in accordance with the filing requirements and procedures prescribed by the commissioner.

(3)(a) Except as provided in paragraph (b) of this subsection, an issuer shall not file for approval more than one (1) form of a policy or certificate of each type for each standard Medicare supplement benefit plan.

(b) An issuer may offer, with the approval of the commissioner, up to four (4) additional policy forms or certificate forms of the same type for the same standard Medicare supplement benefit plan, one (1) for each of the following cases:

1. The inclusion of new or innovative benefits;

2. The addition of either direct response or agent marketing methods;

3. The addition of either guaranteed issue or underwritten coverage; and

4. The offering of coverage to individuals eligible for Medicare by reason of disability.

(c) For the purposes of this section, a "type"

means an individual policy, a group policy, an individual Medicare select policy, or a group Medicare select policy.

(4)(a) Except as provided in subparagraph 1 of this paragraph, an issuer shall continue to make available for purchase any policy form or certificate form issued after January 1, 1992, that has been approved by the commissioner. A policy form or certificate form shall not be considered to be available for purchase unless the issuer has actively offered it for sale in the previous twelve (12) months.

1. An issuer may discontinue the availability of a policy form or certificate form if the issuer provides to the commissioner in writing its decision at least thirty (30) days prior to discontinuing the availability of the form of the policy or certificate. After receipt of the notice by the commissioner, the issuer shall no longer offer for sale the policy form or certificate form in this state.

2. An issuer that discontinues the availability of a policy form or certificate form pursuant to subparagraph 1 of this paragraph shall not file for approval a new policy form or certificate form of the same type for the same standard Medicare supplement benefit plan as the discontinued form for a period of five (5) years after the issuer provides notice to the commissioner of the discontinuance. The period of discontinuance may be reduced if the commissioner determines that a shorter period is appropriate.

(b) The sale or other transfer of Medicare supplement business to another issuer shall be considered a discontinuance for the purposes of this subsection.

(c) A change in the rating structure or methodology shall be considered a discontinuance under paragraph (a) of this subsection unless the issuer complies with the following requirements:

1. The issuer provides an actuarial memorandum, in a form and manner prescribed by the commissioner, describing the manner in which the revised rating methodology and resultant rates differ from the existing rating methodology and resultant rates; and

2. The issuer does not subsequently put into effect a change of rates or rating factors that would cause the percentage differential between the discontinued and subsequent rates as described in the actuarial memorandum to change. The commissioner may approve a change to the differential which is in the public interest.

(5)(a) Except as provided in paragraph (b) of this subsection, the experience of all policy forms or certificate forms of the same type in a standard Medicare supplement benefit plan shall be combined for purposes of the refund or credit calculation prescribed in Section 11 of this regulation.

(b) Forms assumed under an assumption reinsurance agreement shall not be combined with the experience of other forms for purposes of the refund or credit calculation.

[Section 9. Filing Requirements for Out-of-state Group Policies. All group Medicare supplement policies and all certificates used under such policies in this state shall not be used in this state until filed with and approved by the commissioner.]

Section 13. [10.] Permitted Compensation Arrangements. (1) An issuer [insurer] or other entity may provide commission or other compensation to an agent or other representative for the sale of a Medicare supplement policy or certificate only if the first year commission or other first year compensation is no more than 200 percent of the commission or other compensation paid for selling or servicing the policy or certificate in the second year or period.

(2) The commission or other compensation provided in subsequent (renewal) years must be the same as that provided in the second year or period and shall [must] be provided for not less than five (5) [a reasonable number of renewal] years.

(3) No issuer or other entity shall provide compensation to its agents or other producers and no agent or producer shall receive compensation greater than the renewal compensation payable by the replacing issuer [insurer] on renewal policies or certificates if an existing policy or certificate is replaced [unless benefits of the new policy or certificate are clearly and substantially greater than the benefits under the replaced policy].

(4) For purposes of this section, "compensation" includes pecuniary or nonpecuniary remuneration of any kind relating to the sale or renewal of the policy or certificate including, but not limited to, bonuses, gifts, prizes, awards, and finders' fees.

Section 14. [11.] Required Disclosure Provisions. (1) General rules.

(a) Medicare supplement policies and certificates shall include a renewal or continuation provision. The language or specifications of such provision must be consistent with the type of insurance policy issued. The [Such] provision shall be appropriately captioned and shall appear on the first page of the policy, and shall include any reservation by the issuer of the right to change premiums and any automatic renewal premium increases on the insured's age.

(b) Except for riders or endorsements by which the issuer [insurer] effectuates a request made in writing by the insured, exercises a specifically reserved right under a Medicare supplement policy, or is required to reduce or eliminate benefits to avoid duplication of Medicare benefits, all riders or endorsements added to a Medicare supplement policy after the date of issue or at reinstatement or renewal which reduce or eliminate benefits or coverage in the policy shall require a signed acceptance by the insured. After the date of policy or certificate issue, any rider or endorsement which increases benefits or coverage with a concomitant increase in premium during the policy term shall [must] be agreed to in writing signed by the insured, unless the benefits are required by the minimum standards for Medicare supplement policies, or if the increased benefits or coverage is required by law. Where a separate additional premium is charged for benefits provided in connection with riders or endorsements, such premium charge shall be set forth in the policy.

(c) [A] Medicare supplement policies or certificates shall not provide [policy which

provides] for the payment of benefits based on standards described as "usual and customary," "reasonable and customary," or words of similar import[, shall include a definition of such terms and an explanation of such terms in its accompanying outline of coverage].

(d) If a Medicare supplement policy or certificate contains any limitations with respect to preexisting conditions, these [such] limitations shall [must] appear as a separate paragraph of the policy and be labeled as "preexisting condition limitations."

(e) Medicare supplement policies and [or] certificates shall have a notice prominently printed on the first page of the policy or certificate or attached thereto stating in substance that the policyholder or certificate holder shall have the right to return the policy or certificate within at least thirty (30) days of its delivery and to have the premium refunded if, after examination of the policy or certificate, the insured is not satisfied for any reason.

(f) Issuers of [Insurers issuing] insurance policies and certificates thereunder covering accident and sickness and hospital or medical expenses on an expense incurred or indemnity basis, other than incidentally, to persons eligible for Medicare by reason of age shall provide to these [all] applicants a Medicare supplement buyer's guide in the form developed jointly by the National Association of Insurance Commissioners and the Health Care Financing Administration and in a type size no smaller than twelve (12) point type. Delivery of the buyer's guide shall be made whether or not the [such] policies or certificates are advertised, solicited, or issued as Medicare supplement policies as defined in this regulation. Delivery of the buyer's guide shall be made to the applicant at the time of application and acknowledgment of receipt of the buyer's guide shall be obtained by the insurer, except that direct response issuers [insurers] shall deliver the buyer's guide to the applicant upon request, but not later than the time the policy is delivered.

(2) Notice requirements.

(a) As soon as practicable, but no later than thirty (30) days prior to the annual effective date of any Medicare benefit changes, an issuer [every insurer providing coverage to a resident of Kentucky under a Medicare supplement policy] shall notify its insureds of modifications it has made to Medicare supplement policies or certificates. The [Such] notice shall be in a format acceptable to the commissioner. The [For the years 1989 and 1990, and if prescription drugs are covered in 1991, such notice shall be in the format prescribed in Appendices A, B, and C. In addition, such] notice shall:

1. Include a description of revisions to the Medicare program and a description of each modification made to the coverage provided under the Medicare supplement insurance policy or certificate [contract]; and

2. Inform each policyholder or certificateholder [covered person] as to when any premium adjustment is to be made due to changes in Medicare.

(b) The notice of benefit modifications and any premium adjustments shall be in outline form and in clear and simple terms so as to facilitate comprehension.

(c) The [Such] notices shall not contain or be accompanied by any solicitation.

(3) Outline of coverage requirements for Medicare supplement policies.

(a) Issuers [Insurers issuing Medicare supplement policies or certificates for delivery in this state] shall provide an outline of coverage to all applicants at the time application is presented to the applicant [made] and, except for direct response issuers [insurers], shall obtain an acknowledgment of receipt of the [such] outline from the applicant.

(b) If an outline of coverage is provided at the time of application and the Medicare supplement policy or certificate is issued on a basis which would require revision of the outline, a substitute outline of coverage properly describing the policy or certificate shall [must] accompany such policy or certificate when it is delivered and contain the following statement, in no less than twelve (12) point type immediately above the issuer's [insurer's] name:

"NOTICE: READ THIS OUTLINE OF COVERAGE CAREFULLY. IT IS NOT IDENTICAL TO THE OUTLINE OF COVERAGE PROVIDED UPON APPLICATION AND THE COVERAGE ORIGINALLY APPLIED FOR HAS NOT BEEN ISSUED."

(c) The outline of coverage provided to applicants pursuant to this subsection consists of four (4) parts: a cover page, premium information, disclosure pages, and charts displaying the features of each benefit plan offered by the issuer. The outline of coverage shall be in the language and format prescribed below in no less than twelve (12) point type. All Plans A-J shall be shown on the cover page, and the plan(s) that are offered by the issuer shall be prominently identified. Premium information for plans that are offered shall be shown on the cover page or immediately following the cover page and shall be prominently displayed. The premium and mode shall be stated for all plans that are offered to the prospective applicant. All possible premiums for the prospective applicant shall be illustrated.

(d) The following items shall be included in the outline of coverage in the order prescribed below [shall be in the form prescribed below]:

COMPILER'S NOTE: The following chart is new and being inserted in this regulation.

(COMPANY NAME)
Outline of Medicare Supplement Coverage – Cover Page:
Benefit Plan(s)___ (Insert letter(s) of plan(s) being offered)

Medicare supplement insurance can be sold in only ten standard plans. This chart shows the benefits included in each plan. Every company must make available Plan "A". Some plans may not be available in your state.

BASIC BENEFITS: Included in all plans.
Hospitalization: Part A coinsurance plus coverage for 365 additional days after Medicare benefits end.
Medical expenses: Part B coinsurance (20% of Medicare-approved expenses).
Blood: First three pints of blood each year.

A	B	C	D	E	F	G	H	I	J
Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits
		Skilled Nursing Coinsurance	Skilled Nursing Coinsurance	Skilled Nursing Coinsurance	Skilled Nursing Coinsurance	Skilled Nursing Coinsurance	Skilled Nursing Coinsurance	Skilled Nursing Coinsurance	Skilled Nursing Coinsurance
	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible
		Part B Deductible			Part B Deductible				Part B Deductible
					Part B Excess (100%)	Part B Excess (80%)		Part B Excess (100%)	Part B Excess (100%)
		Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency
			At-home Recovery			At-home Recovery		At-home Recovery	At-home Recovery
							Basic Drugs ($1,250 Limit)	Basic Drugs ($1,250 Limit)	Extended Drugs ($3,000 Limit)
				Preventive Care					Preventive Care

[(INSURER NAME)
OUTLINE OF MEDICARE SUPPLEMENT COVERAGE
AND PREMIUM INFORMATION
Use this outline to compare benefits
and premiums among policies]

PREMIUM INFORMATION (Boldface Type)
We (insert issuer's name) can only raise your premium if we raise the premium for all policies like yours in this state. (If the premium is based on the increasing age of the insured, include information specifying when premiums will change).

DISCLOSURES (Boldface Type)
Use this outline to compare benefits and premiums among policies.

1. READ YOUR POLICY VERY CAREFULLY (Boldface Type)
This is only an outline describing your policy's most important features. The policy is your insurance contract. You must read the policy itself to understand all of the rights and duties of both you and your insurance company. [Read your policy carefully – this outline of coverage provides a very brief description of the important features of your policy. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR POLICY CAREFULLY!]

2. RIGHT TO RETURN POLICY (Boldface Type)
If you find that you are not satisfied with your policy, you may return it to (insert issuer's address). If you send the policy back to us within thirty (30) days after you receive it, we will treat the policy as if it had never been issued and return all of your payments. [Medicare supplement coverage – policies of this category are designed to

supplement Medicare by covering some hospital, medical, and surgical services which are partially covered by Medicare. Coverage is provided for hospital inpatient charges and some physician charges, subject to any deductibles and copayment provisions which may be in addition to those provided by Medicare, and subject to other limitations which may be set forth in the policy. The policy does not provide benefits for custodial care such as help in walking, getting in and out of bed, eating, dressing, bathing, and taking medicine (this final sentence may be deleted if coverage for custodial care is, in fact, provided).]

3. POLICY REPLACEMENT (Boldface Type)
If you are replacing another health insurance policy, do NOT cancel it until you have actually received your new policy and are sure you want to keep it.

4. NOTICE (Boldface Type)
This policy may not fully cover all of your medical costs.
a. (for agents)
Neither (insert insurer's name) nor its agents are connected with Medicare.
b. (for direct response insurers:)
(insert insurer's name) is not connected with Medicare.
[4. A brief summary of the major medical benefit gaps in Medicare Parts A and B with a parallel description of supplemental benefits, including dollar amounts (and indexed copayments or deductibles as appropriate), provided by Medicare supplement coverage in the following order:]

COMPILER'S NOTE: The following tables are being deleted in their entirety.

DESCRIPTION	[THIS POLICY PAYS**	YOU PAY
I. Minimum Standards		
SERVICE		
PART A		
Inpatient Hospital Services:		
Semiprivate Room & Board		
Miscellaneous Hospital Services & Supplies, such as Drugs, X-rays, Lab Tests & Operating Room		
Blood		
PART B		
Medical Expense:		
Services of a Physician/Outpatient Services		
Medical Supplies other than Prescribed Drugs		
BLOOD		
MISCELLANEOUS		
Immunosuppressive Drugs		
II. Additional Benefits		
PART A		
Part A Deductible		
Private Rooms		
In-hospital Private Nurses		
Skilled Nursing Facility Care		
PARTS A & B		
Home Health Services		
PART B		
Part B Deductible		
Medical Charges in Excess of Medicare Allowable Expenses (Percentage Paid)		
OUT-OF-POCKET MAXIMUM		
PRESCRIPTION DRUGS		
MISCELLANEOUS		
Respite Care Benefits		
Expenses Incurred in Foreign Country		
Other:		
TOTAL PREMIUM		$_____

IN ADDITION TO THIS OUTLINE OF COVERAGE, (INSURANCE COMPANY NAME) WILL SEND AN ANNUAL NOTICE TO YOU 30 DAYS PRIOR TO THE EFFECTIVE DATE OF MEDICARE CHANGES WHICH WILL DESCRIBE THESE CHANGES AND THE CHANGES IN YOUR MEDICARE SUPPLEMENT COVERAGE.

**If this policy does not provide coverage for a benefit listed above, the insurer must state "no coverage" beside that benefit in the first column. (The order of benefits in this outline of coverage should be adjusted by those states which have adopted additional minimum standards.)]

[5. (The following charts shall accompany the outline of coverage:)]

[(COMPANY NAME)
NOTICE OF CHANGES IN MEDICARE AND YOUR MEDICARE SUPPLEMENT COVERAGE – 1990

THE FOLLOWING CHART BRIEFLY DESCRIBES THE MODIFICATIONS IN MEDICARE AND IN YOUR MEDICARE SUPPLEMENT COVERAGE. PLEASE READ THIS CAREFULLY!
(A BRIEF DESCRIPTION OF THE REVISIONS TO MEDICARE PARTS A & B WITH A PARALLEL DESCRIPTION OF SUPPLEMENTAL BENEFITS WITH SUBSEQUENT CHANGES, INCLUDING DOLLAR AMOUNTS, PROVIDED BY THE MEDICARE SUPPLEMENT COVERAGE IN SUBSTANTIALLY THE FOLLOWING FORMAT.)

SERVICES	MEDICARE BENEFITS		YOUR MEDICARE SUPPLEMENT COVERAGE	
	In 1989 Medicare Pays Per Calendar Year	Effective January 1, 1990, Medicare Will Pay	In 1989 Your Coverage Pays	Effective January 1, 1990 Your Coverage Will Pay

MEDICARE PART A SERVICES AND SUPPLIES		
Inpatient Hospital Services:	Unlimited number of hospital days after $560 deductible	All but $592 for first 60 days/ benefit period
Semiprivate Room & Board		All but $148 a day for 61st–90th days/ benefit period
Miscellaneous Hospital Services & Supplies, such as Drugs, X-rays, Lab Tests & Operating Room		All but $296 a day for 91st–150th days (if individual chooses to use 60 nonrenewable life-time reserve days
BLOOD	Pays all costs except payment of deductible (equal to costs for 1st 3 pints) each calendar year. Part A blood deductible reduced to the extent paid under Part B	Pays all costs except nonreplace-ment fees (blood deductible) for 1st 3 pints in each benefit year
Skilled Nursing Facility Care	There is no prior confinement re-quirement for this	100% of costs for 1st 20 days (after a 3 day prior hospital confinement)/benefit period
	First 8 days–All but $25.50 a day	All but $74 a day for 21st–100th days/benefit period
	9th–150th day 100% of costs	Beyond 100 days – Nothing/benefit period
	Beyond 150 days – Nothing	
MEDICARE PART B SERVICE & SUPPLIES	80% of allowable charges (after $75 deductible)	80% of allowable charges (after $75 deductible/ calendar year)
PRESCRIPTION DRUGS	Inpatient pre-scription drugs. 80% of allowable charges for immunosuppressive drugs during the first year follow-ing a covered transplant (after $75 deductible/ calendar year)	Inpatient pre-scription drugs. 80% of allowable charges for immunosuppressive drugs during the first year follow-ing a covered transplant (after $75 deductible/ calendar year)
BLOOD	80% of all costs except nonreplace-ment fees (blood deductible) for 1st 3 pints in each benefit period (after $75 deductible/calendar year	80% of costs except nonreplace-ment fees (blood deductible) for 1st 3 pints (after deductible/calendar year

(Any other policy benefits not mentioned in this chart should be added to the chart in the order prescribed by the outline of coverage. If there are corresponding Medicare benefits, they should be shown.)

(Describe any coverage provisions changing due to Medicare modifications.)

(Include information about when premium adjustments that may be necessary due to changes in Medicare benefits will be effective.)

THIS CHART SUMMARIZING THE CHANGE IN YOUR MEDICARE BENEFITS AND IN YOUR MEDICARE SUPPLEMENT PROVIDED BY (COMPANY) ONLY BRIEFLY DESCRIBES SUCH BENEFITS. FOR INFORMATION ON YOUR MEDICARE BENEFITS CONTACT YOUR SOCIAL SECURITY OFFICE OR THE HEALTH CARE FINANCING ADMINISTRATION. FOR INFORMATION ON YOUR MEDICARE SUPPLEMENT (policy) CONTACT:

(COMPANY OR FOR AN INDIVIDUAL POLICY – NAME OF AGENT)
(ADDRESS/PHONE NUMBER)]

5. [6.] This outline of coverage does not give all the details of Medicare coverage. Contact your local Social Security office or consult "The Medicare Handbook" for more details. [A statement that the policy does not cover the following:]

[a. Private duty nursing;]
[b. Skilled nursing home care costs (beyond what is covered by Medicare);]
[c. Custodial nursing home care costs;]
[d. Intermediate nursing home care costs;]
[e. Home health care above the number of visits covered by Medicare;]
[f. Physician charges (above Medicare's reasonable charges);]
[g. Drugs (other than prescription drugs furnished during a hospital or skilled nursing facility stay);]
[h. Care received outside the United States; and]
[i. Dental care or dentures, checkups, routine immunizations, cosmetic surgery, routine foot care, and examinations for the cost of eyeglasses or hearing aids.]

COMPLETE ANSWERS ARE VERY IMPORTANT
(Boldface Type)

When you fill out the application for the new policy, be sure to answer truthfully and completely all questions about your medical and health history. The company may cancel your policy and refuse to pay any claims if you leave out or falsify important medical information. (If the policy or certificate is guaranteed issue, this paragraph need not appear.)

Review the application carefully before you sign it. Be certain that all information has been recorded properly.

(Include for each plan prominently identified in the cover page, a chart showing the services, Medicare payments, plan payments, and insured payments for each plan, using the same language, in the same order, using uniform layout and format as shown in the charts below. More than four (4) plans shall not be shown on one (1) chart. For purposes of illustration, charts for each plan are included in this regulation. An issuer may use additional benefit plan designations on these charts pursuant to Section 7(4) of this regulation.)

(Include an explanation of any innovative benefits on the cover page and in the chart, in a manner approved by the commissioner.) [7. A description of any policy provisions which exclude, eliminate, resist, reduce, limit, delay, or in any manner operate to qualify payments of benefits described in paragraph 4 above, including conspicuous statements:]

[a. That the chart summarizing Medicare benefits only briefly describes such benefits; and]

[b. That the Health Care Financing Administration or its Medicare publications should be consulted for further details and limitations.]

[8. A description of policy provisions respecting renewability or continuation of coverage, including any reservation of rights to change premium.]

[9. The amount of premium for this policy.]

COMPILER'S NOTE: The following tables are new, but due to length and format, are not underlined.

PLAN A
MEDICARE (PART A) – HOSPITAL SERVICES – PER BENEFIT PERIOD

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION*			
Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but $628	$0	$628 (Part A deductible)
61st thru 90th day	All but $157 a day	$157 a day	$0
91st day and after:			
– While using 60 lifetime reserve days	All but $314 a day	$314 a day	$0
– Once lifetime reserve days are used:			
– Additional 365 days	$0	100% of Medicare Eligible expenses	$0
– Beyond the additional 365 days	$0	$0	All costs
SKILLED NURSING FACILITY CARE*			
You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital			

First 20 days	All approved amounts	$0	$0
21st thru 100th day	All but $78.50 a day	$0	Up to $78.50 a day
101st day and after	$0	$0	All costs
BLOOD			
First 3 pints	$0	3 pints	$0
Additional amounts	100%	$0	$0
HOSPICE CARE Available as long as your doctor certifies you are terminally ill and you elect to receive these services.	All but very limited coinsurance for outpatient drugs and inpatient respite care	$0	Balance

PLAN A
MEDICARE (PART B) – MEDICAL SERVICES – PER CALENDAR YEAR

*Once you have been billed $100 of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES – IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,			
First $100 of Medicare-approved amounts*	$0	$0	$100 (Part B deductible)
Remainder of Medicare-approved amounts	80%	20%	$0
Part B excess charges (above Medicare approved amounts)	$0	$0	All costs
BLOOD			
First 3 pints	$0	All costs	$0
Next $100 of Medicare-approved amounts*	$0	$0	$100 (Part B deductible)
Remainder of Medicare-approved amounts	80%	20%	$0
CLINICAL LABORATORY SERVICES-BLOOD TESTS FOR DIAGNOSTIC SERVICES	100%	$0	$0
	PARTS A & B		
HOME HEALTH CARE MEDICARE APPROVED SERVICES			
– Medically necessary skilled care services and medical supplies	100%	$0	$0
– Durable medical equipment			
– First $100 of Medicare-approved amounts*	$0	$0	$100 (Part B deductible)
– Remainder of Medicare-approved amounts	80%	20%	$0

PLAN B
MEDICARE (PART A) – HOSPITAL SERVICES – PER BENEFIT PERIOD

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION* Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but $628	$628 (Part A deductible)	$0

61st thru 90th day	All but $157 a day	$157 a day	$0
91st day and after:			
– While using 60 lifetime reserve days	All but $314 a day	$314 a day	$0
– Once lifetime reserve days are used:			
– Additional 365 days	$0	100% of Medicare eligible expenses	$0
– Beyond the additional 365 days	$0	$0	All costs
SKILLED NURSING FACILITY CARE*			
You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital			
First 20 days	All approved amounts	$0	$0
21st thru 100th day	All but $78.50 a day	$0	Up to $78.50 a day
101st day and after	$0	$0	All costs
BLOOD			
First 3 pints	$0	3 pints	$0
Additional amounts	100%	$0	$0
HOSPICE CARE			
Available as long as your doctor certifies you are terminally ill and you elect to receive these services.	All but very limited coinsurance for outpatient drugs and inpatient respite care	$0	Balance

PLAN B
MEDICARE (PART A) – MEDICAL SERVICES – PER CALENDAR YEAR

*Once you have been billed $100 of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES: IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,			
First $100 of Medicare-approved amounts*	$0	$0	$100 (Part B deductible)
Remainder of Medicare-approved amounts	80%	20%	$0
Part B excess charges (above Medicare-approved amounts)	$0	$0	All costs
BLOOD			
First 3 pints	$0	All costs	$0
Next $100 of Medicare-approved amounts*	$0	$0	$100 (Part B deductible)
Remainder of Medicare-approved amounts	80%	20%	$0
CLINICAL LABORATORY SERVICES – BLOOD TESTS FOR DIAGNOSTIC SERVICES	100%	$0	$0
	PARTS A & B		
HOME HEALTH CARE			
MEDICARE APPROVED SERVICES			
– Medically necessary skilled care services and medical supplies	100%	$0	$0
– Durable medical equipment			
– First $100 of Medicare-approved amounts*	$0	$0	$100 (Part B deductible)
– Remainder of Medicare-approved amounts	80%	20%	$0

PLAN C
MEDICARE (PART A) – HOSPITAL SERVICES – PER BENEFIT PERIOD

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION*			
Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but $628	$628 (Part A deductible)	$0
61st thru 90th day	All but $157 a day	$157 a day	$0
91st day and after:			
– While using 60 lifetime reserve days	All but $314 a day	$314 a day	$0
– Once lifetime reserve days are used:			
– Additional 365 days	$0	100% of Medicare Eligible expenses	$0
– Beyond the additional 365 days	$0	$0	All costs
SKILLED NURSING FACILITY CARE*			
You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital			
First 20 days	All approved amounts	$0	$0
21st thru 100th day	All but $78.50 a day	Up to $78.50 a day	$0
101st day and after	$0	$0	All costs
BLOOD			
First 3 pints	$0	3 pints	$0
Additional amounts	100%	$0	$0
HOSPICE CARE			
Available as long as your doctor certifies you are terminally ill and you elect to receive these services.	All but very limited coinsurance for out-patient drugs and inpatient respite care	$0	Balance

PLAN C
MEDICARE (PART B) – MEDICAL SERVICES – PER CALENDAR YEAR

*Once you have been billed $100 of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES – IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,			
First $100 of Medicare-approved amounts*	$0	$100 (Part B deductible)	$0
Remainder of Medicare-approved amounts	80%	20%	$0
Part B excess charges (above Medicare approved amounts)	$0	$0	All costs
BLOOD			
First 3 pints	$0	All costs	$0
Next $100 of Medicare-approved amounts*	$0	$100 (Part B deductible)	$0
Remainder of Medicare-approved amounts	80%	20%	$0
CLINICAL LABORATORY SERVICES-BLOOD TESTS FOR DIAGNOSTIC SERVICES	100%	$0	$0

PARTS A & B

HOME HEALTH CARE MEDICARE APPROVED SERVICES – Medically necessary skilled care services and medical supplies	100%	$0	$0
– Durable medical equipment – First $100 of Medicare-approved amounts*	$0	$100 (Part B deductible)	$0
– Remainder of Medicare-approved amounts	80%	20%	$0

PLAN C
OTHER BENEFITS – NOT COVERED BY MEDICARE

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
FOREIGN TRAVEL–NOT COVERED BY MEDICARE Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA			
First $250 each calendar year	$0	$0	$250
Remainder of charges	$0	80% to a life-time maximum benefit of $50,000	20% and amounts over the $50,000 lifetime maximum

PLAN D
MEDICARE (PART A) – HOSPITAL SERVICES – PER BENEFIT PERIOD

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION* Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but $628	$628 (Part A deductible)	$0
61st thru 90th day	All but $157 a day	$157 a day	$0
91st day and after:			
– While using 60 lifetime reserve days	All but $314 a day	$314 a day	$0
– Once lifetime reserve days are used:			
– Additional 365 days	$0	100% of Medicare eligible expenses	$0
– Beyond the additional 365 days	$0	$0	All costs
SKILLED NURSING FACILITY CARE* You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital			
First 20 days	All approved amounts	$0	$0
21st thru 100th day	All but $78.50 a day	Up to $78.50 a day	$0
101st day and after	$0	$0	All costs
BLOOD First 3 pints	$0	3 pints	$0
Additional amounts	100%	$0	$0
HOSPICE CARE Available as long as your doctor certifies you are terminally ill and you elect to receive these services.	All but very limited coinsurance for out-patient drugs and in-patient respite care	$0	Balance

PLAN D
MEDICARE (PART B) – MEDICAL SERVICES – PER CALENDAR YEAR

*Once you have been billed $100 of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES: IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,			
First $100 of Medicare-approved amounts*	$0	$0	$100 (Part B deductible)
Remainder of Medicare-approved amounts	80%	20%	$0
Part B excess charges (above Medicare-approved amounts)	$0	$0	All costs
BLOOD			
First 3 pints	$0	All costs	$0
Next $100 of Medicare-approved amounts*	$0	$0	$100 (Part B deductible)
Remainder of Medicare-approved amounts	80%	20%	$0
CLINICAL LABORATORY SERVICES – BLOOD TESTS FOR DIAGNOSTIC SERVICES	100%	$0	$0
	PARTS A & B		
HOME HEALTH CARE MEDICARE APPROVED SERVICES			
– Medically necessary skilled care services and medical supplies	100%	$0	$0
– Durable medical equipment			
– First $100 of Medicare-approved amounts*	$0	$0	$100 (Part B deductible)
– Remainder of Medicare-approved amounts	80%	20%	$0
AT-HOME RECOVERY SERVICES – NOT COVERED BY MEDICARE			
Home care certified by your doctor, for personal care during recovery from an injury or sickness for which Medicare approved a home care treatment plan			
– Benefit for each visit	$0	Actual charges to $40 a visit	Balance
– Number of visits covered (must be received within 8 weeks of last Medicare-approved visit)	$0	Up to the # of Medicare-approved visits, not to exceed 7 each week	
– Calendar year maximum	$0	$1,600	
	OTHER BENEFITS – NOT COVERED BY MEDICARE		
FOREIGN TRAVEL – NOT COVERED BY MEDICARE Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA			
First $250 each calendar year	$0	$0	$250
Remainder of charges	$0	80% to a lifetime maximum benefit of $50,000	20% and amounts over the $50,000 lifetime maximum

PLAN E
MEDICARE (PART A) – HOSPITAL SERVICES – PER BENEFIT PERIOD

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION*			
Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but $628	$628 (Part A deductible)	$0
61st thru 90th day	All but $157 a day	$157 a day	$0
91st day and after:			
– While using 60 lifetime reserve days	All but $314 a day	$314 a day	$0
– Once lifetime reserve days are used:			
– Additional 365 days	$0	100% of Medicare Eligible expenses	$0
– Beyond the additional 365 days	$0	$0	All costs
SKILLED NURSING FACILITY CARE*			
You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital			
First 20 days	All approved amounts	$0	$0
21st thru 100th day	All but $78.50 a day	Up to $78.50 a day	$0
101st day and after	$0	$0	All costs
BLOOD			
First 3 pints	$0	3 pints	$0
Additional amounts	100%	$0	$0
HOSPICE CARE			
Available as long as your doctor certifies you are terminally ill and you elect to receive these services.	All but very limited coinsurance for out-patient drugs and inpatient respite care	$0	Balance

PLAN E
MEDICARE (PART B) – MEDICAL SERVICES – PER CALENDAR YEAR

*Once you have been billed $100 of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES – IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,			
First $100 of Medicare-approved amounts*	$0	$0	$100 (Part B deductible)
Remainder of Medicare-approved amounts	80%	20%	$0
Part B excess charges (above Medicare approved amounts)	$0	$0	All costs
BLOOD			
First 3 pints	$0	All costs	$0
Next $100 of Medicare-approved amounts*	$0	$0	$100 (Part B deductible)
Remainder of Medicare-approved amounts	80%	20%	$0
CLINICAL LABORATORY SERVICES-BLOOD TESTS FOR DIAGNOSTIC SERVICES	100%	$0	$0

PARTS A & B

HOME HEALTH CARE MEDICARE APPROVED SERVICES – Medically necessary skilled care services and medical supplies	100%	$0	$0
– Durable medical equipment – First $100 of Medicare-approved amounts*	$0	$0	$100 (Part B deductible)
– Remainder of Medicare-approved amounts	80%	20%	$0

PLAN E
OTHER BENEFITS – NOT COVERED BY MEDICARE

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
FOREIGN TRAVEL–NOT COVERED BY MEDICARE Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA			
First $250 each calendar year	$0	$0	$250
Remainder of charges	$0	80% to a lifetime maximum benefit of $50,000	20% and amounts over the $50,000 lifetime maximum
PREVENTIVE MEDICAL CARE BENEFIT–NOT COVERED BY MEDICARE Annual physical and preventive tests and services such as: fecal occult blood test, digital rectal exam, mammogram, hearing screening, dipstick urinalysis, diabetes screening, thyroid function test, influenza shot, tetanus and diptheria booster and education, administered or ordered by your doctor when not covered by Medicare			
First $120 each calendar year	$0	$120	$0
Additional charges	$0	$0	All costs

PLAN F
MEDICARE (PART A) – HOSPITAL SERVICES – PER BENEFIT PERIOD

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION* Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but $628	$628 (Part A deductible)	$0
61st thru 90th day	All but $157 a day	$157 a day	$0
91st day and after:			
– While using 60 lifetime reserve days	All but $314 a day	$314 a day	$0
– Once lifetime reserve days are used:			
– Additional 365 days	$0	100% of Medicare eligible expenses	$0
– Beyond the additional 365 days	$0	$0	All costs
SKILLED NURSING FACILITY CARE* You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital			
First 20 days	All approved amounts	$0	$0

21st thru 100th day	All but $78.50 a day	Up to $78.50 a day	$0
101st day and after	$0	$0	All costs
BLOOD			
First 3 pints	$0	3 pints	$0
Additional amounts	100%	$0	$0
HOSPICE CARE Available as long as your doctor certifies you are terminally ill and you elect to receive these services.	All but very limited coinsurance for out-patient drugs and in-patient respite care	$0	Balance

PLAN F
MEDICARE (PART B) – MEDICAL SERVICES – PER CALENDAR YEAR

*Once you have been billed $100 of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES – IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician's services, inpatient and out-patient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equip-ment,			
First $100 of Medicare-approved amounts*	$0	$100 (Part B deductible)	$0
Remainder of Medicare-approved amounts	80%	20%	$0
Part B excess charges (above Medicare-approved amounts)	$0	100%	$0
BLOOD			
First 3 pints	$0	All costs	$0
Next $100 of Medicare-approved amounts*	$0	$100 (Part B deductible)	$0
Remainder of Medicare-approved amounts	80%	20%	$0
CLINICAL LABORATORY SERVICES – BLOOD TESTS FOR DIAGNOSTIC SERVICES	100%	$0	$0

PARTS A & B

HOME HEALTH CARE MEDICARE APPROVED SERVICES			
– Medically necessary skilled care services and medical supplies	100%	$0	$0
– Durable medical equipment			
– First $100 of Medicare-approved amounts*	$0	$100 (Part B deductible)	$0
– Remainder of Medicare-approved amounts	80%	20%	$0

PLAN F
OTHER BENEFITS – NOT COVERED BY MEDICARE

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
FOREIGN TRAVEL–NOT COVERED BY MEDICARE Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA			
First $250 each calendar year	$0	$0	$250
Remainder of charges	$0	80% to a life-time maximum benefit of $50,000	20% and amounts over the $50,000 lifetime maximum

PLAN G
MEDICARE (PART A) – HOSPITAL SERVICES – PER BENEFIT PERIOD

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION*			
Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but $628	$628 (Part A deductible)	$0
61st thru 90th day	All but $157 a day	$157 a day	$0
91st day and after:			
– While using 60 lifetime reserve days	All but $314 a day	$314 a day	$0
– Once lifetime reserve days are used:			
– Additional 365 days	$0	100% of Medicare eligible expenses	$0
– Beyond the additional 365 days	$0	$0	All costs
SKILLED NURSING FACILITY CARE*			
You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital			
First 20 days	All approved amounts	$0	$0
21st thru 100th day	All but $78.50 a day	Up to $78.50 a day	$0
101st day and after	$0	$0	All costs
BLOOD			
First 3 pints	$0	3 pints	$0
Additional amounts	100%	$0	$0
HOSPICE CARE			
Available as long as your doctor certifies you are terminally ill and you elect to receive these services.	All but very limited coinsurance for out-patient drugs and inpatient respite care	$0	Balance

PLAN G
MEDICARE (PART B) – MEDICAL SERVICES – PER CALENDAR YEAR

*Once you have been billed $100 of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES – IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,			
First $100 of Medicare-approved amounts*	$0	$0	$100 (Part B deductible)
Remainder of Medicare-approved amounts	80%	20%	$0
Part B excess charges (above Medicare approved amounts)	$0	80%	20%
BLOOD			
First 3 pints	$0	All costs	$0
Next $100 of Medicare-approved amounts*	$0	$0	$100 (Part B deductible)
Remainder of Medicare-approved amounts	80%	20%	$0
CLINICAL LABORATORY SERVICES-BLOOD TESTS FOR DIAGNOSTIC SERVICES	100%	$0	$0

PARTS A & B

HOME HEALTH CARE MEDICARE APPROVED SERVICES			
– Medically necessary skilled care services and medical supplies	100%	$0	$0
– Durable medical equipment			
– First $100 of Medicare-approved amounts*	$0	$0	$100 (Part B deductible)
– Remainder of Medicare-approved amounts	80%	20%	$0
AT-HOME RECOVERY SERVICES-NOT COVERED BY MEDICARE Home care certified by your doctor, for personal care during recovery from an injury or sickness for which Medicare approved a home care treatment plan			
– Benefit for each visit	$0	Actual charges to $40 a visit	Balance
– Number of visits covered (must be received within 8 weeks of last Medicare-approved visit)	$0	Up to the # of Medicare-approved visits, not to exceed 7 each week	
– Calendar year maximum	$0	$1,600	

OTHER BENEFITS

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
FOREIGN TRAVEL-NOT COVERED BY MEDICARE Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA			
First $250 each calendar year	$0	$0	$250
Remainder of charges	$0	80% to a life-time maximum benefit of $50,000	20% and amounts over the $50,000 lifetime maximum

PLAN H

MEDICARE (PART A) – HOSPITAL SERVICES – PER BENEFIT PERIOD

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION* Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but $628	$628 (Part A deductible)	$0
61st thru 90th day	All but $157 a day	$157 a day	$0
91st day and after:			
– While using 60 lifetime reserve days	All but $314 a day	$314 a day	$0
– Once lifetime reserve days are used:			
– Additional 365 days	$0	100% of Medicare eligible expenses	$0
– Beyond the additional 365 days	$0	$0	All costs
SKILLED NURSING FACILITY CARE* You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital			
First 20 days	All approved amounts	$0	$0
21st thru 100th day	All but $78.50 a day	Up to $78.50 a day	$0
101st day and after	$0	$0	All costs

BLOOD			
First 3 pints	$0	3 pints	$0
Additional amounts	100%	$0	$0
HOSPICE CARE			
Available as long as your doctor certifies you are terminally ill and you elect to receive these services.	All but very limited coinsurance for outpatient drugs and inpatient respite care	$0	Balance

PLAN H
MEDICARE (PART B) – MEDICAL SERVICES – PER CALENDAR YEAR

*Once you have been billed $100 of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES – IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,			
First $100 of Medicare-approved amounts*	$0	$0	$100 (Part B deductible)
Remainder of Medicare-approved amounts	80%	20%	$0
Part B excess charges (above Medicare approved amounts)	$0	80%	All costs
BLOOD			
First 3 pints	$0	All costs	$0
Next $100 of Medicare-approved amounts*	$0	$0	$100 (Part B deductible)
Remainder of Medicare-approved amounts	80%	20%	$0
CLINICAL LABORATORY SERVICES–BLOOD TESTS FOR DIAGNOSTIC SERVICES	100%	$0	$0

PARTS A & B

HOME HEALTH CARE			
MEDICARE APPROVED SERVICES			
– Medically necessary skilled care services and medical supplies	100%	$0	$0
– Durable medical equipment			
– First $100 of Medicare-approved amounts*	$0	$0	$100 (Part B deductible)
– Remainder of Medicare-approved amounts	80%	20%	$0

PLAN H
OTHER BENEFITS – NOT COVERED BY MEDICARE

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
FOREIGN TRAVEL–NOT COVERED BY MEDICARE Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA			
First $250 each calendar year	$0	$0	$250
Remainder of charges	$0	80% to a lifetime maximum benefit of $50,000	20% and amounts over the $50,000 lifetime maximum
BASIC OUTPATIENT PRESCRIPTION DRUGS NOT COVERED BY MEDICARE			
First $250 each calendar year	$0	$0	$250
Next $2,500 each calendar year	$0	50% – $1,250 calendar year maximum benefit	50%

Over $2,500 each calendar year	$0	$0	All costs

PLAN I
MEDICARE (PART A) – HOSPITAL SERVICES – PER BENEFIT PERIOD

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION*			
Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but $628	$628 (Part A deductible)	$0
61st thru 90th day	All but $157 a day	$157 a day	$0
91st day and after:			
– While using 60 lifetime reserve days	All but $314 a day	$314 a day	$0
– Once lifetime reserve days are used:			
– Additional 365 days	$0	100% of Medicare eligible expenses	$0
– Beyond the additional 365 days	$0	$0	All costs
SKILLED NURSING FACILITY CARE*			
You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital			
First 20 days	All approved amounts	$0	$0
21st thru 100th day	All but $78.50 a day	Up to $78.50 a day	$0
101st day and after	$0	$0	All costs
BLOOD			
First 3 pints	$0	3 pints	$0
Additional amounts	100%	$0	$0
HOSPICE CARE			
Available as long as your doctor certifies you are terminally ill and you elect to receive these services.	All but very limited coinsurance for out-patient drugs and inpatient respite care	$0	Balance

PLAN I
MEDICARE (PART B) – MEDICAL SERVICES – PER CALENDAR YEAR

*Once you have been billed $100 of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES – IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,			
First $100 of Medicare-approved amounts*	$0	$0	$100 (Part B deductible)
Remainder of Medicare-approved amounts	80%	20%	$0
Part B excess charges (above Medicare approved amounts)	$0	100%	$0
BLOOD			
First 3 pints	$0	All costs	$0
Next $100 of Medicare-approved amounts*	$0	$0	$100 (Part B deductible)
Remainder of Medicare-approved amounts	80%	20%	$0

CLINICAL LABORATORY SERVICES–BLOOD TESTS FOR DIAGNOSTIC SERVICES	100%	$0	$0
	PARTS A & B		
HOME HEALTH CARE MEDICARE APPROVED SERVICES			
– Medically necessary skilled care services and medical supplies	100%	$0	$0
– Durable medical equipment			
– First $100 of Medicare–approved amounts*	$0	$0	$100 (Part B deductible)
– Remainder of Medicare–approved amounts	80%	20%	$0
AT–HOME RECOVERY SERVICES NOT COVERED BY MEDICARE Home care certified by your doctor, for personal care during recovery from an injury or sickness for which Medicare approved a home care treatment plan			
– Benefit for each visit	$0	Actual charges to $40 a visit	Balance
– Number of visits covered (must be received within 8 weeks of last Medicare–approved visit)	$0	Up to the # of Medicare–approved visits, not to exceed 7 each week	
– Calendar year maximum	$0	$1,600	
	OTHER BENEFITS		
SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
FOREIGN TRAVEL–NOT COVERED BY MEDICARE Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA			
First $250 each calendar year	$0	$0	$250
Remainder of charges	$0	80% to a life–time maximum ben–efit of $50,000	20% and amounts over the $50,000 lifetime maximum
BASIC OUTPATIENT PRESCRIPTION DRUGS NOT COVERED BY MEDICARE			
First $250 each calendar year	$0	$0	$250
Next $2,500 each calendar year	$0	50% – $1,250 calendar year maximum benefit	50%
Over $2,500 each calendar year	$0	$0	All costs

PLAN J
MEDICARE (PART A) – HOSPITAL SERVICES – PER BENEFIT PERIOD

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION* Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but $628	$628 (Part A deductible)	$0
61st thru 90th day	All but $157 a day	$157 a day	$0
91st day and after:			
– While using 60 lifetime reserve days	All but $314 a day	$314 a day	$0
– Once lifetime reserve days are used:			
– Additional 365 days	$0	100% of Medicare eligible expenses	$0
– Beyond the additional 365 days	$0	$0	All costs

SKILLED NURSING FACILITY CARE* You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital			
First 20 days	All approved amounts	$0	$0
21st thru 100th day	All but $78.50 a day	Up to $78.50 a day	$0
101st day and after	$0	$0	All costs
BLOOD			
First 3 pints	$0	3 pints	$0
Additional amounts	100%	$0	$0
HOSPICE CARE Available as long as your doctor certifies you are terminally ill and you elect to receive these services.	All but very limited coinsurance for out-patient drugs and inpatient respite care	$0	Balance

PLAN J
MEDICARE (PART B) – MEDICAL SERVICES – PER CALENDAR YEAR

*Once you have been billed $100 of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES – IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,			
First $100 of Medicare-approved amounts*	$0	$100 (Part B deductible)	$0
Remainder of Medicare-approved amounts	80%	20%	$0
Part B excess charges (above Medicare approved amounts)	$0	100%	$0
BLOOD			
First 3 pints	$0	All costs	$0
Next $100 of Medicare-approved amounts*	$0	$100 (Part B deductible)	$0
Remainder of Medicare-approved amounts	80%	20%	$0
CLINICAL LABORATORY SERVICES-BLOOD TESTS FOR DIAGNOSTIC SERVICES	100%	$0	$0
	PARTS A & B		
HOME HEALTH CARE MEDICARE APPROVED SERVICES			
– Medically necessary skilled care services and medical supplies	100%	$0	$0
– Durable medical equipment			
– First $100 of Medicare-approved amounts*	$0	$100 (Part B deductible)	$0
– Remainder of Medicare-approved amounts	80%	20%	$0
AT-HOME RECOVERY SERVICES – NOT COVERED BY MEDICARE Home care certified by your doctor, for personal care during recovery from an injury or sickness for which Medicare approved a home care treatment plan			
– Benefit for each visit	$0	Actual charges to $40 a visit	Balance
– Number of visits covered (must be received within 8 weeks of last			

Medicare-approved visit)	$0	Up to the # of Medicare-approved visits, not to exceed 7 each week	
- Calendar year maximum	$0	$1,600	

OTHER BENEFITS

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
FOREIGN TRAVEL-NOT COVERED BY MEDICARE Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA			
First $250 each calendar year	$0	$0	$250
Remainder of charges	$0	80% to a lifetime maximum benefit of $50,000	20% and amounts over the $50,000 lifetime maximum
EXTENDED OUTPATIENT PRESCRIPTION DRUGS NOT COVERED BY MEDICARE			
First $250 each calendar year	$0	$0	$250
Next $6,000 each calendar year	$0	50% - $3,000 calendar year maximum benefit	50%
Over $6,000 each calendar year	$0	$0	All costs
PREVENTIVE MEDICAL CARE BENEFIT NOT COVERED BY MEDICARE Annual physical and preventive tests and services such as: fecal occult blood test, digital rectal exam, mammogram, hearing screening, dipstick urinalysis, diabetes screening, thyroid function test, influenza shot, tetanus and diptheria booster and education, administered or ordered by your doctor when not covered by Medicare			
First $120 each calendar year	$0	$120	$0
Additional charges	$0	$0	All costs

(4) Notice regarding policies or certificates [subscriber contracts] which are not Medicare supplement policies. Any accident or sickness insurance policy or certificate (other than a Medicare supplement policy), a policy issued pursuant to a contract under Section 1876 of the Federal Social Security Act (42 U.S.C. §1395 et seq.), disability income policy, basic, catastrophic, or major medical expense policy, or single premium nonrenewable policy issued for delivery in Kentucky to persons eligible for Medicare by reason of age shall notify insureds under such policy that the policy is not a Medicare supplement policy or certificate. The [Such] notice shall either be printed on or attached to the first page of the outline of coverage delivered to insureds under the policy, or if no outline of coverage is delivered, printed on or attached to the first page of the policy or certificate delivered to insureds. Such notice shall be in no less than twelve (12) point type and shall contain the following language:

"THIS (POLICY OR CERTIFICATE) IS NOT A MEDICARE SUPPLEMENT POLICY. If you are eligible for Medicare, review the Medicare supplement buyer's guide available from the insurance company."

Section 15. [12.] Requirements for Application Forms and Replacement Coverage. (1) Comparison statement. When a Medicare supplement policy or certificate is to replace another health insurance [Medicare supplement] policy or certificate, there shall be presented to the applicant, no later than at the time of taking the application, a comparison statement which shall be substantially identical to Appendix C [in the form prescribed by the commissioner]. Direct response issuers [insurers] shall present the comparison statement to the applicant not later than at the time of delivery of the policy. Agents shall obtain the signature of the applicant on the comparison statement and shall sign the comparison statement and send the comparison statement to the issuer [insurer]. A copy of the comparison statement shall be attached to the replacement policy.

(2) Application forms shall include the following questions designed to elicit information as to whether, as of the date of the application, the applicant has another Medicare supplement or other health insurance policy or certificate in force or a Medicare supplement policy or certificate is intended to replace any other accident and sickness policy or certificate presently in force. A supplementary application or other form to be signed by the applicant and the agent[, except where the coverage is sold without an agent,] containing these questions and statements may be used:

(a) Do you have another Medicare supplement [insurance] policy or certificate in force?

1. If so, with which company?

(b) Do you have any other health insurance policies that provide benefits which this

Medicare supplement policy would duplicate? [Did you have another Medicare supplement policy or certificate in force during the last twelve (12) months?]

1. If so, with which company?

2. What kind of policy? [If that policy lapsed, when did it lapse?]

[(c) Are you covered by Medicaid?]

(c) If the answer to (a) or (b) is yes, [(d)] do you intent to replace these [any of your] health policies [insurance coverage] with this policy (or certificate)?

(d) Are you covered by Medicaid?

(3) Agents shall list any other health insurance policies they have sold to the applicant.

(a) List policies sold which are still in force.

(b) List policies sold in the last five (5) years which are no longer in force.

(4) In the case of a direct response issuer, a copy of the application or supplemental form, signed by the applicant, and acknowledged by the insurer, shall be returned to the applicant by the insurer upon delivery of the policy.

(5) [(4)] Upon determining that a sale will involve replacement of Medicare supplement coverage, an issuer [insurer] (other than a direct response issuer [insurer]), or its agent, shall furnish the applicant, prior to issuance or delivery of the Medicare supplement policy or certificate, a notice regarding replacement of Medicare supplement coverage [accident and sickness insurance]. One (1) copy of the [such] notice signed by the applicant and the agent, except where coverage is sold without an agent, shall be provided to the applicant and an additional signed copy shall be retained by the issuer [insurer]. A direct response issuer [insurer] shall deliver to the applicant at the time of the issuance of the policy the notice regarding replacement of Medicare supplement [accident and sickness] coverage. [In no event, however, will such a notice be required in the solicitation of "accident only" and "single premium nonrenewable" policies.]

(6) [(5)] The notice required by subsection (5) [(4)] of this section for an issuer [insurer (other than a direct response insurer)] shall be provided in substantially the following form in no less than ten (10) point type:

NOTICE TO APPLICANT REGARDING REPLACEMENT
OF MEDICARE SUPPLEMENT INSURANCE
(Insurer Name and Address)
SAVE THIS NOTICE! IT MAY BE IMPORTANT
TO YOU IN THE FUTURE.

According to (your application or information you have furnished), you intend to [lapse or otherwise] terminate existing accident and sickness insurance and replace it with a policy to be issued by (insurer name). Your new policy provides (insert here an amount of time not less than thirty (30) days) within which you may decide without cost whether you desire to keep the policy. [For your own information and protection, you should be aware of and seriously consider certain factors which may affect the insurance protection available to you under the new policy.]

You should review this new coverage carefully. Compare [, comparing] it with all health insurance you now have. Terminate [, and terminate] your present policy only if, after due consideration, you find that purchase of this Medicare supplement coverage is a wise decision.

STATEMENT TO APPLICANT BY ISSUER OR AGENT (OR OTHER REPRESENTATIVE): [(Use additional sheets, as necessary).]

I have reviewed your current health insurance coverage. [I believe] The replacement of insurance involved in this transaction does not duplicate coverage, to the best of my knowledge. The replacement policy is being purchased for the following reason(s) (check one) [materially improves your position. My conclusion has taken into account the following considerations, which I call to your attention]:

___ Additional benefits.

___ No change in benefits, but lower premiums.

___ Fewer benefits and lower premiums.

___ Other (please specify).

(a) Health conditions which you may presently have (so-called preexisting conditions) may not be immediately or fully covered under the new policy. This could result in denial or delay of a claim for benefits under the new policy, whereas a similar claim might have been payable under your present policy (this paragraph may be modified if preexisting conditions are, in fact, covered under the new policy).

(b) State law provides that your replacement policy or certificate may not contain new preexisting conditions, waiting periods, elimination periods, or probationary periods. The insurer will waive any time periods applicable to preexisting conditions, waiting periods, elimination periods, or probationary periods in the new policy (or coverage) for similar benefits to the extent such time was spent (depleted) under the original policy.

[(c) If you are replacing existing Medicare supplement insurance coverage, you may wish to secure the advice of your present insurer or its agent regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interest to make sure you understand all the relevant factors involved in replacing your present coverage.]

(c) [(d)] If[, after due consideration,] you still wish to terminate your present policy and replace it with new coverage, be certain to truthfully and completely answer all questions on the application concerning your medical and health history. Failure to include all material medical information on an application may provide a basis for the insurer to deny any future claims and to refund your premium as though your policy had never been in force. After the application has been completed and before you sign it, review [reread] it carefully to be certain that all information has been recorded properly. (If the policy or certificate is guaranteed issue, this paragraph need not appear).

(d) Do not cancel your present policy until you have your new policy and are sure that you want to keep it.

_____
Signature of Agent or Other Representative

_____
Typed Name and Address of Agent

The above "Notice to Applicant" was delivered to me on:

_____
Date

_____
Applicant's Signature

(6) Subsection (5)(a) and (b) of this section may be omitted from the replacement notice if the replacement policy or certificate does not involve application of a new preexisting condition limitation. [The notice required by subsection (4) of this section for a direct response insurer shall be as follows:]

[NOTICE TO APPLICANT REGARDING REPLACEMENT
OF MEDICARE SUPPLEMENT INSURANCE
(Insurer's Name and Address)
SAVE THIS NOTICE! IT MAY BE IMPORTANT
TO YOU IN THE FUTURE.]

[According to (your application or information you have furnished) you intend to lapse or otherwise terminate existing Medicare supplement insurance and replace it with the policy delivered with this notice issued by (insurer name). Your new policy provides thirty (30) days within which you may decide without cost whether you desire to keep the policy. For your own information and protection, you should be aware of and seriously consider certain factors which may affect the insurance protection available to you under the new policy. You should review this new coverage carefully, comparing it with all accident and sickness coverage you now have, and terminate your present policy only if, after due consideration, you find that purchase of this Medicare supplement coverage is a wise decision.]

[(a) Health conditions which you may presently have (so-called preexisting conditions) may not be immediately or fully covered under the new policy. This could result in denial or delay of a claim for benefits under the new policy, whereas a similar claim might have been payable under your present policy.]

[(b) State law provides that your replacement policy or certificate may not contain new preexisting conditions, waiting periods, elimination periods, or probationary periods. Your insurer will waive any time periods applicable to preexisting conditions, waiting periods, elimination periods, or probationary periods in the new policy (or coverage) for similar benefits to the extent such time was spent (depleted) under the original policy.]

[(c) If you are replacing existing Medicare supplement insurance coverage, you may wish to secure the advice of your present insurer or its agent regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interest to make sure you understand all the relevant factors involved in replacing your present coverage.]

[(d) (To be included only if the application is attached to the policy). If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, read the copy of the application attached to your new policy and be sure that all questions are answered fully and correctly. Omissions or misstatements in the application could cause an otherwise valid claim to be denied. Check the application and write to (insurer name and address) within thirty (30) days if any information is not correct and complete, or if any past medical history has been left out of the application.]

[_____
Insurer Name]

Section 16. [13.] Filing Requirements for Advertising of Medicare Supplement Policies. (1) An issuer [Every insurer, nonprofit hospital, medical-surgical, dental, and health service corporation, or health maintenance organization providing Medicare supplement policies in Kentucky] shall provide a copy of any Medicare supplement policy advertisement intended for use in Kentucky whether through written, radio, or television, to the commissioner prior to such use. Advertisements need not be approved prior to use, but an advertisement shall not be used if it has been disapproved by the commissioner and notice of the [such] disapproval has been given to the issuer [insurer, nonprofit hospital, medical-surgical, dental, and health service corporation, or health maintenance organization].

(2) Issuers [Insurers] and agents shall not use the names and addresses of persons purchased as "leads" unless the solicitation material used to obtain the names and addresses of the "leads" are filed as advertisements as required by this section. Issuers [Insurers] and agents shall not use such "leads" if the solicitation materials have been disapproved by the commissioner.

Section 17. [14.] Policy Delivery. If a Medicare supplement policy is not delivered by mail, the agent or insurer shall obtain a signed and dated delivery receipt from the insured. If the delivery receipt is obtained by an agent, the agent shall forward the delivery receipt to the issuer [insurer].

Section 18. [15.] Standards for Marketing. (1) An issuer [Every insurer, nonprofit hospital, medical-surgical, dental, and health service corporation, and health maintenance organization marketing Medicare supplement insurance coverage in Kentucky], directly or through its agents or other representatives, shall:

(a) Establish marketing procedures to assure that any comparison of policies by its agents or other representatives will be fair and accurate.

(b) Establish marketing procedures to assure excessive insurance is not sold or issued.

(c) Display prominently by type, stamp, or other appropriate means, on the first page of the outline of coverage and the policy the following disclosure: "Notice to buyer: This policy may not cover all of your medical expenses [the costs associated with medical care incurred by the buyer during the period of coverage. The buyer is advised to review carefully all policy limitations]."

(d) Inquire and otherwise make every reasonable effort to identify whether a prospective applicant or enrollee for Medicare supplement insurance already has accident and sickness insurance and the types and amounts of any such insurance.

(e) [Every insurer or entity marketing Medicare supplement insurance shall] Establish auditable procedures for verifying compliance with this subsection.

(2) In addition to the practices prohibited in KRS Chapter 304.12 and 806 KAR Chapter 12, the following acts and practices are prohibited:

(a) Twisting. Making any unfair or deceptive representation or incomplete or fraudulent comparison of any insurance policies or insurers

for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on, or convert any insurance policy or to take out a policy of insurance with another insurer.

(b) High pressure tactics. Employing any method of marketing having the effect of or tending to induce the purchase of insurance through force, fright, threat, whether explicit or implied, or undue pressure to purchase or recommend the purchase of insurance.

(c) Cold lead advertising. Making use directly or indirectly of any method of marketing which fails to disclose in a conspicuous manner that a purpose of the method of marketing is solicitation of insurance and that contact will be made by an insurance agent or insurance company.

Section 19. [16.] Appropriateness of Recommended Purchase and Excessive Insurance. (1) In recommending the purchase or replacement of any Medicare supplement policy or certificate an agent shall make reasonable efforts to determine the appropriateness of recommended purchase or replacement.

(2) Any sale of medicare supplement coverage that [which] will provide an individual more than one (1) Medicare supplement policy or certificate is prohibited[, but additional Medicare supplement coverage may be sold if, it would insure no more than 100% of the individual's actual medical expenses covered under the combined policies].

Section 20. [17.] Reporting of Multiple Policies. (1) On or before March 1 of each year, an issuer [, every insurer or other entity providing Medicare supplement insurance coverage in this state] shall report the following information for every individual resident of this state for which the issuer [insurer or entity] has in force more than one (1) Medicare supplement insurance policy or certificate:

(a) Policy and certificate number; and

(b) Date of issuance.

(2) The items set forth above shall be grouped by individual policyholder.

Section 21. [18.] Prohibition Against Preexisting Conditions, Waiting Periods, Elimination Periods, and Probationary Periods in Replacement Policies or Certificates. (1) If a Medicare supplement policy or certificate replaces another Medicare supplement policy or certificate, the replacing insurer shall waive any time periods applicable to preexisting conditions, waiting periods, elimination periods, and probationary periods in the new Medicare supplement policy for similar benefits to the extent such time was spent under the original policy.

(2) If a Medicare supplement policy or certificate replaces another Medicare supplement policy or certificate which has been in effect for at least six (6) months, the replacing policy shall not provide any time period applicable to preexisting conditions, waiting period, elimination periods, and probationary periods.

[Section 19. Transition of Medicare Supplement Policy Benefits and Premiums Due to Changes in Medicare. (1) The purpose of this section is to assure the orderly implementation and conversion of Medicare supplement insurance benefits and premiums due to changes in the federal Medicare program, to provide for the reasonable standardization of the coverage, terms, and benefits of Medicare supplement policies, to facilitate public understanding of such policies or contracts, to eliminate provisions contained in such policies or contracts which may be misleading or confusing in connection with the purchase of such policies or contracts, to eliminate policy or contract provisions which may duplicate Medicare benefits, to provide for adjustment of required minimum benefits for Medicare supplement policies, to provide notice to former policy holders of an offer to reinstitute coverage, to provide full disclosure of policy or contract benefits and benefit changes, and to provide for appropriate premium adjustments.]

[(2) This section shall take precedence over other requirements relating to Medicare supplement policies only to the extent necessary to assure that benefits are not duplicated and to adjust minimum required benefits to changes in Medicare benefits, that applicants receive adequate notice and disclosure of changes in Medicare supplement policies and contracts, that appropriate premium adjustments are made in a timely manner, and that premiums are reasonable in relation to benefits. Except as otherwise provided, this regulation shall apply to:]

[(a) All Medicare supplement policies and contracts delivered, issued for delivery, or which are otherwise subject to the jurisdiction of Kentucky on or after the effective date of this regulation; and]

[(b) All certificates issued under group Medicare supplement policies as provided in paragraph (a) of this subsection.]

[(3) Benefit conversion requirements.]

[(a) Effective January 1, 1990, no Medicare supplement insurance policy, contract, or certificate in force in this state shall contain benefits which duplicate benefits provided by Medicare.]

[(b) Benefits eliminated by operation of the Medicare Catastrophic Coverage Act of 1988 transition provisions shall be restored.]

[(c) For Medicare supplement policies subject to the minimum standards adopted by the states pursuant to the Medicare Catastrophic Coverage Act of 1988, the minimum benefits shall be:]

[1. Coverage of Part A Medicare eligible expenses for hospitalization to the extent not covered by Medicare from the 61st day through the 90th day in any Medicare benefit period;]

[2. Coverage for either all or none of the Medicare Part A inpatient hospital deductible amounts;]

[3. Coverage of Part A Medicare eligible expenses incurred as daily hospital charges during use of Medicare's lifetime hospital inpatient reserve days;]

[4. Upon exhaustion of all Medicare hospital inpatient coverage including the lifetime reserve days, coverage of ninety (90) percent of all Medicare Part A eligible expenses for hospitalization not covered by Medicare subject to a lifetime maximum benefit of an additional 365 days;]

[5. Coverage under Medicare Part A for the reasonable cost of the first three (3) pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations) unless replaced in accordance with

federal regulations or already paid for under Part B.]

[6. Coverage for the coinsurance amount of Medicare eligible expenses under Part B regardless of hospital confinement, subject to a maximum calendar year out of pocket amount equal to the Medicare Part B deductible; and]

[7. Effective January 1, 1990, coverage under Medicare Part B for the reasonable cost of the first three (3) pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations), unless replaced in accordance with federal regulations or already paid for under Part A, subject to the Medicare deductible amount.]

[(d) General requirements. No later than January 31, 1990, every entity providing Medicare supplement insurance or benefits to a Kentucky resident shall notify its policyholders of modifications it has made to Medicare supplement insurance policies or contracts. Such notice shall be in the format set forth in Appendix A.]

[1. The notice shall not contain or be accompanied by any solicitation.]

[2. No modifications to an existing Medicare supplement policy shall be made at the time of or in connection with the notice requirements of this section except to the extent necessary to accomplish the purposes set forth in subsection (1) of this section.]

[(4) Rate and form filing requirements.]

[(a) As soon as practicable, but no later than forty-five (45) days after the effective date of the Medicare benefit changes, every entity issuing Medicare supplement policies in Kentucky shall file with the commissioner, in accordance with the applicable filing procedures, the following:]

[1. Appropriate premium adjustments necessary to produce loss ratios as originally anticipated for the applicable policies or contracts. Supporting documents which are necessary to justify the adjustment shall accompany the filing.]

[2. Any appropriate riders, endorsements, or policy forms needed to accomplish Medicare supplement policy modifications necessary to eliminate benefit duplications with Medicare and to provide the benefits required by subsection (3) of this section. Any such riders, endorsements, or policy forms shall provide a clear description of the Medicare supplement benefits provided by the policy or contract.]

[(b) Upon satisfying the filing and approval requirements, every entity providing Medicare supplement policies in Kentucky shall provide each covered person with any rider, endorsement, or policy form necessary to make the adjustment outlined in subsection (3) of this section.]

[(c) Any premium adjustments shall produce an expected loss ratio under such policy or contract as will conform with minimum loss ratio standards for Medicare supplement policies and shall result in an expected loss ratio of at least as great as that originally anticipated by the insurer for such Medicare supplement insurance policies or contracts. Premium adjustments may be calculated for the period commencing with Medicare benefit changes.]

[(5) Offer of reinstitution of coverage.]

[(a) Except as provided in paragraph (b) of this subsection, in the case of an individual who had in effect on December 31, 1988, a Medicare supplement policy or certificate and the individual terminated coverage under such policy before the date of the enactment of the repeal of the Medicare Catastrophic Coverage Act of 1988, the insurer shall:]

[1. Provide written notice as soon as practicable to the policyholder or certificate holder at the last address known to the insurer of the offer described below; and]

[2. Offer the individual, reinstitution of coverage effective as of January 1, 1990, under the following terms:]

[a. There will be no provision for any waiting period with respect to treatment of preexisting conditions;]

[b. Provision for coverage which is substantially equivalent to coverage in effect before the date of termination; and]

[c. Provision for classification of premiums on terms which are at least as favorable to the policyholder or certificate holder as the premium classification terms that would have applied to the policyholder or certificate holder had the coverage never terminated.]

[(b) An insurer is not required to make the offer under paragraph (a)2 of this subsection in the case of an individual who is a policyholder or certificate holder of another Medicare supplement policy as of January 1, 1990, if the individual is not subject to a waiting period with respect to treatment of preexisting condition under the other policy.]

[(6) Requirements for new polices and certificates.]

[(a) Effective January 1, 1990, no Medicare supplement insurance policy, contract or certificate shall be delivered or issued for delivery in Kentucky which provides benefits which duplicate benefits provided by Medicare. No such policy, contract, or certificate shall provide less benefits than those required under this regulation, except where duplication of Medicare benefits would result and except as required by this section.]

[(b) General requirements.]

[1. Within ninety (90) days after the effective date of this regulation, every entity issuing Medicare supplement policies shall file new Medicare supplement policies or contracts which eliminate any duplication of Medicare supplement benefits provided by Medicare, which adjust minimum required benefits to changes in Medicare benefits and which provide a clear description of the policy or contract benefit.]

[2. The filing required under subsection (4)(a)1 of this section shall provide for loss ratios which are in compliance with all minimum standards.]

[3. Every applicant for a Medicare supplement insurance policy or certificate shall be provided an outline of coverage which simplifies and accurately describes benefits provided by Medicare and policy or certificate benefits and limitations.]

[Section 20. Severability. If any provision of this regulation or the application of this regulation to any person or circumstance is for any reason held to be invalid, the remainder of the regulation and the application of such provision to other persons or circumstances shall not be affected thereby.]

[Section 21. Effective Date. This regulation shall become effective upon completion of its review pursuant to KRS Chapter 13A.]

[(For Appendix A, see Chart in Section 5 of the "OUTLINE OF MEDICARE SUPPLEMENT COVERAGE AND PREMIUM INFORMATION", (Section 11(3)(c) of this regulation)]

COMPILER'S NOTE: The following "Appendix A" and "Appendix B" are new appendices being inserted.

APPENDIX A
MEDICARE SUPPLEMENT REFUND CALCULATION FORM
FOR CALENDAR YEAR _____

TYPE _____ SMSBP (W) _____
For the State of _____
Company Name _____
NAIC Group Code _____ NAIC Company Code _____
Person Completing This Exhibit_____
Title _____ Telephone Number _____

Line	(a) Earned Premium (x)	(b) Incurred Claims (y)
1. Current year's experience		
a. Total (all policy years)		
b. Current year's issues (2)		
c. Net (for reporting purposes – 1a – 1b)	_____	_____
2. Past year's experience (all policy years)	_____	_____
3. Total experience (net current year + past years' experience)	_____	_____
4. Refunds last year (excluding interest)		
5. Previous since inception (excluding interest)		
6. Refunds since inception (excluding interest)		
7. Benchmark ratio since inception (SEE WORK-SHEET FOR RATIO 1)		
8. Experienced ratio since inception		

Total actual incurred claims (line 3, col b) = Ratio 2

Tot. earned prem. (line 3, col a) – refunds since inception (line 6)

9. Life years exposed since inception_____

If the experienced ratio is less than the benchmark ratio, and there are more than 500 life years exposure, then proceed to calculation of refund.

10. Tolerance permitted (obtained from credibility table) _____

11. Adjustment to incurred claims for credibility

ratio 3 = ratio 2 + tolerance

If ratio 3 is more than benchmark ratio (ratio 1), a refund or credit to premium is not required.

If ratio 3 is less than the benchmark ratio, then proceed.

12. Adjusted incurred claims = (tot. earned premiums (line 3, col a) – refunds since inception (line 6)) x ratio 3 (lines 11)

13. Refund = total earned premium (line 3, col a) – refunds since inception (line 6) –

$$\frac{\text{Adjusted incurred claims (line 12)}}{\text{benchmark ratio (ratio 1)}}$$

If the amount on line 13 is less than .005 times the annualized premium in force as of December 31 of the reporting year, then no refund is made. Otherwise, the amount on line 13 is to be refunded or credited, and a description of the refund and/or credit against premiums to be used must be attached to this form.

Medicare Supplement Credibility Table

Life Years Exposed Since Inception	Tolerance
10,000 +	0.0%
5,000 – 9,999	5.0%
2,500 – 4,999	7.5%
1,000 – 2,499	10.0%
500 – 999	15.0%

If less than 500, no credibility.

(w) "SMSBP" = Standardized Medicare Supplement Benefit Plan.
(x) Includes model loadings and fees charged.
(y) Excludes active life reserves.
(z) This is to be used as "Issue Year Earned Premium" for Year 1 of next year's "Worksheet for Calculation of Benchmark Ratios".

I certify that the above information and calculations are true and accurate to the best of my knowledge and belief.

_____
Signature

_____
Name – Please Type

_____
Title

_____
Date

REPORTING FORM FOR THE CALCULATION OF BENCHMARK RATIO
SINCE INCEPTION FOR INDIVIDUAL POLICIES
FOR CALENDAR YEAR _____

TYPE _____ SMSBP (P) _____
FOR THE STATE OF _____
Company Name _____
NAIC Group Code ___ NAIC Company Code ___
Address _____
Person Completing this Exhibit _____
Title _____ Telephone Number _____

(a) Year	(b) Earned Premium	(c) Factor	(d) (b)x(c)	(e) Cumulative Loss Ratio	(f) (d)x(e)	(g) Factor	(h) (b)x(g)	(i) Cumulative Loss Ratio	(j) (h)x(i)	(o) Policy Year Loss Ratio
1		2.770		0.442		0.000		0.000		0.4
2		4.175		0.493		0.000		0.000		0.55
3		4.175		0.493		1.194		0.659		0.65
4		4.175		0.493		2.245		0.669		0.67
5		4.175		0.493		3.170		0.678		0.69
6		4.175		0.493		3.998		0.686		0.71
7		4.175		0.493		4.754		0.695		0.73
8		4.175		0.493		5.445		0.702		0.75
9		4.175		0.493		6.075		0.708		0.76
10		4.175		0.493		6.650		0.713		0.76
11		4.175		0.493		7.176		0.717		0.76
12		4.175		0.493		7.655		0.720		0.77
13		4.175		0.493		8.093		0.723		0.77
14		4.175		0.493		8.493		0.725		0.77
15		4.175		0.493		8.684		0.725		0.77
TOTAL:		(k):		(l):		(m):		(n):		

Benchmark ratio since inception: (l + n) / (k + m):

(a): Year 1 is the current calendar year – 1
Year 2 is the current calendar year – 2
(etc.)
(Example: If the current year is 1991, then: year 1 is 1990; year 2 is 1989; etc.)

(b): For the calendar year on the appropriate line in column (a), the premium earned during that year for policies issued in that year.

(o): Those loss ratios are not explicitly used in computing the benchmark loss ratios. They are the loss ratios, on a policy year basis, which result in the cumulative loss ratios displayed on this worksheet. They are shown here for informational purposes only.

(p): "SMSBP" = Standardized Medicare Supplement Benefit Plan.

REPORTING FORM FOR THE CALCULATION OF BENCHMARK RATIO
SINCE INCEPTION FOR GROUP POLICIES
FOR CALENDAR YEAR _____

TYPE _____ SMSBP (P) _____
FOR THE STATE OF _____
Company Name _____
NAIC Group Code ___ NAIC Company Code ___
Address _____
Person Completing this Exhibit _____
Title _____ Telephone Number _____

(a) Year	(b) Earned Premium	(c) Factor	(d) (b)x(c)	(e) Cumulative Loss Ratio	(f) (d)x(e)	(g) Factor	(h) (b)x(g)	(i) Cumulative Loss Ratio	(j) (h)x(i)	(o) Policy Year Loss Ratio
1		2.770		0.507		0.000		0.000		0.46
2		4.175		0.567		0.000		0.000		0.63
3		4.175		0.567		1.194		0.759		0.75
4		4.175		0.567		2.245		0.771		0.77
5		4.175		0.567		3.170		0.782		0.8
6		4.175		0.567		3.998		0.792		0.82
7		4.175		0.567		4.754		0.802		0.84
8		4.175		0.567		5.445		0.811		0.87
9		4.175		0.567		6.075		0.818		0.88
10		4.175		0.567		6.650		0.824		0.88

11	4.175	0.567	7.176	0.828	0.88
12	4.175	0.567	7.655	0.831	0.88
13	4.175	0.567	8.093	0.834	0.89
14	4.175	0.567	8.493	0.837	0.89
15	4.175	0.567	8.684	0.838	0.89
TOTAL:	(k):	(l):	(m):	(n):	

Benchmark ratio since inception: (l + n) / (k + m):

(a): Year 1 is the current calendar year – 1
Year 2 is the current calendar year – 2
(etc.)
(Example: If the current year is 1991, then: year 1 is 1990; year 2 is 1989; etc.)

(b): For the calendar year on the appropriate line in column (a), the premium earned during that year for policies issued in that year.

(o): Those loss ratios are not explicitly used in computing the benchmark loss ratios. They are the loss ratios, on a policy year basis, which result in the cumulative loss ratios displayed on this worksheet. They are shown here for informational purposes only.

(p): "SMSBP" = Standardized Medicare Supplement Benefit Plan.

APPENDIX B
FORM FOR REPORTING
MEDICARE SUPPLEMENT POLICIES

Company Name: _____
Address: _____
_____
Phone Number: _____

Due March 1, annually

Policy and Certificate # Date of Issuance

_____
_____
_____
_____

_____
Signature

_____
Name and Title (Please Type)

_____
Date

The purpose of this form is to report the following information on each resident of this state who has in force more than one Medicare supplement policy or certificate. The information is to be grouped by individual policyholder.

KENTUCKY MEDICARE SUPPLEMENT COMPARISON STATEMENT

Current Insurance_____ Annual Premium_____
(Insurer Name)

Proposed Insurance_____ Annual Premium_____
(Insurer Name)

MEDICARE (PART A): HOSPITAL INSURANCE – COVERED SERVICES PER BENEFIT PERIOD (1)

Services	Benefit	Medicare Pays*	You Pay*	PRIVATE INSURANCE CHECKLIST Current Insurance Pays (Plan)**	Proposed Insurance Pays (Plan)
HOSPITALIZATION	First 60 days	All but $	$		
Semiprivate room and board, general nursing and miscellaneous hospital services and supplies.	61st to 90th day	All but $ a day	$ a day		
	91st to 150th day***	All but $ a day	$ a day		
	Beyond 150 days	Nothing	All costs		
POSTHOSPITAL SKILLED NURSING FACILITY CARE In a facility approved by Medicare. You must have been in a hospital for at least 3 days and enter the facility within 30 days after hospital discharge (2).	First 20 days	100% of approved amount	Nothing		
	Additional 80 days	All but $ a day	$ a day		
	Beyond 100 days	Nothing	All costs		

HOME HEALTH CARE	Visits limited to medically necessary skilled care.	Full cost of services; 80% of approved amount for durable medical equipment	Nothing for services; 20% of approved amount for durable medical equipment
HOSPICE CARE Available to terminally ill.	Up to days if doctor certifies need.	All but limited costs for outpatient drugs and inpatient respite care.	Limited cost sharing for outpatient drugs and inpatient respite care.
BLOOD	Blood.	All but first 3 pints	For first 3 pints.****
FOREIGN TRAVEL	Medically necessary emergency care in a foreign country.	Emergency hospital services in qualified Mexican or or Canadian hospitals.*****	All costs not covered by Medicare

* These figures are for 19__ and are subject to change each year.
** If the policy being replaced is not a standardized policy, insert "N/A".
*** 60 reserve days may be used only once; days used are not renewable.
**** To the extent the blood deductible is met under one part of Medicare during the calendar year, it does not have to be met under the other part.
***** Please refer to your Medicare Handbook for more information.
(1) A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital or skilled nursing facility for 60 days in a row.
(2) Medicare and private Medicare supplement insurance will not pay for most nursing home care. You pay for custodial care and most care in a nursing home.

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KENTUCKY MEDICARE SUPPLEMENT COMPARISON STATEMENT

MEDICARE (PART B): HOSPITAL INSURANCE - COVERED SERVICES PER CALENDAR YEAR

Service	Benefit	Medicare Pays	You Pay	PRIVATE INSURANCE CHECKLIST Current Insurance Pays (Plan)*	Proposed Insurance Pays (Plan)
MEDICAL EXPENSE Physician's services, inpatient and outpatient medical services and supplies, physical and speech therapy, ambulance, etc.	Medicare pays for medical services in or out of the hospital.	80% of approved amount (after $ deductible)	$ Deductible** plus 20% of balance of approved amount (plus any charge above approved amount)***		
HOME HEALTH CARE	Visits limited to medically necessary skilled care	Full cost of services; 80% of approved amount for durable medical equipment (after $ deductible).	Nothing for services; 20% of approved amount for durable medical equipment (after $ deductible).		
AT-HOME RECOVERY BENEFIT	Short-term at-home assistance with activities of daily living.****	Nothing	All costs		
OUTPATIENT HOSPITAL TREATMENT	Unlimited if medically necessary.	80% of approved amount (after $ deductible).	Subject to deductible plus 20% of approved amount.		
BLOOD	Blood	80% of approved amount (after $ deductible and starting with 4th pint).	First 3 pints plus 20% of approved amount (after $ deductible)*****		
PREVENTIVE CARE-PATIENT EDUCATION	Annual physical exam, preventive testing, influenza vaccines	Screening pap smears once every 3 years; screening mammograms every second year.	All costs not covered by Medicare		
OUTPATIENT PRESCRIPTION DRUGS	Outpatient prescription drugs	Nothing	All costs		

FOREIGN TRAVEL	Medically necessary emergency care in foreign country.	Nothing	All costs not covered by Medicare
OTHER******			

* If the policy being replaced is not a standardized policy, insert "N/A".
** Once you have had $ of expense for covered services in 19 , the Part B deductible does not apply to any further covered services you receive for the rest of the year.
*** YOU PAY FOR charges higher than the amount approved by Medicare unless the doctor or supplier agrees to accept Medicare's approved amount as the total charge for services rendered.
**** At home recovery benefits must be received in conjunction with Medicare approved home health care benefits.
***** To the extent the blood deductible is met under one part of Medicare during the calendar year, it does not have to be met under the other part.
****** Use this area to compare prestandardization and/or innovative benefits.

NOTICE TO APPLICANT:
Do not sign this form unless it has been explained to you.

Applicant _____ Date _____ Agent _____ Date _____

NOTICE TO AGENT/INSURER:
This form is to be retained by the replacing insurer and attached to the replacement policy.

Form LHM-2 (November, 1991) Page 2 of 2

ELIZABETH P. WRIGHT, Commissioner
THEODORE T. COLLEY, Secretary
APPROVED BY AGENCY: November 18, 1991
FILED WITH LRC: December 6, 1991 at 9 a.m.

PUBLIC HEARING: Persons with an interest in the subject matter of the proposed regulation may comment at a public hearing scheduled for January 21, 1992 at 9 a.m. (ET), in the offices of the Kentucky Department of Insurance, 229 West Main Street, Frankfort, Kentucky 40601. Written comments may be submitted to Elizabeth P. Wright, Commissioner, Kentucky Department of Insurance, P.O. Box 517, Frankfort, Kentucky 40602. Written comments must be received prior to 9 a.m. (ET) on January 21, 1992, in order to receive consideration. The public hearing scheduled above may be cancelled if no one notifies the Commissioner of Insurance at least five (5) days prior to the hearing that they will be in attendance at the hearing to comment.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Patrick Watts

Need for the proposed regulation: The proposed regulation is necessary to meet the requirements of federal law in order to receive federal approval for Kentucky's program to regulate Medicare supplement insurance. In 1980, Congress adopted 42 USC § 1395ss, providing that the National Association of Insurance Commissioner ("NAIC") would be required to adopt a minimum standards model act and model regulation for Medicare supplement insurance and that states which failed to have the minimum standards model act and regulation in force would lose the authority to regulate Medicare supplement insurance.

In 1988, Congress adopted the Medicare Catastrophic Coverage Act, which made radical changes in Medicare and required the NAIC (and, therefore, the states) to change their Medicare supplement insurance regulations. At that time, the Department of Insurance adopted 806 KAR 17:065, Minimum standards for Medicare supplement insurance.

In 1989, Congress executed an about-face, repealing the Medicare Catastrophic Coverage Act of 1988. In turn, this required amendment of the NAIC model regulation (and, therefore, state regulations) relating to Medicare supplement insurance. The model regulation was also amended to adopt various consumer protection provisions. The current regulation was promulgated in response to the Medicare Catastrophic Coverage Repeal Act of 1989, as well as to adopt the new consumer protection provisions contained in the NAIC model regulation.

The Omnibus Budget Reconciliation Act of 1990 (PL 101-508) made substantial changes in federal laws controlling the regulation of Medicare supplement insurance. OBRA 1990 requires the NAIC to amend its model regulation to specify up to ten standardized Medicare supplement contracts and prohibit insurers from selling any contracts other than the standardized contracts. The purpose of this restriction is to make it easier for senior citizens to compare policies (see Section 7). OBRA 1990 also established an open enrollment requirement under which persons eligible for Medicare by reason of age must be accepted by a Medicare supplement insurer as long as the application for insurance is made within six months of the applicant becoming covered by Part B of Medicare (see Section 9).

(1) Type and number of entities affected: The proposed regulation will affect the 100 insurers writing Medicare supplement insurance in Kentucky. The proposed regulation will also affect 35,000 insurance agents who have authority to sell health insurance, although not all of these agents are actively engaged in the sale of Medicare supplement insurance. The proposed regulation will also effect an unknown number of Medicare supplement insurance policyholders.

(a) Direct and indirect costs or savings to those affected:

1. First year: These minimum standards are imposed by federal law. Therefore, the proposed regulation imposes no cost or savings to those affected.

2. Continuing costs or savings: The proposed regulation imposes minimum standards required by federal law. Therefore, the proposed regulation has no cost or savings.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: The proposed regulation imposes minimum standards required by federal law, and, therefore, the reporting and paperwork requirements are not imposed by the Department of Insurance. The requirement of a comparison statement for replacement (see Section 15) is not part of the model regulation.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The regulation is required by federal law, and, therefore, costs or savings, are not attributable to the proposed regulation.

2. Continuing costs or savings: The proposed regulation is required by federal law, and, therefore, continuing costs or savings are imposed by federal law, not the proposed regulation.

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: 42 USC § 1395ss requires states to have regulations imposing minimum standards for Medicare supplement insurance policies or the federal government will assume regulation of these policies. Therefore, there is no alternative (other than allowing federal regulation) to having minimum standards for Medicare supplement insurance policies.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? Yes. Tiering is recognized in that policies issued prior to January 1, 1992, will be required to meet standards in effect at the time they were issued while policies issued after that date will be required to meet the new minimum standards. Tiering is further utilized in the creation of 10 different standardized policies, with the choice as to which policy will be purchased left with the prospective insured. Lastly, tiering is recognized in the regulation of so-called Medicare select policies.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC § 1395ss.

2. State compliance standards. State compliance standards consist of a model regulation adopted by the National Association of Insurance Commissioners. The current regulation requires amendment due to changes required in the Omnibus Budget Reconciliation Act of 1990 (PL 101-508).

One difference between the model regulation and 806 KAR 17:066 is that Section 15 of 806 KAR 17:066 requires a comparison statement for replacement. This has been an additional protection which has been included in Kentucky's regulation since 1982.

Another distinction between 806 KAR 17:066 and the model regulation is that Section 17 of 806 KAR 17:066 requires a signed delivery receipt for any policy not delivered by mail. This additional protection has been part of Kentucky's regulation since 1989.

806 KAR 17:066 also prohibits insurers or agents from using "leads" purchased from another person unless the solicitation materials used by the other person have been filed as an advertisement under Section 16. The model regulation does not specifically contain this requirement, although this is, arguably, the meaning of the model regulation.

3. Minimum or uniform standards contained in the federal mandate. 42 USC §1935ss requires states to adopt standards at least as stringent as those set forth in the National Association of Insurance Commissioners model regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The items set forth above which are not contained in the model regulation differ from the model regulation in that they are in addition to the minimum required standards, but they do not violate federal law because the federal requirement is that Kentucky's regulation be at least as stringent as the model regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The requirement that a comparison statement, that is, a direct comparison of proposed replacement Medicare supplement insurance with existing Medicare supplement insurance, is highly beneficial to the policyholder in determining whether a replacement transaction is appropriate. Kentucky has used this requirement since 1982.

The requirement of a signed delivery receipt is to provide evidence of delivery of the policy to mark the beginning of the "free look" period. The department has encountered problems when agents deliver policies, insureds try to return them, and there is a dispute as to whether the policy was returned within the "free look" period. A signed delivery receipt will minimize these problems.

Prohibiting insurers and agents from using "leads" unless the solicitation materials used to obtain the "leads" has been approved by the department is necessary to suppress unfair or deceptive business practices by persons obtaining "leads" for sale to insurers and agents. Typically, these persons will send a mailer to a senior citizen offering information on Medicare or Social Security or call themselves "federal Medicare division," or some similar name, with a return address in Washington, D.C. The responses are received at the Washington address and then forwarded to an address (sometimes a post office box) in the midwest. The "leads" are then sold to insurers

and agents, who often do not bring the consumer information on Medicare supplement or Social Security, but instead try to sell the consumer insurance. By requiring solicitation materials to be filed by insurers or agents purchasing "leads," the activities of so-called "lead" companies can be regulated more effectively.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings & Construction
Office of State Fire Marshal
(Proposed Amendment)

815 KAR 4:010. Elevators, dumbwaiters, escalators and moving walks standards.

RELATES TO: KRS 198B.400-198B.540
STATUTORY AUTHORITY: KRS 198B.470, 198B.490
NECESSITY AND FUNCTION: KRS 198B.490 requires the commissioner to make rules and regulations exclusively for the safety and inspection of passenger elevators as defined by KRS 198B.400(1) and (2). The function of this regulation is to adopt safety standards which will insure that such passenger elevators are installed and maintained to provide reasonable safety when used by the citizens of this Commonwealth. This amendment is necessary to upgrade the standards for elevator maintenance and installation by adopting the latest edition of the code without exception [needed to update the standards for annual inspection to the latest edition of the applicable codes].

Section 1. Adoption of Code. The commissioner hereby adopts and incorporates by reference the American Standard Safety Code for Elevators, Dumbwaiters, Escalators and Moving Walks, American Society of Mechanical Engineers A17.1-1990 [1987 (with the exception of rules 102.2.(c)(4) and 700.4b, 700.5, 700.7b, 700.10b, 707.4)] and the safety standard for conveyors and related equipment which is published by and available from the American Society of Mechanical Engineers, United Engineering Center, 345 East 47th Street, New York, New York 10017, which specifically details the equipment, materials, weights, gauges, lengths, widths, and quality of construction that will make elevators, escalators, and any other lifting or lowering device reasonably safe. Copies are also available to be inspected at the Department of Housing, Buildings and Construction, U.S. 127 South, Frankfort, Kentucky, Monday through Friday between 8 a.m. and 4:30 p.m.

Section 2. New Elevators. All new elevators and equipment covered by Section 1 of this regulation shall be constructed in accordance with the standards set forth in this regulation and the Kentucky Building Code. Fees shall be paid as set forth in 815 KAR 4:025.

Section 3. Annual Inspection of Passenger Elevators and Escalators. Annual inspections of passenger elevators and escalators shall be conducted in accordance with the codes adopted in Section 1 of this regulation. Fees charged are as set forth in 815 KAR 4:025.

CHARLES A. COTTON, Commissioner
THEODORE T. COLLEY, Secretary
APPROVED BY AGENCY: November 21, 1991
FILED WITH LRC: December 9, 1991 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 21, 1992 at 10 a.m. in the office of the Department of Housing, Buildings and Construction, 1047 U.S. 127 South, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by January 16, 1992, (five days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is received. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Judith G. Walden, Office of General Counsel, Department of Housing, Buildings and Construction, The 127 Building, 1047 U.S. 127 South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Judith G. Walden
(1) Type and number of entities affected: Elevator installation contractors and owners of buildings in which an elevator is located.
(a) Direct and indirect costs or savings to those affected: No additional costs beyond the fees charged for plan review and inspections which have not been 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 new reporting or paperwork requirements.
(2) Effects on the promulgating administrative body: Department receives fees for initial installation inspection of all elevators, passenger or otherwise.
(a) Direct and indirect costs or savings: Fees generate approximately $280,000 per year which is sufficient to support the number of employees making the required amount of inspections.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: Reporting requirements have remained the same.
(3) Assessment of anticipated effect on state and local revenues: No effect on state or local revenues.
(4) Assessment of alternative methods; reasons why alternatives were rejected: Fee for service viewed as best mechanism with appropriate persons paying.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: 815 KAR 7:025 regulates new elevators by the same standard, so no conflict. This regulation governs annual inspections.
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation

with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? Yes. The elevator code treats each type of moving device in a different way. The standard varies from elevator to elevator.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings & Construction
Division of Building Codes Enforcement
(Prosposed Amendment)

815 KAR 7:025. Kentucky Building Code.

RELATES TO: KRS Chapter 198B
STATUTORY AUTHORITY: KRS 198B.040(7), 198B.050
NECESSITY AND FUNCTION: The Kentucky Board of Housing, Buildings and Construction is required by KRS 198B.040(7) to adopt and promulgate a mandatory uniform state building code, which establishes standards for construction of buildings in the state. This regulation establishes the Kentucky Building Code basic provisions relating to construction, including general building limitations, special use and occupancy, light, ventilation and sound transmission control, means of egress, structural and foundation loads and stresses, acceptable materials and tests, fire resistive construction and fire protection systems, safety during building operations, mechanical systems, energy conservation and electrical systems. This regulation includes the substance of 815 KAR 7:020, which is being repealed. These amendments are necessary to allow an alternate method of compliance for separation between tenant spaces in attics when the walls are perpendicular to the roof trusses; to upgrade the elevator standards to the latest edition of the elevator code; to provide alternate facility dimensions for accessibility for disabled children in day care and elementary schools. [This amendment is necessary in order to clarify, define or explain other provisions of the code and to put into enforceable law in accordance with KRS Chapter 13A official interpretations of the department.]

Section 1. Adoption of Building Code. (1) The "BOCA National Building Code/1990," Eleventh Edition, Articles 2 through 32 and Appendices A through D, published by Building Officials and Code Administrators International, Inc., 4051 W. Flossmoor Road, Country Club Hills, Illinois 60477, is hereby incorporated by reference as it is set forth at length herein, except as amended in Section 2 through 33 of this regulation. Copies are available at the Department of Housing, Buildings and Construction, The 127 Building, 1047 U.S. 127 South, Frankfort, Kentucky, between 8 a.m. and 4:30 p.m., Monday through Friday.
(2) Article 1, Administration and Enforcement, is hereby deleted in its entirety. All requirements for the administration and enforcement of this regulation are set forth in 815 KAR 7:010 with fees established by 815 KAR 7:013.

Section 2. Article 2, Definitions. Amend Article 2 by adding the following definitions:
(1) "Alarm verification" means a feature of automatic fire detection systems to reduce unwanted alarms wherein automatic fire detectors report alarm conditions for a minimum period of time, or confirm alarm conditions within a given period, after being automatically reset to be accepted as a valid alarm initiation signal.
(2) "Detector, heat" means an alarm-initiating device that detects abnormally high temperature or rate-of-temperature rise.
(3) "Exit discharge, level of" means the horizontal plane located by the point at which an exit terminates and an exit discharge begins.
(4) "Fire alarm box, manual" means a manually operated alarm-initiating device that activates a fire protective signaling system.
(5) "Fire command station" means the principal location where the status of the detection, alarm, communications and control systems is displayed and from which the system has the capability for manual control.
(6) "Heated slab" means slab-on-grade construction in which the heating elements or hot air distribution system is in contact with or placed within the slab or the subgrade.
(7) "Infiltration" means the uncontrolled inward air leakage through cracks and interstices in any building element and around windows and doors of a building caused by the pressure effects of wind or the effect of differences in the indoor and outdoor air density.
(8) "Multiple single-family dwelling" means a building or portion thereof containing more than two (2) dwelling units.
(9) "Opaque areas" means all exposed areas of a building envelope which enclose conditioned space, except openings for windows, skylights, doors and building service systems.
(10) "Overall thermal transfer value (OTTV)" means the thermal transfer into a building through the walls or roof due to solar heat gain and outdoor-indoor temperature differences as determined by Equations 3 and 4 (see Article 31).
(11) "Shading coefficient (SC)" means the solar heat gain of fenestration divided by the solar heat gain of one-eighth (1/8) inch clear glass.

$$sc = \frac{\text{solar heat gain of fenestration}}{\text{solar heat gain of 1/8-inch clear glass}}$$

(12) "Smoke detector, multiple station" means single-station smoke detectors which are capable of being interconnected so that actuation of one (1) causes all integral or separate audible alarms to operate.
(13) "Smoke detector, single station" means an assembly incorporating the detector, control equipment and the alarm-sounding device in one (1) unit, which is operated from a power supply either in the unit, or obtained at the point of installation.
(14) "Supervisory device" means an initiating device used to monitor the conditions that are essential for the proper operation of automatic fire suppression systems (i.e., switches used to monitor the position of gate valves, a low air-pressure switch on a dry-pipe sprinkler system, etc.)
(15) "Voice/alarm signaling system" means a system that provides, to the occupants of a building, dedicated manual or automatic facilities, or both, for originating and distributing voice instructions, as well as alert and evacuation signals pertaining to a fire emergency.
(16) "Wireless initiating device" means an initiating device which communicates with

associated control or receiving equipment by means of wireless transmission medium.

Section 3. Article 3, Use Group Classification. Amend Article 3 by making the following additions, deletions or changes:

(1) Amend subsection 304.1 to read as follows: "304.1 General: All buildings and structures, or parts thereof, other than those used for business training or vocational training, which are used by more than five (5) persons at one (1) time for educational purposes including, among others, schools, academies, colleges and universities, shall be classified in Use Group E. Educational type uses with a total occupant load of less than fifty (50) shall be classified as Use Group B. School buildings, or parts thereof, used for business training or vocational training shall be classified in the same use group as the business or vocation taught. 304.1.1 Day Care Facilities: A day care facility which provides care for more than four (4) persons for less than twenty-four (24) hours per day shall be classified as Use Group E."

(2) Delete subsection 307.3.1, Child care facility, in its entirety.

(3) Amend subsection 309.5, Use Group R-4 Structures, to read as follows: "309.5 Use group R-4 Structures: This use group shall include all detached one (1) or two (2) family dwellings not more than than three (3) stories in height, and their accessory structures as indicated in the One (1) and Two (2) Family Dwelling Code listed in Appendix A. All of these structures shall be designed and built in accordance with the requirements of this code for a Use Group R-3 structure, or with the requirements of the one (1) and two (2) family dwelling code, except that the requirements of the State Plumbing Code (Article 28) shall supersede those conflicting requirements of the One (1) and Two (2) Family Dwelling Code. This choice shall be made by the builder at the time of plans submission. A builder may use Exception #4 of Section 809.4 to determine minimum size of egress windows."

(4) Create a new subsection to read as follows: "310.4 Tobacco auction warehouses: Warehouses, for the sale of tobacco only, of Type 1, Type 2 or Type 3 construction, may be constructed without a sprinkler system if all of the following requirements have been met:

(a) The initial submission of plans to the Department of Housing, Buildings and Construction shall include a signed certificate by the owner that the warehouse shall be used solely for the sale of tobacco on a seasonal basis or for the storage of noncombustibles.

(b) A fire protective signaling system (manual fire alarm) and automatic fire detection system (smoke detection) with notification to the local fire service shall be provided with installation in accordance with Sections 1016, 1017 and 1020 of this code.

(c) An eighteen (18) foot paved and posted fire lane surrounding the entire perimeter of the building shall be provided and be accessible from a public street.

(d) A fifty (50) foot fire separation shall be maintained between the warehouse and the lot line and the warehouse and the nearest building.

Section 4. Article 4, Types of Construction Classification. Amend Article 4 by making the following additions, deletions or changes:

(1) Amend Table 401, Fire-resistance Ratings of Structure Elements (In Hours), by creating a footnote to read as follows: "Note 1. The fire partitions and floor/ceiling assembly ratings in R-2 buildings may be reduced to one (1) half (1/2) hour if all dwelling units are not more than one (1) story above the lowest level of exit discharge and not more than one (1) story below the highest level of exit discharge of exits serving the dwelling unit and if equipped with an NFiPA 13D sprinkler system listed in Appendix A."

(2) Amend the notation under "Dwelling unit separations" in column "Structure element" within Table 401 to read as follows: "(Sections 910.0, 913.0 and Notes f, j and 1)."

Section 5. Article 5, General Building Limitations. Amend Article 5 by making the following additions, deletions or changes:

(1) Amend subsection 504.2, Exterior walls, by adding one (1) sentence at the end of the paragraph to read as follows: "The entire perimeter of one (1) story unlimited area buildings shall have a minimum fire separation distance of thirty (30) feet (9144 mm)."

(2) Amend subsection 505.1 by changing the number "103.0" to read "106.0."

(3) Amend subsection 511.1 by changing the number "124.0" to read "123.0."

(4) Delete subsections 512.1 through 512.4.1 and insert in lieu thereof the following: "512.1 Barrier Free Design. Please see 815 KAR 7:060 (Article 33) for construction requirements providing for accessible buildings and facilities."

(5) Delete subsection 513.1, Approval, in its entirety.

Section 6. Article 6, Special Use and Occupancy Requirements. Amend Article 6 by making the following additions, deletions or changes:

(1) Amend subsection 602.2, Maintenance and inspection, to read as follows: "602.2 Maintenance and inspection: All fire protection systems shall be maintained in an operative condition at all times and shall be periodically inspected and tested in accordance with the fire prevention code listed in Appendix A."

(2) Amend Section 608.1, Attached Garages, by adding the following exception: "Exception: In lieu of the required one and three quarter (1 3/4) inch or twenty (20) minute door, an approved automatic sprinkler head located directly above the door in the garage and properly connected to the domestic water system shall be permitted."

(3) Create a new subsection 623.1.1 to read as follows: "623.1.1 New facilities: The Cabinet for Human Resources, Department for Health Services, shall regulate the design and construction of new facilities as related to water distribution and treatment systems for public swimming pools and the proper operation and maintenance of all pool facilities. See 902 KAR 10:120, Kentucky public swimming and bathing facilities regulation."

Section 7. Article 7, Interior Environmental Requirements. Amend Article 7 by making the following additions, deletions or changes:

(1) Create a new subsection 701.2 to read as follows: "701.2 Alternative Mechanical System: HVAC systems in occupancies reviewed under NFiPA 101 pursuant to Section 126.1 of this code shall

be installed in accordance with NFiPA 90A or NFiPA 90B in lieu of the mechanical code listed in Appendix A."

(2) Delete subsections 702.1 through 702.3 in their entirety.

(3) Amend subsection 708.1.3, Furred Ceilings, by adding the following exception: "Exception: In Use Group R-3 basement recreation rooms, a furred ceiling height of six feet and eight inches (6'8") around the ducts may be made in the soffit area only for structural beams and mechanicals. The two-thirds (2/3) area requirements listed in this section shall still be met."

(4) Amend subsection 709.3 to read as follows: "709.3 Alternative mechanical ventilation: Enclosed attic, rafter and crawl spaces and other uninhabited spaces such as unfinished basements, which are not ventilated as herein required, shall be equipped with a mechanical ventilation system conforming to the requirements of Section M-1605 of the mechanical code listed in Appendix A."

Section 8. Article 8, Means of Egress. Amend Article 8 by making the following additions, deletions or changes:

(1) Delete subsection 804.2.1 in its entirety.

(2) Amend Table 806.1.2 by adding a notation to Industrial areas to read as follows: "Note: Use a value of 200 gross for purposes of determining jurisdiction under Sections 108 and 109, design professional seal requirements, and Article 33, applicability."

(3) Create a new subsection 807.3.2 to read as follows: "807.3.2 Protection of egress: A required means of egress shall not discharge directly into a vehicular path unless guards are provided to protect vehicles from hitting the exit door in any outward opened position and to direct pedestrians in a path running parallel to the vehicular path. The guards shall prevent the exit door from being blocked by movable objects such as dumpsters or parked vehicles."

(4) Amend Table 809.3, Buildings with One Exit, to read as follows:

TABLE 809.3
BUILDINGS WITH ONE EXIT

Use Group	Maximum No. of Stories Above Grade	Maximum occupants, travel distances[d] or Dwelling Units. Per Floor
All	1 story	50 occupants
B[b],F,M,S[a]	2 stories	30 occupants and a 75-foot travel distance
R-2	2 stories[e]	4 dwelling units and a travel distance of 50 feet
R-2	3 stories[c]	4 dwelling units

Note a. For the required number of exits for open parking structures, see Section 809.5

Note b. For the required number of exits for air traffic control towers, see Section 617.0.

Note c. Buildings of Use Group R-2 equipped throughout with an automatic sprinkler system in accordance with Section 1004.2.1 or 1004.2.2 shall have a maximum height of three (3) stories above grade.

Note d. One (1) foot = 304.8 mm.

Note e. When equipped with an NFiPA 13D sprinkler system listed in Appendix A, the travel distance shall be increased to seventy-five (75) feet and the number of dwelling units per floor shall be increased to eight (8), but not more than four (4) units shall share a single exit."

(5) Amend subsection 809.4, Emergency Escape, by adding two (2) additional exceptions to read as follows: "4. Egress windows located on the first and second stories in multiple family dwellings (R-2 and R-3 Use Groups) and one (1) and two (2) family dwellings may have a minimum net clear opening height dimension of twenty-two (22) inches and a minimum width dimension of twenty (20) inches; and the net clear opening area may be reduced to no less than four (4) square feet. The minimum total glazed area shall be five (5) square feet in the case of a ground floor window and not less than five and seven-tenths (5.7) square feet in the case of a second story window. (This exception applies only if the sash frames can be readily broken or removed.)" and "5. An outside window or exterior door for emergency escape shall not be required in R-2 occupancies when all dwelling units are not more than one (1) story above the lowest level of exit discharge and not more than one (1) story below the highest level of exit discharge of exits serving the dwelling unit and when equipped with an NFiPA 13D sprinkler system listed in Appendix A."

(6) Amend Table 810.4, Corridor Fire-resistance Rating, to read as follows:

TABLE 810.4
CORRIDOR FIRE-RESISTANCE RATING

Use Group	Total Required Capacity of all Exits from Corridor	Required Fire-resistance Rating Without sprinkler system	Required Fire-resistance Rating With sprinkler system[d]
H	>30	NP[e]	1 hr.
A,B,E,F,M,S	>30	1 hr.	0
I-1,R[a,f]	>10	1 hr.	1/2 hr.
I-2	All	1 hr.	0[b]
I-3	All	NP	0[c]

Note a. For reduction in fire-resistance rating for Use Group R, see Section 810.4, Exception 2.

Note b. For requirements for Use Group I-2, see Section 610.3.

Note c. For reduction in fire-resistance rating for Use Group I-3, see Table 611.8.

Note d. Buildings equipped throughout with an automatic sprinkler system in accordance with Section 1004.2.1, 1004.2.2 or 1004.2.3.

Note e. NP = Not Permitted.

Note f. In R-2 occupancies when all dwelling units are not more than one (1) story above the lowest level of exit discharge and not more than one (1) story below the highest level of exit discharge of exits serving the dwelling unit and when equipped with an NFiPA 13D sprinkler system listed in Appendix A, the required fire resistance rating shall be

one-half (1/2) hour."

(7) Amend the exception to 810.4.1, Corridor walls as separation walls, to read as follows: "Exception: Tenant separation and dwelling unit separation walls which are also corridor walls shall not be required to have a fire-resistance rating greater than that required by Table 810.4 where the building is equipped throughout with an automatic sprinkler system in accordance with Sections 1004.2.1, 1004.2.2 or 1004.2.3."

(8) Amend subsection 813.4.2, Panic Hardware, as follows:

(a) Amend the first sentence to read as follows: "All doors equipped with latching or locking devices in buildings of Use Groups A and E or portions of buildings used for assembly or educational purposes and serving rooms or spaces with an occupant load greater than 100, shall be equipped with approved panic hardware."

(b) Create an exception to subsection 813.4.2 to read as follows: "Exception: Panic hardware for Use Group A3 shall not be required for principal entrance/exit doors if:

1. They are free-swinging; and
2. The calculated occupant load does not exceed 150; and
3. The latch/lock device is a thumb latch/lock or a key operated lock device in which the key cannot be removed from the side from which egress is to be made when it is locked."

(9) Amend subsection 816.3, Maximum slope, to read as follows: "816.3, Maximum slope: The maximum slope of means of egress ramps shall be one (1) unit vertical in eight (8) units horizontal (1:8); except ramps required in accordance with Article 33 for persons with physical handicaps, in which case the maximum slope shall be: one (1) unit vertical in eight (8) units horizontal (1:8) if the rise is limited to three (3) inches (76 mm); one (1) unit vertical in ten (10) units horizontal (1:10) if the rise is limited to six (6) inches (152 mm); or one (1) unit vertical in twelve (12) units horizontal (1:12) otherwise."

(10) Amend subsection 817.12, Exterior Stairways, by deleting the first sentence to read as follows: "817.12 Exterior stairways: Exterior stairways shall not be accepted as an exit in the following cases:

1. Buildings of Use Group I-2 which exceed four (4) stories or fifty (50) feet in height.
2. Buildings of Use Group I-3.
3. Floors that exceed five (5) stories or sixty-five (65) feet in height above the level of exit discharge."

Section 9. Article 9, Fire-resistive Construction. Amend Article 9 by making the following additions, deletions, or changes:

(1) Amend subsection 901.2, Penetrations, to read as follows: "Plans for buildings shall indicate where penetrations shall be made for electrical, mechanical, plumbing and communication conduits, pipes and systems, and shall also indicate the materials and methods for maintaining the required structural integrity, fire-resistance rating and firestopping. Approved penetration assemblies shall be used for all combustible penetrations of fire-resistant rated building elements as specified in Section 910.3.1."

(2) Amend subsection 903.4, Interior Hangings and Decorations, to read as follows: "Interior hangings and decorations shall comply with Section 903.4.1."

(3) Delete subsections 903.4.2, 903.4.3 and 903.4.4 in their entirety.

(4) Create a new subsection 904.4 to read as follows: "904.4 Combustible pipe: Combustible pipe shall be permitted in all use groups and construction types where approved by Article 28 of this Code and the Kentucky State Plumbing Code."

(5) Create a new subsection 904.4.1 to read as follows: "904.4.1 Vertical combustible pipe: Vertical combustible pipes shall comply with Sections 910.3.1 and 915.3.2."

(6) Create a new subsection 910.3.1, Through-Penetration System, to read as follows: "910.3.1 Through-Penetration System: Combustible cable trays, conduits, tubes or pipes shall be allowed to penetrate a rated assembly if they are protected with an approved through penetration protection system that has been tested in accordance with ASTM E-814 listed in Appendix A. Exception: In buildings of Use Groups R-1 and R-2 when all dwelling units are not more than one (1) story above the lowest level of exit discharge and not more than one (1) level below the highest level of exit discharge, the through penetrations shall not be required to be protected with an ASTM E-814 system, if equipped with an NFiPA sprinkler system listed in Appendix A".

(7) Amend subsection 913.4, Penetration protection, by creating an additional exception to read as follows: "4. In all buildings of Use Group R-2, vertical noncombustible ducts shall not be required to have a one (1) hour enclosure if the following conditions exist:

(a) The cross-sectional area does not exceed thirty-five (35) square inches (22581 mm^2; and

(b) The duct does not penetrate more than three (3) floors; and

(c) The duct does not serve more than one (1) dwelling unit and shall not join other ducts except above the top level for the purpose of utilizing a single roof penetration; and

(d) These ducts shall be restricted for use as a bathroom or kitchen exhaust and combustion air supply and relief."

(8) Amend subsection 921.7.2.1, Use Group R, by creating an additional exception to read as follows: "6. When dwelling unit separation walls are constructed to the underside of a fire-resistance rated roof/ceiling assembly or to a ceiling with sixty (60) minute finish rating, the attic draftstopping complying with subsection 921.7.2.2 (i.e., horizontal draftstopped areas not exceeding 3,000 square feet) shall be deemed equivalent."

Section 10. Article 10, Fire Protection Systems. Amend Article 10 by making the following additions, deletions or changes:

(1) Amend subsection 1002.8 by amending the exception to read as follows: "Exception: Use Group R-1 buildings (hotels, motels, etc.) where all guestrooms are not more than one (1) story above the lowest level of exit discharge of the exits serving the guestroom (e.g., a two (2) story building with basement). Each guestroom shall have at least one (1) door opening directly to an exterior exit access which leads directly to the exits."

(2) Amend subsection 1002.9 by creating two (2) exceptions to read as follows:

(a) "Exception 1. Two (2) Story Buildings with Basement. Use Group R-2 buildings (apts., condos, dorms, etc.) where all dwelling units

are not more than one (1) story above the lowest level of exit discharge and not more than one (1) story below the highest level of exit discharge of exits serving the dwelling unit (e.g., a two (2) story building with a basement)."

(b) "Exception 2. Existing buildings. R-2 buildings that exceed two (2) stories but which do not have more than six (6) dwelling units. This exception shall not apply to buildings constructed after the effective date of this code."

(3) Create a new subsection 1004.2.3 to read as follows: "1004.2.3 NFiPA 13D Systems. A sprinkler system in accordance with NFiPA 13D listed in Appendix A shall be permitted in the following occupancies:

(a) In buildings of Use Group R-2 if all dwelling units are not more than one (1) story above the lowest level of exit discharge and not more than one (1) story below the highest level of exit discharge of exits serving the dwelling unit (i.e., a two (2) story building with a basement).

(b) In Existing Buildings of Use Group R-2 that exceed two (2) stories but have no more than six (6) dwelling units. This shall not apply to buildings constructed after the effective date of this code.

(c) In Use Group R-1 occupancies complying with Section 1002.8."

(4) Amend subsection 1005.6.3, Domestic connection, to read as follows: "1005.6.3 Domestic connection: Two (2) check (one (1) way) valves, one (1) of which may be an alarm check valve, shall be provided at the point where the suppression system piping is connected to the domestic water piping. Shutoff valves shall not be permitted in the suppression system piping. Water supply shall be controlled by the riser control valve to the domestic water piping.

Exception: Shutoff valves in the sprinkler system piping are permitted if the valves are supervised in accordance with Section 1020.0."

(5) Amend subsection 1015.1, Yard Hydrants, to read as follows:

(a) "1015.1 Private hydrants: Fire hydrants installed on private property as a part of a private fire protection system shall be located so as to meet the requirements of National Fire Protection Association (NFiPA) Pamphlet #24 listed in Appendix A. Yard hydrant installation shall be coordinated with the local fire code officials who shall not make recommendations which exceed the requirements of National Fire Protection Association (NFiPA) Pamphlet #24. Yard hydrants shall not be installed on a water main less than six (6) inches in diameter."

(b) Create a new subsection of 1015.2 to read as follows: "1015.2 Public hydrants: Public hydrants not covered by National Fire Protection Association (NFiPA) Pamphlet #24 listed in Appendix A shall conform to the standards of the administrative authority of the jurisdiction as provided for by local ordinance."

(6) Amend subsection 1016.4.1, Use Group A-4 or E, by creating an additional exception to read as follows: "Exception 2. Church buildings which do not exceed 10,000 square feet and in which single station smoke detectors are installed as follows:

a. Smoke detectors may be single station and wired in series so as to sound alarm in sanctuary.

b. Smoke detectors shall be installed in fellowship hall and more hazardous areas such as furnace rooms, mechanical rooms and storage rooms, but shall not be as required in Sunday school classrooms.

c. Detector spacing shall be thirty (30) feet on center in corridors and 900 square feet per detector in open spaces, or in accordance with the manufacturer's specifications."

(7) Create an additional exception to subsection 1018.3.2, Use Group R-2, to read as follows: "3. Smoke detectors shall not be required in bedrooms of Use Group R-2 occupancies if all dwelling units are not more than one (1) story above the lowest level of exit discharge and not more than one (1) story below the highest level of exit discharge of exits serving the dwelling unit and when equipped with an NFiPA 13D sprinkler system listed in Appendix A."

(8) Amend subsection 1020.2, Fire protection signaling systems, to read as follows: "1020.2 Fire protection signaling systems: All required fire protective signaling systems in the following occupancies shall transmit alarm and trouble signals to an approved central-station system, proprietary system or remote-station system.

1. Day care centers with more than 100 clients.

2. Health care facilities licensed by the Cabinet for Human Resources."

Section 11. Article 11, Structural Loads. Amend Article 11 by making the following additions, deletions or changes:

(1) Create a new subsection 1100.2 to read as follows: "1100.2 Certificate of compliance: Design compliance with the provisions of this article and Article 12 shall be satisfied when certification of an architect or engineer registered in Kentucky to that effect is placed on drawings submitted to the building code official."

(2) Amend subsection 1105.4, Existing Live Load, by changing "Section 103.3" to "Section 106.3".

(3) Amend Figure 1113.1 of Article 11 by adding the following list of 120 Kentucky counties to further explain the map which shows the assigned earthquake risk zone for each.

Earthquake Risk Zone #1

Adair	Elliott	Laurel	Oldham
Allen	Estill	Lawrence	Owen
Anderson	Fayette	Lee	Owsley
Barren	Fleming	Leslie	Pendleton
Bath	Floyd	Lewis	Perry
Boone	Franklin	Lincoln	Pike
Bourbon	Gallatin	Logan	Powell
Boyd	Garrard	Madison	Pulaski
Boyle	Grant	Magoffin	Robertson
Bracken	Grayson	Marion	Rockcastle
Breathitt	Green	Martin	Rowan
Breckinridge	Greenup	Mason	Russell
Bullitt	Hancock	Meade	Scott
Butler	Hardin	Menifee	Shelby
Campbell	Harrison	Mercer	Simpson
Carroll	Hart	Metcalfe	Spencer
Carter	Henry	Monroe	Taylor
Casey	Jackson	Montgomery	Todd
Christian	Jefferson	Morgan	Trimble
Clark	Jessamine	Muhlenberg	Warren
Clay	Johnson	McCreary	Washington
Clinton	Kenton	McLean	Wayne
Cumberland	Knott	Nelson	Whitley

Daviess	Knox	Nicholas	Wolfe
Edmonson	Larue	Ohio	Woodford

Earthquake Risk Zone #2	Earthquake Risk Zone #3
Bell	Ballard
Caldwell	Carlisle
Calloway	Fulton
Crittenden	Graves
Harlan	Hickman
Henderson	Livingston
Hopkins	Marshall
Letcher	McCracken
Lyon	
Trigg	
Union	
Webster	

(4) Amend subsection 1113.1.1 by creating the following exception: "Exception: In Zone 1, additions that increase the height of an existing building shall not be required to conform to the provisions of this subsection."

Section 12. Article 12, Foundation Systems and Retaining Walls. Amend Article 12 by making the following additions, deletions or changes: Amend Subsection 1205.1 to read as follows: "Except when erected upon solid rock or otherwise protected from frost, foundation walls, piers and other permanent supports of all buildings and structures larger than 100 square feet (9.30 m^2) in area or ten (10) feet (3048 mm) in height shall extend below the frost line of the locality, to a minimum depth of twenty-four (24) inches, or whichever is deeper, and spread footings of adequate size shall be provided if necessary to distribute properly the load within the allowable bearing value of the soil. Alternatively, the structures shall be supported on piles if solid earth or rock is not available. Footings shall not be founded on frozen soils unless the frozen condition is of a permanent character."

Section 13. Article 13, Materials and Tests. Amend Article 13 by making the following additions, deletions or changes:
(1) Delete subsection 1301.3 in its entirety.
(2) Delete subsections 1308.1 through 1308.8 in their entirety.

Section 14. Article 14, Masonry, is hereby adopted in its entirety.

Section 15. Article 15, Concrete, is hereby adopted in its entirety.

Section 16. Article 16, Gypsum and Plaster, is hereby adopted in its entirety.

Section 17. Article 17, Wood, is hereby adopted in its entirety.

Section 18. Article 18, Steel, is hereby adopted in its entirety.

Section 19. Article 19, Lightweight Metal Alloys, is hereby adopted in its entirety.

Section 20. Article 20, Plastic, is hereby adopted in its entirety.

Section 21. Article 21, Exterior Walls. Amend Article 21 by making the following additions, deletions or changes: Create a new subsection to read a follows: "2100.2 Approval of plans: Plans showing compliance with Section 2101.6.1 through 2101.6.11.3 shall be submitted to the Kentucky Division of Water pursuant to KRS 151.250 and 260. Approval of plans by or through that agency together with their final approval of construction shall constitute compliance with these sections."

Section 22. Article 22, Vertical and Sloped Glass and Glazing. Amend Article 22 by making the following additions, deletions or changes:
(1) Create a new subsection 2201.1.1 to read as follows: "2201.1.1 Labeling requirements: Each light of safety glazing material manufactured, distributed, imported, or sold for use in hazardous locations or installed in a location within the Commonwealth of Kentucky shall be permanently labeled by etching, sandblasting or firing ceramic material on the safety glazing material. The label shall identify the labeler, whether manufacturer, fabricator or installer, and the nominal thickness and the type of safety glazing material and the fact that said material meets the test requirements of American National Standards Institute, Inc. (ANSI) Standard Z-97.1 and Z-97.1a listed in Appendix A and further requirements as may be adopted by the Department of Housing, Buildings and Construction. The label shall be legible and visible after installation. Safety glazing labeling shall not be used on materials other than safety glazing materials."
(2) Amend Paragraph 7 of subsection 2203.2, Specific Hazardous Locations, to read as follows: "Glazing in fixed panels having a glazed area in excess of nine (9) square feet (0.84 m^2) with the lowest edge less than eighteen (18) inches (457 mm) above the finish floor level or walking surface within thirty-six (36) inches (914 mm) of the glazing, and the finish floor or walking surface is extended on both sides of said glazing. In lieu of safety glazing, glazed panels may be protected with a horizontal member not less than one and one-half (1 1/2) inches (38 mm) in width when located between twenty-four (24) inches (610 mm) and thirty-six (36) inches (914 mm) above the walking surface."

Section 23. Article 23, Roofs and Roof Coverings, is hereby adopted in its entirety except subsection 2308.2 is amended to read as follows: "2308.2 Structural and construction loads: The roof covering system and the material and equipment loads that will be encountered during installation of the roof covering system shall not exceed the capacity of the structural roof components."

Section 24. Article 24, Masonry Fireplaces, is hereby adopted in its entirety.

Section 25. Article 25, Mechanical Equipment and Systems. Amend Article 25 by making the following additions, deletions or changes:
(1) Amend subsection 2500.2 to read as follows: "2500.2 Boilers: All boilers and associated pressure piping shall meet the standards for construction, installation and inspection as set forth in Title 815, Chapter 15, Kentucky Administrative Regulations."
(2) Create a new subsection 2500.3 to read as

follows: "2500.3 Unfired Pressure Vessels. All unfired pressure vessels shall meet the standards set forth in Section VIII of the 1983 Edition of the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code, American National Standards Institute, Inc./American Society of Mechanical Engineers (ANSI/ASME) BPV-VIII-1, as required by Kentucky boiler regulations set forth in Title 815, Chapter 15, Kentucky Administrative Regulations."

(3) Create a new subsection 2500.4 to read as follows: "2500.4 Mechanical Code: All mechanical equipment and systems which are not covered by 2500.2 or 2500.3 but which are required by other provisions of this code to be installed in accordance with the mechanical code listed in Appendix A, shall be constructed, installed and maintained in accordance with the BOCA National Mechanical Code/1990 including all applicable standards listed within Appendix A."

(a) Create a new subsection 2500.4.1 to read as follows: "2500.4.1 Mechanical ventilation: Mechanical ventilating systems may be designed in accordance with the provisions of ASHRAE Standard 62-1989 listed in Appendix A as an equivalent alternative to the BOCA National Mechanical Code/1990."

(b) Create a new subsection 2500.4.2 to read as follows: "2500.4.2 Design of mechanical systems: The building code official may use the actual occupant load in lieu of Table 806.1.2 in the design of mechanical ventilating systems. This applies to both the BOCA National Mechanical Code/1990 and ASHRAE 62-1989 listed in Appendix A."

(4) Create a new Section 2511.0 entitled "Rangehoods" to read as follows: "2511.1 Rangehoods: Rangehoods in kitchen exhaust systems shall comply with the requirements of the Mechanical Code listed in Appendix A. The bottom edge of the hood shall be located at a height of not more than four (4) feet above the cooking surface."

(5) Create a new subsection, 2511.2, Commercial Exhaust System not Required, to read as follows: "2511.2 Commercial Exhaust System not Required: In churches and in other occupancies where the range is merely a convenience for occasional use and where there is minimal or nonexistent grease laden vapors, commercial exhaust systems shall not be required."

Section 26. Article 26, Elevator, Dumbwaiter, and Conveyor Equipment, Installation and Maintenance. Amend Article 26 by making the following additions, deletions or changes:

(1) Amend subsection 2602.4.1 to read as follows: "2602.4.1 Periodic inspection intervals: Periodic inspections shall be made at intervals of not more than twelve (12) months for all passenger elevators, manlifts and escalators."

(2) Amend subsection 2603.4 to read as follows: "2603.4 Posting certificates of compliance: The owner or lessee shall post the last issued certificate of compliance in a conspicuous place on the elevator, available to the building official."

(3) Amend subsection 2607.4 to read as follows: "2607.4 Location of vents: Vents shall be located at the top of the hoistway, and shall open either directly to the outer air or through noncombustible ducts to the outer air. Holes in the machine room floors for the passage of ropes, cables or other moving elevator equipment shall be limited so as not to provide greater than two (2) inches (51 mm) of clearance on all sides."

(4) Create a new subsection 2607.4.1 to read as follows: "2607.4.1 Mechanical ventilation: Mechanical ventilation shall be allowed in buildings other than Use Groups R-1, R-2, I-1, I-2 and similar uses with overnight sleeping quarters if outside exposure for the required vents is not possible. The mechanical ventilation shall conform to the mechanical code listed in Appendix A."

(5) Amend subsection 2607.5 to read as follows: "2607.5 Area of vents: Except as provided for herein, the area of the vents shall not be less than three and one-half (3 1/2) percent of the area of the hoistway nor less than three (3) square feet (0.28 m^2) for each elevator car, and not less than three and one-half (3 1/2) percent nor less than one-half (1/2) square foot (0.047 m^2) for each dumbwaiter car in the hoistway, whichever is greater. Of the total required vent area, not less than one-third (1/3) shall be of the permanently open type unless all vents activate upon detection of smoke from any of the elevator lobby smoke detectors. Where mechanical ventilation conforming to the mechanical code listed in Appendix A provides equivalent venting, the required vent area shall be reduced if compliance with subsection 2607.4.1 is met."

(6) Create a new Section 2612.0 entitled "Vertical Chairlifts and Wheelchair Lifts: to read as follows: "2612.1 General: Except as herein provided, inclined stairway chairlifts and inclined and vertical wheelchair lifts shall conform to the requirements of ASME A17.1 listed in Appendix A. Exception: Vertical wheelchair lifts may have a travel distance not to exceed 23 feet and penetrate a floor subject to the following additional requirements.

1. The platform shall be fully enclosed on the top and any side which is not used as an exit or entrance. Enclosures shall conform to the requirements of ASME A17.1 listed in Appendix A.
2. The runway shall be fully enclosed from the floor to the ceiling on all floors conforming with the requirements of Section 2608.0.
3. All runway entrances shall be protected by a door of unperforated construction conforming to the requirements of Section 2611.0.
4. All runway entrance doors shall be equipped with approved interlocks conforming to the requirements of ASME A17.1 listed in Appendix A."

(7) Create a new section 2613.0 entitled "Machine Rooms and Related Construction for Passenger and Freight Elevators and Dumbwaiters" to read as follows: "2613.1 General: The construction of machine rooms and related construction for passenger and freight elevators and dumbwaiters shall be protected from the weather, and shall be enclosed with fire resistive enclosures. Enclosures and access doors thereto shall have a fire endurance at least equal to that required to the hoistway enclosure in Table 401."

Section 27. Article 27, Electric Wiring, Equipment and Systems. Amend Article 27 by making the following additions, deletions or changes:

(1) Amend subsection 2700.1, Scope, by adding the following sentence: "Tentative Interim Amendments issued to NFiPA 70 and accepted by

the department shall be permitted to be used for interpretations of NFiPA 70."

(2) Create a new subsection 2700.5 to read as follows: "2700.5 Electrical Inspections: Inspections conducted to determine compliance with the National Electrical Code shall be conducted by a certified electrical inspector in accordance with Kentucky Administrative Regulation 815 KAR 35:015."

(3) In subsections 2702.1, 2702.3, and 2703.1 delete the words "code official" and insert in lieu thereof the words "certified electrical inspector."

(4) Delete subsections 2701.3, 2704.3, and 2704.4 in their entirety.

Section 28. Article 28, Plumbing Systems. Amend Article 28 by deleting sections 2800.1 through 2807.1 in their entirety and insert in lieu thereof the following: "2800.1 Scope: The design and installation of all plumbing systems, including sanitary and storm water sewage disposal in buildings shall comply with the requirements of Chapter 318 of the Kentucky Revised Statutes and the Kentucky State Plumbing Code as set out in Title 815, Chapter 20, Kentucky Administrative Regulations. Copies are available from the Kentucky Division of Plumbing, The 127 Building, 1047 U.S. 127 South, Frankfort, Kentucky 40601."

Section 29. Article 29, Signs, is deleted in its entirety.

Section 30. Article 30, Precautions During Building Operations. Amend subsection 3005.2 by deleting the words, "Section 2805.4" and insert in lieu thereof the words, "Article 28, 815 KAR 20:090 and Article 9, respectively."

Section 31. Article 31, Energy Conservation, is hereby adopted in its entirety.

Section 32. Article 32, Repair, Alteration, Addition to and Change of Use of Existing Buildings. Amend Article 32 by making the following additions, deletions or changes:

(1) Amend subsection 3202.1 to read as follows: "3202.1 General: The provisions in Section 3202.1.1 through 3202.1.5 shall apply to existing buildings that will continue to be, or are proposed to be, in Use Groups A, B, E, F, M, R and S. These provisions shall not apply to historic buildings as provided for in Section 102.5."

(2) Amend subsection 3202.1.5 to read as follows: "3202.1.5 Handicapped requirements: All portions of the buildings proposed for change in use shall conform to the provisions of Article 33 as required by Section 3302.1. Federal regulations issued by the Department of Justice may be more stringent than this Code."

Section 33. Create a new subsection, 3303.2, Preschool, day care and elementary school modifications, to read as follows: "Preschool, day care and elementary school modifications: The standards set forth in "Recommendations for Accessibility to serve Physically Handicapped Children in Elementary Schools" dated March, 1986, may be used for providing handicapped accessibility for students in lieu of the listed dimensions and heights identified in this Article. This document is published jointly by the General Services Administration, the United States Postal Service, and the Departments of Defense and Housing and Urban Development, and a copy may be obtained from the American National Standards Institute (ANSI), 11 West 42nd Street, New York, NY 10036. Copies are also available at the Department of Housing, Buildings and Construction, The 127 Building, 1047 U.S. 127 South, Frankfort, Kentucky, between 8 a.m. and 4:30 p.m., Monday through Friday."

Section 34. [33.] Appendix A, Referenced Standards. Amend Appendix A by making the following additions, deletions or changes:

(1) Amend the reference to the BOCA National Fire Prevention Code 1990 listed in Appendix A by adding the following language: "The Kentucky Standards of Safety (815 KAR 10:040 – Fire Prevention Code) as amended by the Kentucky Department of Housing, Buildings and Construction."

(2) Elevators. Amend the reference to Safety Code for Elevators and Escalators to read "A17.1–1990" [with the exception of rules 102.2(c)(4) and 700.4b, 700.5, 700.7b, 700.10b, and 704.4]."

(3) Add the following language and list of National Fire Protection Association (NFiPA) Pamphlets to Appendix A:

"These National Fire Protection Association (NFiPA) Pamphlets are listed for use in fire suppression design and installation only if referenced in a specific code required by Articles 2 through 32 of this code.

Aircraft Hangars	#409
Pyroxylin Plastics	#40C
Flammable Liquids	#30
Laboratories	#45
Fireworks	#1124
L.P. Gas Storage	#58
High Piled Storage in Excess of 12 ft. in height	#231
Rubber Tire Storage	#231D
Baled Cotton Storage	#231E
Rolled Paper Storage	#231F
Rangehoods	#96
Computer Rooms	#75
Archives and Record Centers	#232AM
L.P. Gas Storage and Handling	#59A
Explosion Prevention Systems	#69
Code for the Manufacture and Storage of Aerosol Products	#30B
Installation of Closed-head Foam Water Sprinkler Systems	#16A
Fur Storage	#81
Cooling Towers	#214
Marinas and Boatyards	#303"

(4) Amend Appendix A by changing the edition date to "1990" for the following National Fire Protection Association (NFiPA) Pamphlets: #10, #12B, #14, #15, #17, #17A, #30, #32, #43A, #50, #72E, #80, #82, #99, #418, #495 and #704.

(5) Amend Appendix A and all Articles of the Code by removing all reference to "NFiPA Pamphlets #72A, #72C, #72D, #72F" and in its place list NFiPA Pamphlet #72-90."

(6) Amend Appendix A by adding reference to "NFiPA Pamphlet Number 13D Sprinkler Systems for 1 & 2 Family Dwellings and Mobile Homes, 1989 Edition."

CHARLES A. COTTON, Commissioner
THEODORE T. COLLEY, Secretary
APPROVED BY AGENCY: November 21, 1991

FILED WITH LRC: December 9, 1991 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 21, 1992 at 10 a.m. in the office of the Department of Housing, Buildings and Construction, 1047 U.S. 127 South, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by January 16, 1992, (five days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is received. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Judith G. Walden, Office of General Counsel, Department of Housing, Buildings and Construction, The 127 Building, 1047 U.S. 127 South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Judith G. Walden

(1) Type and number of entities affected: Contractors, architects, engineers, users of the Kentucky Building Code.

(a) Direct and indirect costs or savings to those affected: No costs or savings because regulation only establishes clarification of standards as interpreted by the department.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition): No competition; KBC is a statewide code.

(b) Reporting and paperwork requirements: None to persons using KBC.

(2) Effects on the promulgating administrative body: None to the agency because the regulation merely provides accepted standards in construction.

(a) Direct and indirect costs or savings: Cost of printing KBC but this is recouped by the sale of the code books.

1. First year: See above.

2. Continuing costs or savings: Printing of revised or updated pages.

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Paperwork requirements to agency involve updating code by reprinting and distributing to purchasers.

(3) Assessment of anticipated effect on state and local revenues: No anticipated effect on state or local revenue.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative method of construction was rejected. Board of Housing reviews code sections for adoption or amendment within limits defined.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No known conflict.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? Yes. Different classifications of buildings and different sizes and different construction types call for different standards.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes_X_ No___ (If yes, complete questions 2-4)

2. State what unit, part or division of local government this administrative regulation will affect. This regulation will affect a part of local government.

3. State the aspect or service of local government to which this administrative regulation relates. This regulation will affect local government where there is a local building inspection program. KRS 198B.060 requires local government to provide for building officials to enforce the KBC.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: There is no increased fiscal impact created by this regulation, nor does it increase the number of persons needed by local government. State revenues are neither increased nor decreased by this regulation.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management and Development
(Proposed Amendment)

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

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

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

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

personal care beds. Personal care services are described in 902 KAR 20:036. This regulation sets forth the provisions of the supplementation program.

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

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

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

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

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

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

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

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

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

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

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

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

(a) For eligibility determinations for personal care homes made on or after January 1, 1992 [July 1, 1991]: not less than $720 [705];

(b) For eligibility determinations for family care homes made on or after January 1, 1992 [Family care home]: not less than $525 [510, effective January 1, 1991];

(c) Caretaker.

1. For eligibility determinations for single individual, or eligible individual with ineligible spouse (one who is not aged, blind, or disabled) made on or after January 1, 1992: not less than $445 [440, effective January 1, 1991];

2. For eligibility determinations for married couple, both eligible (aged, blind, or disabled), with one (1) requiring care made on or after January 1, 1992: not less than $661 [638, effective January 1, 1991];

3. For eligibility determinations for married couple, both eligible and both requiring care made on or after January 1, 1992: not less than $705 [682, effective January 1, 1991].

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

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

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

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

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

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

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

(b) He is judged legally incompetent; or

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

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

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

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

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

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

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

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

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

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

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

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

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

(14) An individual eligible for and receiving a supplemental payment in October, 1979, shall be considered a Kentucky resident through July 4, 1984, even if he does not meet the residency requirements specified in this section, so long

as the individual continues to reside in Kentucky and his receipt of supplementary payments has not since October, 1979 been interrupted by a period of ineligibility.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Importance of proper medication administration.

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

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

(d) Characteristics of each major diagnosis, for example, paranoia, schizophrenia, bi-polar disorder, mental retardation, etc.

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

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

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

MI or MR training workshop at the closest location.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MIKE ROBINSON, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: November 21, 1991
FILED WITH LRC: November 27, 1991 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 21, 1992 at 9 a.m. at the Vital Statistics Conference Room, First Floor, CHR Building, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by January 16, 1992, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street – 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: James E. Randall

(1) Type and number of entities affected: 6,500 recipients of state supplementation.

(a) Direct and indirect costs or savings to those affected: 1) Recipients in personal care homes receive a $35 increase per month. 2) Recipients in family care homes receive a $26 increase per month. 3) Recipients in caretaker situations receive the following increase: single individual – $23; couple (one requiring care) – $33; couple (both requiring care) – $35.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: Increase in cost-of-living for state supplementation recipients.

1. First year: $327,400 cost, already anticipated in the state budget.
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative method assessed; set forth through department policy.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None
TIERING: Was tiering applied? No. The 3.7 percent increase in the cost-of-living is applied uniformly to all recipients of state supplementation. The department's pass-along agreement with the Social Security Administration mandates that the administrative process for state supplementation be implemented in a like manner on a statewide basis, thereby prohibiting tiering.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 20 CFR 416.2095, 20 CFR 416.2096.
2. State compliance standards. This amended administrative regulation includes the 1991 cost-of-living increases, to place Kentucky in compliance with federal SSI guidelines.
3. Minimum or uniform standards contained in the federal mandate. Maintain state supplementation payment and pass-along cost-of-living increases.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. None

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management and Development
(Proposed Amendment)

904 KAR 3:025. Technical requirements.

RELATES TO: KRS 194.050, 7 CFR 273.4, 273.5, 273.7, 273.21
STATUTORY AUTHORITY: KRS 194.0507, 7 CFR 271.4
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer a Food Stamp Program. KRS 194.050 provides that the secretary shall, by regulation, develop policies and operate programs concerned with the welfare of the citizens of the Commonwealth. This regulation sets forth the technical eligibility requirements used by the cabinet in the administration of the Food Stamp Program.

Section 1. Definitions. (1) "Certification period" means a definite period of time within which a household shall be eligible to receive food stamp benefits.
(2) "Quality control review" means a review of a statistically valid sample of active and denied or discontinued cases to determine the extent to which households are receiving the food stamp allotments to which they are entitled, and to ensure that inactive cases are not incorrectly denied or terminated.
(3) "Student status" means any person who is between the ages of eighteen (18) and sixty (60) inclusive, physically and mentally fit, and enrolled at least half-time in an institution of higher education.

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

Section 3. Technical Eligibility Criteria. Technical eligibility standards shall apply equally to all households and consist of:
(1) Residency. A household shall live in the county in which they make application;
(2) Identity.
(a) The applicant's identity shall be verified; and
(b) If an authorized representative applies for the household, both the applicant's and the authorized representative's identities shall be verified;
(3) Citizenship and alien status.
(a) Program participation shall be limited to:
1. Citizens of the United States; or
2. Eligible aliens as defined by 904 KAR 3:010.
(b) Individuals whose status is questionable shall be ineligible to participate until such status has been verified;
(c) A single household member shall attest in writing to the citizenship or alien status of each household member;
(d) The departmental form required for the declaration of citizenship or alien status is incorporated into this regulation by reference.
(4) Household size. Size of household shall be verified through readily available documentary evidence or through a collateral contact;
(5) Students. Any person who meets the definition of a student as specified in Section 1 of this regulation shall be ineligible to participate unless they meet at least one (1) of the following criteria:
(a) Shall be engaged in paid employment for a minimum of twenty (20) hours per week or, if self-employed, shall be employed for a minimum of twenty (20) hours per week and receive weekly earnings at least equal to the federal minimum wage multiplied by twenty (20) hours; or
(b) Shall participate in a federally financed work study program (funded in full or in part under 20 USC 1070) during the regular school year; or
(c) Shall be responsible for the care of a dependent household member under the age of six (6); or
(d) Shall be responsible for the care of a dependent household member who has reached the age of six (6) but is under age twelve (12) where the cabinet has determined that adequate child care is not available; or

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

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

(6) Mandatory monthly reporting (MMR).

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

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

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

2. Migrant or seasonal farm worker households;

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

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

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

(7) Social Security number (SSN).

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

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

(8) Work registration.

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

1. Register for work;

2. Accept suitable employment; and

3. Be subject to other work registration requirements.

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

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

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

b. A person age sixteen (16) or seventeen (17) who is not a head of a household or who is attending school, or enrolled in an employment training program on at least a half-time basis is exempt;

2. A person physically or mentally unfit for employment;

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

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

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

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

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

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

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

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

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

(c) Strikers whose households are eligible in accordance with 904 KAR 3:035, Section 6(9), shall be subject to the work registration requirements unless exempt for reasons other than employment at the time of application.

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

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

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

(e) A work registrant[s] who:

1. Is [are] required to participate in the:

a. Food stamp employment and training (E&T) program; or

b. Aid to Families with Dependent Children (AFDC), Job Opportunities and Basic Skills (JOBS) Program pursuant to 904 KAR 2:006; and [who]

2. Fails to do so shall be ineligible to receive food stamp benefits for two (2) months unless:

a. Good cause exists;

b. The noncompliance individual was participating in a JOBS component which is more stringent that the components of the E&T Program; or

c. The noncompliant JOBS participant is otherwise exempt from work registration in the E&T Program.

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

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

3. An individual who is not sanctioned in the Food Stamp Program as meeting the criteria in subparagraph 2b of this paragraph shall be work registered in the E&T Program unless otherwise exempt by paragraph (b) of this subsection.

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

Section 4. Material Incorporated by Reference. (1) Forms FS-301 and FS-301A are necessary for MMR and are incorporated effective June 1, 1991.

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

(3) These forms may be inspected and copied at the Department for Social Insurance, 275 East

Main Street, Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m.

MIKE ROBINSON, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: December 11, 1991
FILED WITH LRC: December 13, 1991 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 21, 1992 at 9 a.m. in the Vital Statistics Conference Room, 1st Floor, CHR Building. Individuals interested in attending this hearing shall notify this agency in writing by January 16, 1992, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street – 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: James E. Randall

(1) Type and number of entities affected: The amendment to this administrative regulation will affect AFDC, JOBS program participants who are required to work register in the Food Stamp E&T Program and are nonexempt in the JOBS program when the requirements of the JOBS component are equal to or less stringent than the requirements of the components of the E&T Program. The number of entities affected cannot be determined; however, it is anticipated that the impact of this policy or program participants will be minimal.

(a) Direct and indirect costs or savings to those affected: None

1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings: None

1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(6) Any additional information or comments: None

TIERING: Was tiering applied? 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 273.7(g)(2)
2. State compliance standards. This regulation pertains to the technical eligibility requirements for participation in the Food Stamp Program as prescribed by the Food and Nutrition Service. There are no separate state compliance standards.
3. Minimum or uniform standards contained in the federal mandate. The federal regulation mandates that state agencies consider the technical eligibility determination for food stamps in accordance with national uniform standards. Therefore, the technical eligibility requirements contained in this administrative regulation are applied in a like manner on a statewide basis and are consistent with the technical eligibility requirements applied to the National Food Stamp Program.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. The provisions of this administrative regulation coincide with those mandated by the Food and Nutrition Service.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation will not impose any stricter requirements or any additional or different responsibilities than those required by the federal mandate.

PROPOSED REGULATIONS RECEIVED THROUGH NOON, DECEMBER 13, 1991

GENERAL GOVERNMENT CABINET
Kentucky Board of Pharmacy

201 KAR 2:061. Procedures followed by the Kentucky Board of Pharmacy in the investigation and hearing of complaints.

RELATES TO: KRS 315.131
STATUTORY AUTHORITY: KRS 315.191(1)
NECESSITY AND FUNCTION: The Kentucky Board of Pharmacy in fulfilling provisions of KRS 315.131(1), (2), and (3) has implemented procedures to expedite and enhance the judicial process to effect appropriate resolution in a more timely fashion and in a manner consistent with the severity of the transgression.

Section 1. Complaints against licensees may be oral or written, with precedence given to written, from such sources as consumers, competitors, health professionals, government and provider agencies, or other interested parties.

Section 2. Upon receipt of any complaint meriting investigation as determined by the executive director, the board, or its representative, an inspector shall be dispatched to conduct an investigation and to file a report of his findings.

Section 3. As consideration of the investigatory findings by the executive director, inspector, the board or its appointee and, when necessary, the counsel for the board, concludes, the following options shall result:
(1) Admonition or other disposition by written communication to the licensee(s) involved, with proper notification of resolution to the complainant. Documentation shall be maintained in the appropriate board office files for reference purposes.
(2) Issuance of formal complaint, order, and notice of hearing. Alleged infractions may result in:
(a) Administrative conference before the executive director and inspector. Should proposed agreements be forthcoming, and after submission be ratified by the board, the matter shall be concluded without further process.
(b) Settlement conference, usually conducted between defense and prosecuting attorneys who strive to agree as to certain stipulations and proposed terms and conditions for an agreed order that appears reasonably acceptable to resolve the complaint. The proposed terms of agreement are then subject to approval of the board. If an agreed order is subsequently agreed to by all parties concerned, the matter is thereby resolved, the matter shall be concluded without further process.
(c) Hearing becomes necessary to resolve the matter.

Section 4. Hearings. (1) The president of the board or the duly appointed hearing officer shall preside over all administrative hearings and shall have the authority to rule on all motions, to control the procedure of the hearing and to admit or exclude testimony or other evidence.
(2) Evidence in support of the complaint shall be presented by the counsel for the board. In all cases, said counsel shall have the right to question witnesses and offer evidence into the record.
(3) Evidence may be admitted if it is of the type commonly relied upon by reasonably prudent men and women in the conduct of their affairs. Irrelevant, immaterial or unduly repetitious evidence shall be excluded. Hearsay evidence, including affidavits, may be admitted for the purpose of supplementing competent evidence in the discretion of the president of the board or the hearing officer appointed to conduct the hearing.
(4) All hearings before the board shall proceed in the following order, wherever practical:
(a) Opening statements in the following order:
1. Board counsel;
2. Licensee's counsel or licensee;
(b) Witnesses and evidence in support of the complaint;
(c) Witnesses and evidence on behalf of licensee;
(d) Closing statements in the following order:
1. Licensee's counsel or licensee;
2. Board counsel.
(5) Testimony to be considered by the board may be taken by deposition. A party or witness will be allowed to testify by deposition, rather than attend the hearing, upon a showing of inability to attend and that the other party will have an opportunity to cross-examine at said deposition.

Section 5. Posthearing Proceedings. The board shall deliberate on all cases in closed session. The specific findings of the board shall be made in open session following the board's deliberation.

DONALD J. RUWE, President
APPROVED BY AGENCY: December 4, 1991
FILED WITH LRC: December 5, 1991 at 8 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 22, 1992, 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 January 17, 1992, 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: 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: Only those who are involved in judicial process.
(a) Direct and indirect costs or savings to those affected: No additional direct or indirect costs would be involved except for those affected by the judicial process.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition): As in (1)(a) no increasing costs.
(b) Reporting and paperwork requirements: No additional reporting or paperwork.
(2) Effects on the promulgating administrative body: Would allow for consistent judicial process for violation of pharmacy statutes and regulations.
(a) Direct and indirect costs or savings: No additional direct or indirect costs or savings other than uniform procedures being followed.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: No additional reporting or paperwork.
(3) Assessment of anticipated effect on state and local revenues: No effect on state and local revenues.
(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternative method does not allow for consistent judicial process.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflict, overlapping, or duplication.
(a) Necessity of proposed regulation if in conflict:
(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. N/A

GENERAL GOVERNMENT CABINET
Kentucky State Board of Registration for Professional Engineers and Land Surveyors

201 KAR 18:131. Disciplinary and grievance hearing procedures.

RELATES TO: KRS 322.180, 322.190, 322.200, 322.210, 322.220, 322.250, 322.320
STATUTORY AUTHORITY: KRS 322.180, 322.190, 322.200, 322.220, 322.290
NECESSITY AND FUNCTION: Establishes procedural guidelines for board hearings and processing of informal charges, complaints and grievances as required under KRS Chapter 322.

Section 1. Administrative Adjudication Procedure. This rule governs the procedure in all proceedings before the board in which the legal rights, duties or privileges of any person are required by statute or administrative regulation to be determined after an opportunity for a hearing. This procedure shall be construed to secure a just, speedy and inexpensive determination of any proceeding while insuring that the requirements of due process are observed.

Section 2. Definitions. (1) "Person" means any individual, partnership, corporation or association.
(2) "Board" means the State Board of Registration for Professional Engineers and Land Surveyors as provided by KRS Chapter 322.
(3) "Order" means the whole or part of any final disposition of an adjudication.
(4) "Adjudication" means the board process in which a sanction may be imposed.
(5) "Sanction" means revocation or suspension of a license, reprimand or fine.
(6) "License" means any permit, certificate, or registration granted by the board.
(7) "Hearing officer" means a licensed practicing attorney appointed by the board to hear proof and recommend findings of fact.
(8) "Probable Cause Committee" means a committee of one (1) or more present or past board members, appointed by the chairman of the board, and the executive director and legal counsel of the board.
(9) "Grievance" means a formal complaint filed by any licensee or applicant contesting a refusal of the board to:
(a) Permit an applicant to sit for an exam;
(b) Issue a license;
(c) Renew a license.

Section 3. Public Information. (1) Publication, procedure. This procedure shall be published and made available to the public for the guidance of the public.
(2) Publication, adjudication. From time to time, as is convenient to the board, but at least once annually, a list of all adjudications of the board shall be published, identifying the respondent and the final disposition in the matter.
(3) Official record. All matters of official record in any adjudication shall be available to the public for inspection and copying except that the work product of the board investigatory staff shall not be, unless specifically made a part of the official record of an adjudication proceeding.

Section 4. Complaints. Complaints shall be classified as follows: formal and informal.
(1) Formal complaints. Formal charges may be made by any person filing an original and two (2) copies of a complaint with the executive director at the board offices, in the general pleading form used for complaints in any civil action in Kentucky. The complaint shall contain:
(a) The name and address of any person making charges, as well as the name and address of the person or persons against whom charges are being made;
(b) A clear and concise description of the issues of fact and law involved and the statutes, rules and regulations and sections of the Code of Professional Practice and Conduct and Standards of Practice which the party complained against is alleged to have violated;
(c) A demand for a formal hearing before the board according to the regulation;
(d) The relief sought.
(2) Informal complaints. Information of personal knowledge of any person, which, if true, would indicate a possible violation of the registration law by a registrant or applicant,

may be presented to the executive director. Upon receipt of such information, the executive director shall, without informing the board of any of the particulars:

(a) Investigate the matter, which investigation may be conducted by calling the parties involved to conference, by personally investigating the matter, or by having the matter investigated by the board staff, or any combination of these methods;

(b) Compile all relevant evidence of probative value.

Section 5. Commencement of Actions. (1) Formal complaints. Upon receipt of a formal complaint referred to in Section 4(1) of this regulation, the executive director shall transmit the complaint to the hearing officer who shall then proceed as set out in Section 6 of this regulation.

(2) Informal complaints. Upon completion of the investigation provided for in Section 4(2) of this regulation, the Probable Cause Committee shall evaluate the evidence developed by the investigation to determine its substantive value. Based on the decision of the Probable Cause Committee, the executive director shall then:

(a) If the informal complaint states no actionable violation of statutes, regulations or binding rules, transmit the committee's decision to the person who filed the informal complaint, after which the complainant may proceed under Section 4(1) of this regulation;

(b) In all other cases: cause to have prepared a formal complaint as provided in Section 4(1) of this regulation and transmit the complaint to the hearing officer, who shall proceed as set out in Section 6 of this regulation.

Section 6. Service and Response. (1) Upon receipt of a formal complaint, the hearing officer shall cause a copy of the complaint and any attachments to be served upon the respondent at the address set out in the complaint by certified mail, return receipt requested.

(2) Not later than twenty (20) days after receipt of the complaint, as shown on a certified mail receipt, the respondent shall serve upon the hearing officer and upon the board's attorney a response admitting or denying each allegation of fact or law contained in the complaint.

(3) The complaint need not contain documents in support of the complaint, but inspection and copies of any documents to be used upon hearing shall be available to the respondent at the board's office or the office of the board's attorney not later than the date of service of the complaint upon the respondent.

(4) If the respondent fails to file a responsive pleading within the time period set out in subsection (2) of this section, the hearing officer shall notify the respondent by certified mail, return receipt requested, that at the end of seven (7) days the hearing officer shall proceed to deem the respondent in default, the complaint confessed, and make recommended findings of fact and conclusions of law to the board, unless good cause is shown why the respondent is in default.

(5) Upon receipt of a responsive pleading, the hearing officer shall proceed to schedule a hearing on the complaint to be held not sooner than thirty (3) days nor more than sixty (60) days from the date of respondent's reply, the hearing to take place at a time and location most convenient to all parties, in the hearing officer's discretion.

(6) The hearing officer may continue a hearing for not more than thirty (30) days for good cause shown.

Section 7. Prehearing Procedure. Prehearing conferences. At the request of either party, prehearing conferences may be conducted by the hearing officer, who shall keep a record of any agreement as to issues, admission of facts, or stipulations. Any proposed agreement which, if accepted by the board, would settle all issues of the complaint shall:

(1) Be transmitted to the board.

(2) Not be considered to be a waiver of any defenses until accepted by the board.

(3) Be in writing and signed.

(4) Not be binding upon any of the parties until accepted by the board.

Section 8. Evidence. The respondent should be afforded every opportunity to defend and should not be surprised. In order to enable the respondent to defend:

(1) Board subpoenas authorized by law shall be issued to any party upon request.

(a) Prehearing disclosure of evidence.

1. By the board. The licensee or applicant shall have the right to inspect the investigative file relating to a disciplinary action either in person or by legal counsel. The names, addresses and telephone numbers of witnesses expected to be called by the board will be made available. Copies of documentary evidence may be obtained upon the payment of a reasonable charge therefore, except documents that may not be reproduced under the provisions of state or federal law. Nothing in this section shall be construed as giving the licensee or applicant the right to examine or copy the personal notes, observations, or conclusions of the board's investigators nor shall it be construed as allowing access to the work product of legal counsel for the board. Further, appointment for the examination of an investigative file must be made upon reasonable notice, during regular office hours, and at a time convenient to all parties. The licensee or applicant shall also be permitted to examine any items of tangible evidence in the possession of the board.

2. By the licensee or applicant. At least ten (10) days prior to the scheduled hearing date the licensee or applicant shall furnish to the investigator or legal counsel for the board copies of any documents which the licensee or applicant intends to introduce at the hearing and a list of the names, addresses, and home and work telephone numbers of any witnesses to be presented to the hearing panel by the licensee or applicant. The licensee or applicant shall also produce for inspection any items of tangible evidence within its possession or control which it intends to introduce at the hearing.

(b) The rules of evidence. The tribunal shall not be bound by the technical rules of evidence. The tribunal may receive any evidence which it considers to be reliable, including testimony which would be hearsay if presented in a court of law. Documentary evidence may be admitted in the form of copies or excerpts, and need be

authenticated only to the extent that the tribunal is satisfied of its genuineness and accuracy. Tangible items may be received into evidence without the necessity of establishing a technical legal chain of custody so long as the board is satisfied that the item is what it is represented to be and that it is in substantially the same condition as it was at the time of the events under consideration.

(2) Irrelevant, immaterial or unduly repetitious evidence shall be excluded.

(3) By agreement of the parties, all or part of the evidence may be received in written form.

(4) The hearing officer may take notice of judicially cognizable facts, and notice may be taken of generally recognized technical or scientific facts, provided, however, that either party shall be afforded an opportunity to contest the facts so noticed.

Section 9. Conduct of Hearings. (1) The hearing shall be adversarial, presided over by the hearing officer, with the charges and evidence against the licensee presented by an attorney designated by the board.

(2) The respondent may appear pro se or by counsel.

(3) The hearing shall be conducted as follows: the petitioner shall present its evidence with opportunity for the respondent to cross-examine; the respondent shall present his evidence, if any, with the petitioner having the right to cross-examine; petitioner shall have the right of rebuttal.

(4) The hearing shall be officially recorded.

(5) The hearing may be continued or adjourned for reasonable cause shown.

(6) The subject matter of the hearing shall be strictly limited to those charges set forth in the complaint. If it appears that additional subject matter should be considered, or additional charges filed, the hearing officer shall order an adjournment for an appropriate period to provide notice of those matters or charges to be communicated to the respondent and to allow reasonable time for the respondent to prepare a defense, unless the adjournment is waived by the respondent.

(7) Not later than fourteen (14) days following the hearing, the hearing officer shall make proposed findings of fact and conclusions of law based on the record, which shall be served on counsel for the petitioner and the respondent. The proposed findings of fact and conclusions of law shall contain: judicious summary of the evidence introduced; a basis for each finding; and any legal precedent or reference to codified law which the hearing officer deems appropriate. In those instances in which the hearing officer recommends that the respondent be found guilty of the charges alleged, he shall not include any recommendation as to the nature of disciplinary action to be taken.

(8) The parties shall have fourteen (14) days from service of the proposed findings of fact and conclusions of law to file exceptions with the hearing officer.

(9) Immediately upon the close of the period for filing exceptions, the hearing officer shall transmit his proposed findings and conclusions, together with the entire record, to the executive director. Not later than fourteen (14) days prior to the next succeeding quarterly meeting of the full board, copies of the hearing officer's recommended findings of fact and conclusions of law, together with exhibits made a part of the recommended findings, together with any written exceptions filed by the parties, shall be served on each member of the board.

Section 10. Adjudication. (1) At the next succeeding meeting of the full board, each case shall be considered by the board, and by majority vote of a quorum the board shall take one of the following actions:

(a) Adopt the hearing officer's recommendation in whole or in part;

(b) Reject the hearing officer's recommendation in whole or in part;

(c) Remand the matter back to the hearing officer to make additional findings of fact and conclusions of law, including the conducting of additional hearings.

(2) If the board finds the respondent guilty of any charge, determine a disciplinary action.

(3) All actions by the board shall be conducted in open session, as required by law.

(4) The board's decision shall be issued in writing, signed by the chairman and executive director, and served upon all parties not later than seven (7) days following the board's decision.

Section 11. Reconsideration. A petition to the board for vacation or reduction of the severity of a sanction imposed shall be in writing and may be submitted at any time subsequent to the issuance of an order. The petition shall be a complete statement of the respondent's grounds for vacation or reduction. The petition shall be considered by the board at the next succeeding quarterly meeting and a decision issued within seven (7) days.

Section 12. Nonregistrants. (1) Applicants for registration. Complaints related to an applicant's qualifications may be received and investigated as provided in Section 4 of this regulation. However, if registration is denied as a result of the investigation, the applicant shall be notified of:

(a) The basis for denial;

(b) His right to a grievance hearing before the board, if he wishes to contest the matter.

(2) A grievance shall be filed with the executive director in the same manner as complaints, as set out in Section 5 of this regulation, and hearings shall be conducted as set out in Section 6 of this regulation.

Section 13. Practice or Offer to Practice by Nonregistrants. Complaints related to an applicant's qualifications may be received and investigated as provided in Section 4 of this regulation. Upon receipt of such complaint the executive director shall:

(1) Attempt to have the complainant seek court action as provided for in KRS Chapter 322; or

(2) The executive director, after consultation with the Probable Cause Committee, may initiate court action as provided for in KRS Chapter 322.

Section 14. Ancillary Matters. (1) Board staff. In any case involving sanction, an employee or agent directly engaged in the performance of investigative or advocacy functions for the board shall not participate or advise in the decision, recommended decision, or

board review, except as witness or counsel in a public hearing.

(2) Subpoena. Any member of the board or its executive director may administer oaths and issue subpoenas for the board.

Section 15. Repealed. 201 KAR 18:130 is hereby repealed in its entirety.

GEORGE ELY, Chairman
APPROVED BY AGENCY: October 9, 1991
FILED WITH LRC: December 13, 1991 at noon
PUBLIC HEARING: A public hearing on the adoption of this regulation shall take place at the hour of 9 a.m. on the 23rd day of January, 1992, at the offices of the Kentucky State Board of Registration for Professional Engineers and Land Surveyors, Kentucky Engineering Center, 160 Democrat Drive, Frankfort, Kentucky 40601. Persons desiring to be heard shall contact Larry Perkins, Executive Director, not later than five (5) days prior to the hearing.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Larry S. Perkins
(1) Type and number of entities affected: This regulation will only affect registrants brought before the board on disciplinary proceedings. Approximately 15-20 per year.
(a) Direct and indirect costs or savings to those affected: No difference in costs to those affected than with previous regulation.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: No significant difference.
(2) Effects on the promulgating administrative body: This regulation will result in savings to the agency in board time and administrative savings in money.
(a) Direct and indirect costs or savings: See above.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: No significant difference.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: Savings in time and money.
(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 registrants involved in hearings will be treated the same.

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

405 KAR 7:001. Definitions for 405 KAR Chapter 7.

RELATES TO: KRS Chapter 350, 7 CFR Part 657, 30 CFR Parts 700.5, 701.5, 707.5, 730-733, 735, 761.5, 762.5, 773.5, 800.5, 843.5, 917, 30 USC 1253, 1255, 1291
STATUTORY AUTHORITY: KRS Chapter 13A, 350.028, 350.465, 7 CFR Part 657, 30 CFR Parts 700.5, 701.5, 707.5, 730-733, 735, 761.5, 762.5, 773.5, 800.5, 843.5, 917, 30 USC 1253, 1255, 1291
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations pertaining to surface coal mining and reclamation operations under the permanent regulatory program. This regulation provides for the defining of certain essential terms used in 405 KAR Chapter 7.

Section 1. Definitions. (1) "Adjacent area" means land located outside the affected area or permit area, depending on the context in which "adjacent area" is used, where air, surface or groundwater, fish, wildlife, vegetation or other resources protected by KRS Chapter 350 may be adversely impacted by surface coal mining and reclamation operations.
(2) "Administratively complete application" means an application for permit approval, or approval for coal exploration if required, which the cabinet determines to contain information addressing each application requirement of the regulatory program and to contain all information necessary to initiate technical processing and public review.
(3) "Affected area" means any land or water area which is used to facilitate, or is physically altered by, surface coal mining and reclamation operations. The affected area includes the disturbed area; any area upon which surface coal mining and reclamation operations are conducted; any adjacent lands the use of which is incidental to surface coal mining and reclamation operations; all areas covered by new or existing roads used to gain access to, or for hauling coal to or from, surface coal mining and reclamation operations, except as provided in this definition; any area covered by surface excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, shipping areas; any areas upon which are sited structures, facilities, or other property or material on the surface resulting from, or incident to, surface coal mining and reclamation operations; and the area located above underground workings associated with underground mining activities, auger mining, or in situ mining. The affected area shall include every road used for the purposes of access to, or for hauling coal to or from, surface coal mining and reclamation operations, unless the road:
(a) Was designated as a public road pursuant to the laws of the jurisdiction in which it is located;
(b) Is maintained with public funds, and constructed in a manner similar to other public roads of the same classification within the

jurisdiction; and

(c) There is substantial (more than incidental) public use.

(4) "Applicant" means any person seeking a permit, permit revision, permit amendment, permit renewal, or transfer, assignment, or sale of permit rights from the cabinet to conduct surface coal mining and reclamation operations or approval to conduct coal exploration operations pursuant to KRS Chapter 350 and all applicable regulations.

(5) "Application" means the documents and other information filed with the cabinet seeking issuance of permits; revisions; amendments; renewals; and transfer, assignment or sale of permit rights for surface coal mining and reclamation operations or, if required, seeking approval for coal exploration.

(6) "Approximate original contour" is defined in KRS 350.010.

(7) "Aquifer" means a zone, stratum, or group of strata that can store and transmit water in sufficient quantities for domestic, agricultural, industrial, or other beneficial use.

(8) "Auger mining" means a method of mining coal at a cliff or highwall by drilling holes into an exposed coal seam from the highwall and transporting the coal along an auger bit to the surface and shall also include all other methods of mining in which coal is extracted from beneath the overburden by mechanical devices located at the face of the cliff or highwall and extending laterally into the coal seam, such as extended depth, secondary recovery systems.

(9) "Blaster" means a person who is directly responsible for surface blasting operations in surface coal mining and reclamation operations or coal exploration operations.

(10) "Cabinet" is defined in KRS 350.010.

(11) "Cessation order" means an order for cessation and immediate compliance and any similar order issued by OSM under SMCRA or issued by any state pursuant to its laws or regulations under SMCRA.

(12) "CFR" means Code of Federal Regulations.

(13) "Coal" means combustible carbonaceous rock, classified as anthracite, bituminous, subbituminous, or lignite by ASTM Standard D 388-77.

(14) "Coal exploration" means the field gathering of:

(a) Surface or subsurface geologic, physical, or chemical data by mapping, trenching, drilling, geophysical, or other techniques necessary to determine the quality and quantity of overburden and coal of an area; or

(b) Environmental data to establish the conditions of an area before beginning surface coal mining and reclamation operations under the requirements of 405 KAR Chapters 7 through 24 if the activity may cause any disturbance of the land surface or may cause any appreciable effect upon land, air, water, or other environmental resources.

(15) "Coal mine waste" means coal processing waste and underground development waste.

(16) "Coal processing waste" means materials which are separated from the product coal during the cleaning, concentrating, or other processing or preparation of coal.

(17) "Collateral bond" means an indemnity agreement in a sum certain payable to the cabinet executed by the permittee and which is supported by the deposit with the cabinet of cash, negotiable certificates of deposit, or an irrevocable letter of credit of any bank organized and authorized to transact business in the United States.

(18) "Cumulative measurement period" means the period of time over which both cumulative production and cumulative revenue are measured.

(19) "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.

(20) "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.

(21) "Day" means calendar day unless otherwise specified to be a working day.

(22) "Department" means the Department for Surface Mining Reclamation and Enforcement.

(23) "Disturbed area" means an area where vegetation, topsoil, or overburden is removed or upon which topsoil, spoil, coal processing waste, underground development waste, or noncoal waste is placed by surface coal mining operations. Those areas are classified as "disturbed" until reclamation is complete and the performance bond or other assurance of performance required by 405 KAR Chapter 10 is released.

(24) "Embankment" means a manmade deposit of material that is raised above the natural surface of the land and used to contain, divert, or store water; to support roads or railways; or for other similar purposes.

(25) "Existing structure" means a structure or facility used in connection with or to facilitate surface coal mining and reclamation operations, for which construction began prior to January 18, 1983.

(26) "Extraction of coal as an incidental part" means the extraction of coal which is necessary to enable the construction to be accomplished. Only that coal extracted from within the right-of-way, in the case of a road, railroad, utility line, or similar construction, or within the boundaries of the area directly affected by other types of government-financed construction, may be considered incidental to that construction. Extraction of coal outside the right-of-way or boundary of the area directly affected by the construction shall be subject to the requirements of KRS Chapter 350 and 405 KAR Chapters 7 through 24.

(27) "Government-financed construction" means construction funded fifty (50) percent or more by funds appropriated from a government financing agency's budget or obtained from general revenue bonds, but shall not mean government financing agency guarantees, insurance, loans, funds obtained through industrial revenue bonds or their equivalent, or in-kind payments.

(28) "Government financing agency" means a federal, Commonwealth of Kentucky, county, municipal, or local unit of government, or a cabinet, department, agency, or office of the unit which, directly or through another unit of government, finances construction.

(29) "Groundwater" means subsurface water that fills available openings in rock or soil materials to the extent that they are considered water saturated.

(30) "Highwall" means the face of exposed overburden and coal in an open cut of a surface mining activity or for entry to underground mining activities.

(31) "Hydrologic balance" means the relationship between the quality and quantity of water inflow to, water outflow from, and water storage in a hydrologic unit such as a drainage basin, aquifer, soil zone, lake, or reservoir. It encompasses the dynamic relationship between precipitation, runoff, evaporation, and changes in ground and surface water storage.

(32) "Hydrologic regime" means the entire state of water movement in a given area. It is a function of the climate and includes the phenomena by which water first occurs as atmospheric water vapor, passes into a liquid or solid form, falls as precipitation, moves along or into the ground surface, and returns to the atmosphere as vapor by means of evaporation and transpiration.

(33) "Imminent danger to the health and safety of the public" means the existence of any condition or practice, or any violation of a permit or other requirements of KRS Chapter 350 in a surface coal mining and reclamation operation, which could reasonably be expected to cause substantial physical harm to persons outside the permit area before the condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same condition or practice giving rise to the peril, would avoid exposure to the danger during the time necessary for abatement.

(34) "Impoundment" means a closed basin, naturally formed or artificially built, which is dammed or excavated for the retention of water, sediment, or waste.

(35) "In situ processes" means activities conducted on the surface or underground in connection with in-place distillation, retorting, leaching, or other chemical or physical processing of coal. The term includes, but is not limited to, in situ gasification, in situ leaching, slurry mining, solution mining, borehole mining, and fluid recovery mining.

(36) "KAR" means Kentucky administrative regulations.

(37) "Knowingly" means that a person knew or had reason to know in authorizing, ordering, or carrying out an act or omission that the act or omission constituted a violation of SMCRA, KRS Chapter 350, 405 KAR Chapters 7 through 24, or a permit condition, or that the act or omission constituted a failure or refusal to comply with an order issued pursuant to SMCRA, KRS Chapter 350, or 405 KAR Chapters 7 through 24.

(38) "KRS" means Kentucky Revised Statutes.

(39) "Land use" means specific functions, uses, or management-related activities of an area, and may be identified in combination when joint or seasonal uses occur and may include land used for support facilities that are an integral part of the use. In some instances, a specific use can be identified without active management.

(40) "Mining area", as used in 405 KAR 7:035, means an individual excavation site or pit from which coal, other minerals, and overburden are removed.

(41) "Monitoring" means the collection of environmental data by either continuous or periodic sampling methods.

(42) "MSHA" means Mine Safety and Health Administration.

(43) "Notice of noncompliance and order for remedial measures" means a written document and order prepared by an authorized representative of the cabinet which sets forth with specificity the violations of KRS Chapter 350, 405 KAR Chapters 7 through 24, or permit conditions which the authorized representative of the cabinet determines to have occurred based upon his inspection, and the necessary remedial actions, if any, and the time schedule for completion thereof, which the authorized representative deems necessary and appropriate to correct the violations.

(44) "Operations" is defined in KRS 350.010.

(45) "Operator" is defined in KRS 350.010.

(46) "Order for cessation and immediate compliance" means a written document and order issued by an authorized representative of the cabinet when:

(a) A person to whom a notice of noncompliance and order for remedial measures was issued has failed, as determined by a cabinet inspection, to comply with the terms of the notice of noncompliance and order for remedial measures within the time limits set therein, or as subsequently extended; or

(b) The authorized representative finds, on the basis of a cabinet inspection, any condition or practice or any violation of KRS Chapter 350, 405 KAR Chapters 7 through 24, or any condition of a permit or exploration approval which:

1. Creates an imminent danger to the health or safety of the public; or

2. Is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resources.

(47) "OSM" means Office of Surface Mining Reclamation and Enforcement, United States Department of the Interior.

(48) "Other mineral" means any commercially valuable substance mined for its mineral value, excluding coal, topsoil, waste, and fill material.

(49) "Overburden" is defined in KRS 350.010.

(50) "Performance bond" means a surety bond, a collateral bond, or a combination thereof, or bonds filed pursuant to the provisions of the Kentucky Bond Pool Program (405 KAR 10:200, KRS 350.595, and KRS 350.700 through 350.755), by which a permittee assures faithful performance of all the requirements of KRS Chapter 350, 405 KAR Chapters 7 through 24, and the requirements of the permit and reclamation plan.

(51) "Permit" means written approval issued by the cabinet to conduct surface coal mining and reclamation operations.

(52) "Permit area" means the area of land and water within boundaries designated in the approved permit application, which shall include, at a minimum, all areas which are or will be affected by surface coal mining and reclamation operations under that permit.

(53) "Permittee" means an operator or a person holding or required by KRS Chapter 350 or 405 KAR Chapters 7 through 24 to hold a permit to conduct surface coal mining and reclamation operations during the permit term and until all reclamation obligations imposed by KRS Chapter 350 and 405 KAR Chapters 7 through 24 are satisfied.

(54) "Person" is defined in KRS 350.010.

(55) "Prime farmland" means those lands which are defined by the Secretary of Agriculture in 7

CFR 657 and which have been "historically used for cropland" as that phrase is defined above.

(56) "Probable cumulative impacts" means the expected total qualitative, and quantitative, direct and indirect effects of surface coal mining and reclamation operations on the hydrologic regime.

(57) "Probable hydrologic consequences" means the projected results of proposed surface coal mining and reclamation operations which may reasonably be expected to change the quantity or quality of the surface and groundwater; the surface or groundwater flow, timing, and pattern; and the stream channel conditions on the permit area and adjacent areas.

(58) "Reclamation" is defined in KRS 350.010.

(59) "Refuse pile" means a surface deposit of coal mine waste that is not retained by an impounding structure and does not impound water, slurry, or other liquid or semiliquid material.

(60) "Road" means a surface right-of-way for purposes of travel by land vehicles used in coal exploration or surface coal mining and reclamation operations. A road consists of the entire area within the right-of-way, including the roadbed, shoulders, parking and side area, approaches, structures, ditches, surface, and contiguous appendages necessary for the total structure. The term includes access and haul roads constructed, used, reconstructed, improved, or maintained for use in coal exploration or surface coal mining and reclamation operations, including use by coal hauling vehicles leading to transfer, processing, or storage areas. The term does not include pioneer or construction roadways used for part of the road construction procedure and promptly replaced by a road pursuant to 405 KAR Chapters 16 and 18 located in the identical right-of-way as the pioneer or construction roadway. The term also excludes any roadway within the immediate mining pit area.

(61) "SCS" means Soil Conservation Service.

(62) "Secretary" is defined in KRS 350.010.

(63) "Sedimentation pond" means a primary sediment control structure designed, constructed, and maintained in accordance with 405 KAR 16:090 or 405 KAR 18:090 and including but not limited to a barrier, dam, or excavated depression which slows down water runoff to allow suspended solids to settle out. A sedimentation pond shall not include secondary sedimentation control structures, such as straw dikes, riprap, check dams, mulches, dugouts, and other measures that reduce overland flow velocity, reduce runoff volume, or trap sediment, to the extent that the secondary sedimentation structures drain to a sedimentation pond.

(64) "Significant, imminent environmental harm" means an adverse impact on land, air, or water resources which resources include, but are not limited to, plant and animal life as further defined in this subsection.

(a) An environmental harm is imminent, if a condition, practice, or violation exists which:

1. Is causing environmental harm; or

2. May reasonably be expected to cause environmental harm at any time before the end of the reasonable abatement time that would be set by the cabinet's authorized agents pursuant to the provisions of KRS Chapter 350.

(b) An environmental harm is significant if that harm is appreciable and not immediately reparable.

(65) "Small operator", as used in 405 KAR 7:080, means an operator whose combined actual and attributed production of coal does not exceed 300,000 tons during any period of twelve (12) consecutive months.

(66) "SMCRA" means Surface Mining Control and Reclamation Act of 1977 (Public Law 95-87), as amended.

(67) "Soil horizons" means contrasting layers of soil parallel or nearly parallel to the land surface. Soil horizons are differentiated on the basis of field characteristics and laboratory data. The four (4) master soil horizons are:

(a) "A horizon." The uppermost mineral layer, often called the surface soil. It is the part of the soil in which organic matter is most abundant, and leaching of soluble or suspended particles is typically the greatest.

(b) "E horizon." The layer commonly near the surface below an A horizon and above a B horizon. An E horizon is most commonly differentiated from an overlying A horizon by lighter color and generally has measurably less organic matter than the A horizon. An E horizon is most commonly differentiated from an underlying B horizon in the same sequum by color of higher value or lower chroma, by coarser texture, or by a combination of these properties.

(c) "B horizon." The layer that typically is immediately beneath the E horizon and often called the subsoil. This middle layer commonly contains more clay, iron, or aluminum than the A, E, or C horizons.

(d) "C horizon." The deepest layer of soil profile. It consists of loose material or weathered rock that is relatively unaffected by biologic activity.

(68) "Spoil" means overburden and other materials, excluding topsoil, coal mine waste, and mined coal, that are excavated during surface coal mining and reclamation operations.

(69) "Surety bond" means an indemnity agreement in a sum certain, payable to the cabinet and executed by the permittee, which is supported by the performance guarantee of a corporation licensed to do business as a surety in the Commonwealth of Kentucky.

(70) "Surface blasting operations" means the on-site storage, transportation, and use of explosives in association with coal exploration operations, surface mining activities, and surface disturbances of underground mining activities. The term shall be interpreted broadly and shall encompass activities including, but not limited to, the design of individual blasts, the implementation of blast designs, the initiation of blasts, the monitoring of airblast and ground vibration, and the use of protective measures such as access control and warning and all-clear signals.

(71) "Surface coal mining and reclamation operations" is defined in KRS 350.010.

(72) "Surface coal mining operations" is defined in KRS 350.010.

(73) "Surface mining activities" means those surface coal mining and reclamation operations incident to the extraction of coal from the earth by removing the materials over a coal seam before recovering the coal, by auger coal mining, by extraction of coal from coal refuse piles, or by recovery of coal from slurry ponds.

(74) "Ton" means 2000 pounds avoirdupois (.90718 metric ton).

(75) "Topsoil" means the A and E soil horizon layers of the four (4) master soil horizons.

(76) "Transfer, assignment, or sale of permit rights" means a change in ownership or other effective control over the right to conduct surface coal mining operations under a permit issued by the cabinet.

(77) "Underground mining activities" means a combination of:

(a) Surface operations incident to underground extraction of coal or in situ processing, including construction, use, maintenance, and reclamation of roads, above-ground repair areas, storage areas, processing areas, and shipping areas; areas upon which are sited support facilities including hoist and ventilating ducts; areas utilized for the disposal and storage of waste; and areas on which materials incident to underground mining operations are placed; and

(b) Underground operations such as underground construction, operation, and reclamation of shafts, adits, underground support facilities; in situ processing; and underground mining, hauling, storage, and blasting.

(78) "Unwarranted failure to comply" means the failure of the permittee due to indifference, lack of diligence, or lack of reasonable care:

(a) To prevent the occurrence of any violation of any applicable requirement of KRS Chapter 350, 405 KAR Chapters 7 through 24, or permit conditions; or

(b) To abate any violation of any applicable requirement of KRS Chapter 350, 405 KAR Chapters 7 through 24, or permit conditions.

(79) "Willfully" and "willful violation" mean that a person acted either intentionally, voluntarily, or consciously, and with intentional disregard or plain indifference to legal requirements, in authorizing, ordering, or carrying out an act or omission that constituted a violation of SMCRA, KRS Chapter 350, 405 KAR Chapters 7 through 24, or a permit condition, or that constituted a failure or refusal to comply with an order issued pursuant to SMCRA, KRS Chapter 350, or 405 KAR Chapters 7 through 24.

JOHN F. NICHOLS, JR., Secretary
FRANK DICKERSON, Commissioner
APPROVED BY AGENCY: November 25, 1991
FILED WITH LRC: November 25, 1991 at 2 p.m.

PUBLIC HEARING: A public hearing on this proposed amendment has been scheduled for 9 a.m. (EST) Thursday, January 30, 1992 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 January 25, 1992. The scheduled hearing will be cancelled if the contact person has not received any written notice of intent to testify by January 25, 1992, 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 amendment 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 amendment but does not wish to testify at the hearing may submit written comments on the proposed amendment at any time before 4:30 p.m. (EST) on January 30, 1992. 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, KY 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact: Jim Villines

(1) Type and number of entities affected: This regulation applies to surface coal mining and reclamation operations and coal exploration operations. This regulation also affects landowners of mined land, adjacent landowners, and the general public in the coal field regions that may be impacted by mining operations. There are approximately 3800 surface coal mining operations and approximately 500 coal exploration operations in this state.

(a) Direct and indirect costs or savings to those affected:

1. First year: Presently, one regulation (405 KAR 7:020) near the beginning of the series of regulations (405 KAR Chapters 7-24) relating to surface coal mining operations contains nearly all of the definitions applicable to that series of related regulations. A few definitions are located in individual regulations. However, the surface coal mining regulations span eight related chapters of Title 405. It is the opinion of the Administrative Regulations Review Subcommittee that KRS Chapter 13A requires that each chapter of a Title must contain any necessary definitions of terms used in that chapter; and that this must be accomplished either by placing the definitions in the first section of each regulation that uses the defined terms, or by placing all definitions in a separate definitions regulation at the beginning of the chapter. Therefore, this regulation is being promulgated to define the terms used in 405 KAR Chapter 7. For the most part, there are no substantive changes since these definitions are simply being transferred, with a few minor changes, from 405 KAR 7:020 and other existing regulations to this new regulation. Each term defined in KRS Chapter 350 has had its regulatory definition deleted and a notation inserted that the term is defined in KRS 350.010. Therefore, there are no direct or indirect costs or savings to those affected due to existing definitions being placed in this regulation. There are new definitions of "knowingly" and "willfully" and "willful violation" which relate to the assessment of individual civil penalties. These definitions clarify terms that are used to describe conduct for which some individuals within corporations may be subject to individual civil penalties. There are several new terms related to proposed 405 KAR 7:035 and 7:080 which are presently in the promulgation process. These were included in those proposed regulations when filed with LRC. For a discussion of the effect of those new regulations, including the effect of the new definitions, please see the Regulatory Impact

Analyses filed with proposed 405 KAR 7:035 and 7:080 on July 15, 1991.

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: No direct costs or savings to the cabinet will result from the definitions in this regulation. However, additional indirect administrative costs to the cabinet will result from having a separate definitions regulation in each chapter rather than having a single definitions regulation for the entire series of related regulations. Because 405 KAR Chapters 7-24 constitute a single regulatory program and contain related subject matter, many defined terms are used in more than one chapter. Thus, when it becomes necessary in the future to add, modify or delete a definition, as many as eight regulations must be amended to make that change. This will increase the time and effort associated with preparing amended regulations and associated documents for the promulgation process. Printing and mailing costs also will increase due to the substantial increase in the number of pages of these regulations.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: See above discussion in (a).

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: This alternative was selected by agreement with the Administrative Regulation Review Subcommittee. The only other alternative available is to place the definitions in the first section of each regulation in which the defined terms are used. That alternative was rejected because it would have been more duplicative and burdensome on the cabinet than the alternative selected.

(5) Identify any statute, administrative regulation, or governmental policy which may be in conflict, overlapping or duplication: None

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. Tiering is not applicable to this proposed administrative regulation because, under the federal and Kentucky surface mining laws and regulations, these requirements must apply equally to all permittees under 405 KAR Chapters 7-24.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 7 CFR Part 657, 30 CFR Parts 700.5, 701.5, 707.5, 730-733, 735, 761.5, 762.5, 773.5, 800.5, 843.5, 917; 30 USC 1253, 1255, 1291.

2. State compliance standards. This regulation defines terms used in 405 KAR Chapter 7. For the most part, these definitions are the same as the existing definitions in 405 KAR 7:020 and other existing regulations, with minor changes, and are being moved to this chapter by agreement with the Administrative Regulation Review Subcommittee to comply with KRS Chapter 13A. There are some new terms included in this regulation: "knowingly" and "willfully" are related to the assessment of individual civil penalties; there are several new terms related to proposed 405 KAR 7:035 and 7:080 which were originally included in those regulations as filed with LRC on July 15, 1991.

3. Minimum or uniform standards contained in the federal mandate. The federal regulations provide definitions of terms used in the federal surface mining regulations which are substantially the same or similar to those proposed in the state regulation.

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.

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

405 KAR 7:021. Repeal of 405 KAR 7:020.

RELATES TO: KRS Chapter 350, 7 CFR Part 657, 30 CFR Parts 700.5, 701.5, 707.5, 730-733, 735, 761.5, 762.5, 773.5, 800.5, 843.5, 917, 30 USC 1253, 1255, 1291

STATUTORY AUTHORITY: KRS Chapter 13A, 350.028, 350.465, 7 CFR Part 657, 30 CFR Parts 700.5, 701.5, 707.5, 730-733, 735, 761.5, 762.5, 773.5, 800.5, 843.5, 917, 30 USC 1253, 1255, 1291

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations pertaining to surface coal mining and reclamation operations under the permanent regulatory program. This administrative regulation repeals 405 KAR 7:020, which defines certain terms used in 405 KAR Chapters 7 through 24. 405 KAR 7:020 is no longer necessary because a new administrative regulation is being promulgated in each chapter of 405 KAR Chapters 7 through 24 that will contain the definitions for that chapter.

Section 1. 405 KAR 7:020 is hereby repealed.

JOHN F. NICHOLS, JR., Secretary
FRANK DICKERSON, Commissioner

APPROVED BY AGENCY: November 25, 1991

FILED WITH LRC: November 25, 1991 at 2 p.m.

PUBLIC HEARING: A public hearing on this proposed amendment has been scheduled for 9 a.m. (EST) Thursday, January 30, 1992 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 January 25, 1992. The scheduled hearing will be cancelled if the contact person has not received any written notice of intent to testify by January 25, 1992, five days before the scheduled hearing date. If the hearing is held, it will be open to the public. Any person in attendance who

be installed in accordance with NFiPA 90A or NFiPA 90B in lieu of the mechanical code listed in Appendix A."

(2) Delete subsections 702.1 through 702.3 in their entirety.

(3) Amend subsection 708.1.3, Furred Ceilings, by adding the following exception: "Exception: In Use Group R-3 basement recreation rooms, a furred ceiling height of six feet and eight inches (6'8") around the ducts may be made in the soffit area only for structural beams and mechanicals. The two-thirds (2/3) area requirements listed in this section shall still be met."

(4) Amend subsection 709.3 to read as follows: "709.3 Alternative mechanical ventilation: Enclosed attic, rafter and crawl spaces and other uninhabited spaces such as unfinished basements, which are not ventilated as herein required, shall be equipped with a mechanical ventilation system conforming to the requirements of Section M-1605 of the mechanical code listed in Appendix A."

Section 8. Article 8, Means of Egress. Amend Article 8 by making the following additions, deletions or changes:

(1) Delete subsection 804.2.1 in its entirety.

(2) Amend Table 806.1.2 by adding a notation to Industrial areas to read as follows: "Note: Use a value of 200 gross for purposes of determining jurisdiction under Sections 108 and 109, design professional seal requirements, and Article 33, applicability."

(3) Create a new subsection 807.3.2 to read as follows: "807.3.2 Protection of egress: A required means of egress shall not discharge directly into a vehicular path unless guards are provided to protect vehicles from hitting the exit door in any outward opened position and to direct pedestrians in a path running parallel to the vehicular path. The guards shall prevent the exit door from being blocked by movable objects such as dumpsters or parked vehicles."

(4) Amend Table 809.3, Buildings with One Exit, to read as follows:

TABLE 809.3
BUILDINGS WITH ONE EXIT

Use Group	Maximum No. of Stories Above Grade	Maximum occupants, travel distances[d] or Dwelling Units Per Floor
All	1 story	50 occupants
B[b],F,M,S[a]	2 stories	30 occupants and a 75-foot travel distance
R-2	2 stories[e]	4 dwelling units and a travel distance of 50 feet
R-2	3 stories[c]	4 dwelling units

Note a. For the required number of exits for open parking structures, see Section 809.5

Note b. For the required number of exits for air traffic control towers, see Section 617.0.

Note c. Buildings of Use Group R-2 equipped throughout with an automatic sprinkler system in accordance with Section 1004.2.1 or 1004.2.2 shall have a maximum height of three (3) stories above grade.

Note d. One (1) foot = 304.8 mm.

Note e. When equipped with an NFiPA 13D sprinkler system listed in Appendix A, the travel distance shall be increased to seventy-five (75) feet and the number of dwelling units per floor shall be increased to eight (8), but not more than four (4) units shall share a single exit."

(5) Amend subsection 809.4, Emergency Escape, by adding two (2) additional exceptions to read as follows: "4. Egress windows located on the first and second stories in multiple family dwellings (R-2 and R-3 Use Groups) and one (1) and two (2) family dwellings may have a minimum net clear opening height dimension of twenty-two (22) inches and a minimum width dimension of twenty (20) inches; and the net clear opening area may be reduced to no less than four (4) square feet. The minimum total glazed area shall be five (5) square feet in the case of a ground floor window and not less than five and seven-tenths (5.7) square feet in the case of a second story window. (This exception applies only if the sash frames can be readily broken or removed.)" and "5. An outside window or exterior door for emergency escape shall not be required in R-2 occupancies when all dwelling units are not more than one (1) story above the lowest level of exit discharge and not more than one (1) story below the highest level of exit discharge of exits serving the dwelling unit and when equipped with an NFiPA 13D sprinkler system listed in Appendix A."

(6) Amend Table 810.4, Corridor Fire-resistance Rating, to read as follows:

TABLE 810.4
CORRIDOR FIRE-RESISTANCE RATING

Use Group	Total Required Capacity of all Exits from Corridor	Required Fire-resistance Rating: Without sprinkler system	Required Fire-resistance Rating: With sprinkler system[d]
H	>30	NP[e]	1 hr.
A,B,E,F,M,S	>30	1 hr.	0
I-1,R[a,f]	>10	1 hr.	1/2 hr.
I-2	All	1 hr.	0[b]
I-3	All	NP	0[c]

Note a. For reduction in fire-resistance rating for Use Group R, see Section 810.4, Exception 2.

Note b. For requirements for Use Group I-2, see Section 610.3.

Note c. For reduction in fire-resistance rating for Use Group I-3, see Table 611.8.

Note d. Buildings equipped throughout with an automatic sprinkler system in accordance with Section 1004.2.1, 1004.2.2 or 1004.2.3.

Note e. NP = Not Permitted.

Note f. In R-2 occupancies when all dwelling units are not more than one (1) story above the lowest level of exit discharge and not more than one (1) story below the highest level of exit discharge of exits serving the dwelling unit and when equipped with an NFiPA 13D sprinkler system listed in Appendix A, the required fire resistance rating shall be

one-half (1/2) hour."

(7) Amend the exception to 810.4.1, Corridor walls as separation walls, to read as follows: "Exception: Tenant separation and dwelling unit separation walls which are also corridor walls shall not be required to have a fire-resistance rating greater than that required by Table 810.4 where the building is equipped throughout with an automatic sprinkler system in accordance with Sections 1004.2.1, 1004.2.2 or 1004.2.3."

(8) Amend subsection 813.4.2, Panic Hardware, as follows:

(a) Amend the first sentence to read as follows: "All doors equipped with latching or locking devices in buildings of Use Groups A and E or portions of buildings used for assembly or educational purposes and serving rooms or spaces with an occupant load greater than 100, shall be equipped with approved panic hardware."

(b) Create an exception to subsection 813.4.2 to read as follows: "Exception: Panic hardware for Use Group A3 shall not be required for principal entrance/exit doors if:

1. They are free-swinging; and
2. The calculated occupant load does not exceed 150; and
3. The latch/lock device is a thumb latch/lock or a key operated lock device in which the key cannot be removed from the side from which egress is to be made when it is locked."

(9) Amend subsection 816.3, Maximum slope, to read as follows: "816.3, Maximum slope: The maximum slope of means of egress ramps shall be one (1) unit vertical in eight (8) units horizontal (1:8); except ramps required in accordance with Article 33 for persons with physical handicaps, in which case the maximum slope shall be: one (1) unit vertical in eight (8) units horizontal (1:8) if the rise is limited to three (3) inches (76 mm); one (1) unit vertical in ten (10) units horizontal (1:10) if the rise is limited to six (6) inches (152 mm); or one (1) unit vertical in twelve (12) units horizontal (1:12) otherwise."

(10) Amend subsection 817.12, Exterior Stairways, by deleting the first sentence to read as follows: "817.12 Exterior stairways: Exterior stairways shall not be accepted as an exit in the following cases:

1. Buildings of Use Group I-2 which exceed four (4) stories or fifty (50) feet in height.
2. Buildings of Use Group I-3.
3. Floors that exceed five (5) stories or sixty-five (65) feet in height above the level of exit discharge."

Section 9. Article 9, Fire-resistive Construction. Amend Article 9 by making the following additions, deletions, or changes:

(1) Amend subsection 901.2, Penetrations, to read as follows: "Plans for buildings shall indicate where penetrations shall be made for electrical, mechanical, plumbing and communication conduits, pipes and systems, and shall also indicate the materials and methods for maintaining the required structural integrity, fire-resistance rating and firestopping. Approved penetration assemblies shall be used for all combustible penetrations of fire-resistant rated building elements as specified in Section 910.3.1."

(2) Amend subsection 903.4, Interior Hangings and Decorations, to read as follows: "Interior hangings and decorations shall comply with Section 903.4.1."

(3) Delete subsections 903.4.2, 903.4.3 and 903.4.4 in their entirety.

(4) Create a new subsection 904.4 to read as follows: "904.4 Combustible pipe: Combustible pipe shall be permitted in all use groups and construction types where approved by Article 28 of this Code and the Kentucky State Plumbing Code."

(5) Create a new subsection 904.4.1 to read as follows: "904.4.1 Vertical combustible pipe: Vertical combustible pipes shall comply with Sections 910.3.1 and 915.3.2."

(6) Create a new subsection 910.3.1, Through-Penetration System, to read as follows: "910.3.1 Through-Penetration System: Combustible cable trays, conduits, tubes or pipes shall be allowed to penetrate a rated assembly if they are protected with an approved through penetration protection system that has been tested in accordance with ASTM E-814 listed in Appendix A. Exception: In buildings of Use Groups R-1 and R-2 when all dwelling units are not more than one (1) story above the lowest level of exit discharge and not more than one (1) level below the highest level of exit discharge, the through penetrations shall not be required to be protected with an ASTM E-814 system, if equipped with an NFiPA sprinkler system listed in Appendix A".

(7) Amend subsection 913.4, Penetration protection, by creating an additional exception to read as follows: "4. In all buildings of Use Group R-2, vertical noncombustible ducts shall not be required to have a one (1) hour enclosure if the following conditions exist:

(a) The cross-sectional area does not exceed thirty-five (35) square inches (22581 mm^2; and

(b) The duct does not penetrate more than three (3) floors; and

(c) The duct does not serve more than one (1) dwelling unit and shall not join other ducts except above the top level for the purpose of utilizing a single roof penetration; and

(d) These ducts shall be restricted for use as a bathroom or kitchen exhaust and combustion air supply and relief."

(8) Amend subsection 921.7.2.1, Use Group R, by creating an additional exception to read as follows: "6. When dwelling unit separation walls are constructed to the underside of a fire-resistance rated roof/ceiling assembly or to a ceiling with sixty (60) minute finish rating, the attic draftstopping complying with subsection 921.7.2.2 (i.e., horizontal draftstopped areas not exceeding 3,000 square feet) shall be deemed equivalent."

Section 10. Article 10, Fire Protection Systems. Amend Article 10 by making the following additions, deletions or changes:

(1) Amend subsection 1002.8 by amending the exception to read as follows: "Exception: Use Group R-1 buildings (hotels, motels, etc.) where all guestrooms are not more than one (1) story above the lowest level of exit discharge of the exits serving the guestroom (e.g., a two (2) story building with basement). Each guestroom shall have at least one (1) door opening directly to an exterior exit access which leads directly to the exits."

(2) Amend subsection 1002.9 by creating two (2) exceptions to read as follows:

(a) "Exception 1. Two (2) Story Buildings with Basement. Use Group R-2 buildings (apts., condos, dorms, etc.) where all dwelling units

are not more than one (1) story above the lowest level of exit discharge and not more than one (1) story below the highest level of exit discharge of exits serving the dwelling unit (e.g., a two (2) story building with a basement)."

(b) "Exception 2. Existing buildings. R-2 buildings that exceed two (2) stories but which do not have more than six (6) dwelling units. This exception shall not apply to buildings constructed after the effective date of this code."

(3) Create a new subsection 1004.2.3 to read as follows: "1004.2.3 NFiPA 13D Systems. A sprinkler system in accordance with NFiPA 13D listed in Appendix A shall be permitted in the following occupancies:

(a) In buildings of Use Group R-2 if all dwelling units are not more than one (1) story above the lowest level of exit discharge and not more than one (1) story below the highest level of exit discharge of exits serving the dwelling unit (i.e., a two (2) story building with a basement).

(b) In Existing Buildings of Use Group R-2 that exceed two (2) stories but have no more than six (6) dwelling units. This shall not apply to buildings constructed after the effective date of this code.

(c) In Use Group R-1 occupancies complying with Section 1002.8."

(4) Amend subsection 1005.6.3, Domestic connection, to read as follows: "1005.6.3 Domestic connection: Two (2) check (one (1) way) valves, one (1) of which may be an alarm check valve, shall be provided at the point where the suppression system piping is connected to the domestic water piping. Shutoff valves shall not be permitted in the suppression system piping. Water supply shall be controlled by the riser control valve to the domestic water piping.

Exception: Shutoff valves in the sprinkler system piping are permitted if the valves are supervised in accordance with Section 1020.0."

(5) Amend subsection 1015.1, Yard Hydrants, to read as follows:

(a) "1015.1 Private hydrants: Fire hydrants installed on private property as a part of a private fire protection system shall be located so as to meet the requirements of National Fire Protection Association (NFiPA) Pamphlet #24 listed in Appendix A. Yard hydrant installation shall be coordinated with the local fire code officials who shall not make recommendations which exceed the requirements of National Fire Protection Association (NFiPA) Pamphlet #24. Yard hydrants shall not be installed on a water main less than six (6) inches in diameter."

(b) Create a new subsection of 1015.2 to read as follows: "1015.2 Public hydrants: Public hydrants not covered by National Fire Protection Association (NFiPA) Pamphlet #24 listed in Appendix A shall conform to the standards of the administrative authority of the jurisdiction as provided for by local ordinance."

(6) Amend subsection 1016.4.1, Use Group A-4 or E, by creating an additional exception to read as follows: "Exception 2. Church buildings which do not exceed 10,000 square feet and in which single station smoke detectors are installed as follows:

a. Smoke detectors may be single station and wired in series so as to sound alarm in sanctuary.

b. Smoke detectors shall be installed in fellowship hall and more hazardous areas such as furnace rooms, mechanical rooms and storage rooms, but shall not be as required in Sunday school classrooms.

c. Detector spacing shall be thirty (30) feet on center in corridors and 900 square feet per detector in open spaces, or in accordance with the manufacturer's specifications."

(7) Create an additional exception to subsection 1018.3.2, Use Group R-2, to read as follows: "3. Smoke detectors shall not be required in bedrooms of Use Group R-2 occupancies if all dwelling units are not more than one (1) story above the lowest level of exit discharge and not more than one (1) story below the highest level of exit discharge of exits serving the dwelling unit and when equipped with an NFiPA 13D sprinkler system listed in Appendix A."

(8) Amend subsection 1020.2, Fire protection signaling systems, to read as follows: "1020.2 Fire protection signaling systems: All required fire protective signaling systems in the following occupancies shall transmit alarm and trouble signals to an approved central-station system, proprietary system or remote-station system.

1. Day care centers with more than 100 clients.

2. Health care facilities licensed by the Cabinet for Human Resources."

Section 11. Article 11, Structural Loads. Amend Article 11 by making the following additions, deletions or changes:

(1) Create a new subsection 1100.2 to read as follows: "1100.2 Certificate of compliance: Design compliance with the provisions of this article and Article 12 shall be satisfied when certification of an architect or engineer registered in Kentucky to that effect is placed on drawings submitted to the building code official."

(2) Amend subsection 1105.4, Existing Live Load, by changing "Section 103.3" to "Section 106.3".

(3) Amend Figure 1113.1 of Article 11 by adding the following list of 120 Kentucky counties to further explain the map which shows the assigned earthquake risk zone for each.

Earthquake Risk Zone #1

Adair	Elliott	Laurel	Oldham
Allen	Estill	Lawrence	Owen
Anderson	Fayette	Lee	Owsley
Barren	Fleming	Leslie	Pendleton
Bath	Floyd	Lewis	Perry
Boone	Franklin	Lincoln	Pike
Bourbon	Gallatin	Logan	Powell
Boyd	Garrard	Madison	Pulaski
Boyle	Grant	Magoffin	Robertson
Bracken	Grayson	Marion	Rockcastle
Breathitt	Green	Martin	Rowan
Breckinridge	Greenup	Mason	Russell
Bullitt	Hancock	Meade	Scott
Butler	Hardin	Menifee	Shelby
Campbell	Harrison	Mercer	Simpson
Carroll	Hart	Metcalfe	Spencer
Carter	Henry	Monroe	Taylor
Casey	Jackson	Montgomery	Todd
Christian	Jefferson	Morgan	Trimble
Clark	Jessamine	Muhlenberg	Warren
Clay	Johnson	McCreary	Washington
Clinton	Kenton	McLean	Wayne
Cumberland	Knott	Nelson	Whitley

Daviess	Knox	Nicholas	Wolfe
Edmonson	Larue	Ohio	Woodford

Earthquake Risk Zone #2	Earthquake Risk Zone #3
Bell	Ballard
Caldwell	Carlisle
Calloway	Fulton
Crittenden	Graves
Harlan	Hickman
Henderson	Livingston
Hopkins	Marshall
Letcher	McCracken
Lyon	
Trigg	
Union	
Webster	

(4) Amend subsection 1113.1.1 by creating the following exception: "Exception: In Zone 1, additions that increase the height of an existing building shall not be required to conform to the provisions of this subsection."

Section 12. Article 12, Foundation Systems and Retaining Walls. Amend Article 12 by making the following additions, deletions or changes: Amend Subsection 1205.1 to read as follows: "Except when erected upon solid rock or otherwise protected from frost, foundation walls, piers and other permanent supports of all buildings and structures larger than 100 square feet (9.30 m^2) in area or ten (10) feet (3048 mm) in height shall extend below the frost line of the locality, to a minimum depth of twenty-four (24) inches, or whichever is deeper, and spread footings of adequate size shall be provided if necessary to distribute properly the load within the allowable bearing value of the soil. Alternatively, the structures shall be supported on piles if solid earth or rock is not available. Footings shall not be founded on frozen soils unless the frozen condition is of a permanent character."

Section 13. Article 13, Materials and Tests. Amend Article 13 by making the following additions, deletions or changes:
(1) Delete subsection 1301.3 in its entirety.
(2) Delete subsections 1308.1 through 1308.8 in their entirety.

Section 14. Article 14, Masonry, is hereby adopted in its entirety.

Section 15. Article 15, Concrete, is hereby adopted in its entirety.

Section 16. Article 16, Gypsum and Plaster, is hereby adopted in its entirety.

Section 17. Article 17, Wood, is hereby adopted in its entirety.

Section 18. Article 18, Steel, is hereby adopted in its entirety.

Section 19. Article 19, Lightweight Metal Alloys, is hereby adopted in its entirety.

Section 20. Article 20, Plastic, is hereby adopted in its entirety.

Section 21. Article 21, Exterior Walls. Amend Article 21 by making the following additions, deletions or changes: Create a new subsection to read a follows: "2100.2 Approval of plans: Plans showing compliance with Section 2101.6.1 through 2101.6.11.3 shall be submitted to the Kentucky Division of Water pursuant to KRS 151.250 and 260. Approval of plans by or through that agency together with their final approval of construction shall constitute compliance with these sections."

Section 22. Article 22, Vertical and Sloped Glass and Glazing. Amend Article 22 by making the following additions, deletions or changes:
(1) Create a new subsection 2201.1.1 to read as follows: "2201.1.1 Labeling requirements: Each light of safety glazing material manufactured, distributed, imported, or sold for use in hazardous locations or installed in a location within the Commonwealth of Kentucky shall be permanently labeled by etching, sandblasting or firing ceramic material on the safety glazing material. The label shall identify the labeler, whether manufacturer, fabricator or installer, and the nominal thickness and the type of safety glazing material and the fact that said material meets the test requirements of American National Standards Institute, Inc. (ANSI) Standard Z-97.1 and Z-97.1a listed in Appendix A and further requirements as may be adopted by the Department of Housing, Buildings and Construction. The label shall be legible and visible after installation. Safety glazing labeling shall not be used on materials other than safety glazing materials."
(2) Amend Paragraph 7 of subsection 2203.2, Specific Hazardous Locations, to read as follows: "Glazing in fixed panels having a glazed area in excess of nine (9) square feet (0.84 m^2) with the lowest edge less than eighteen (18) inches (457 mm) above the finish floor level or walking surface within thirty-six (36) inches (914 mm) of the glazing, and the finish floor or walking surface is extended on both sides of said glazing. In lieu of safety glazing, glazed panels may be protected with a horizontal member not less than one and one-half (1 1/2) inches (38 mm) in width when located between twenty-four (24) inches (610 mm) and thirty-six (36) inches (914 mm) above the walking surface."

Section 23. Article 23, Roofs and Roof Coverings, is hereby adopted in its entirety except subsection 2308.2 is amended to read as follows: "2308.2 Structural and construction loads: The roof covering system and the material and equipment loads that will be encountered during installation of the roof covering system shall not exceed the capacity of the structural roof components."

Section 24. Article 24, Masonry Fireplaces, is hereby adopted in its entirety.

Section 25. Article 25, Mechanical Equipment and Systems. Amend Article 25 by making the following additions, deletions or changes:
(1) Amend subsection 2500.2 to read as follows: "2500.2 Boilers: All boilers and associated pressure piping shall meet the standards for construction, installation and inspection as set forth in Title 815, Chapter 15, Kentucky Administrative Regulations."
(2) Create a new subsection 2500.3 to read as

follows: "2500.3 Unfired Pressure Vessels. All unfired pressure vessels shall meet the standards set forth in Section VIII of the 1983 Edition of the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code, American National Standards Institute, Inc./American Society of Mechanical Engineers (ANSI/ASME) BPV-VIII-1, as required by Kentucky boiler regulations set forth in Title 815, Chapter 15, Kentucky Administrative Regulations."

(3) Create a new subsection 2500.4 to read as follows: "2500.4 Mechanical Code: All mechanical equipment and systems which are not covered by 2500.2 or 2500.3 but which are required by other provisions of this code to be installed in accordance with the mechanical code listed in Appendix A, shall be constructed, installed and maintained in accordance with the BOCA National Mechanical Code/1990 including all applicable standards listed within Appendix A."

(a) Create a new subsection 2500.4.1 to read as follows: "2500.4.1 Mechanical ventilation: Mechanical ventilating systems may be designed in accordance with the provisions of ASHRAE Standard 62-1989 listed in Appendix A as an equivalent alternative to the BOCA National Mechanical Code/1990."

(b) Create a new subsection 2500.4.2 to read as follows: "2500.4.2 Design of mechanical systems: The building code official may use the actual occupant load in lieu of Table 806.1.2 in the design of mechanical ventilating systems. This applies to both the BOCA National Mechanical Code/1990 and ASHRAE 62-1989 listed in Appendix A."

(4) Create a new Section 2511.0 entitled "Rangehoods" to read as follows: "2511.1 Rangehoods: Rangehoods in kitchen exhaust systems shall comply with the requirements of the Mechanical Code listed in Appendix A. The bottom edge of the hood shall be located at a height of not more than four (4) feet above the cooking surface."

(5) Create a new subsection, 2511.2, Commercial Exhaust System not Required, to read as follows: "2511.2 Commercial Exhaust System not Required: In churches and in other occupancies where the range is merely a convenience for occasional use and where there is minimal or nonexistent grease laden vapors, commercial exhaust systems shall not be required."

Section 26. Article 26, Elevator, Dumbwaiter, and Conveyor Equipment, Installation and Maintenance. Amend Article 26 by making the following additions, deletions or changes:

(1) Amend subsection 2602.4.1 to read as follows: "2602.4.1 Periodic inspection intervals: Periodic inspections shall be made at intervals of not more than twelve (12) months for all passenger elevators, manlifts and escalators."

(2) Amend subsection 2603.4 to read as follows: "2603.4 Posting certificates of compliance: The owner or lessee shall post the last issued certificate of compliance in a conspicuous place on the elevator, available to the building official."

(3) Amend subsection 2607.4 to read as follows: "2607.4 Location of vents: Vents shall be located at the top of the hoistway, and shall open either directly to the outer air or through noncombustible ducts to the outer air. Holes in the machine room floors for the passage of ropes, cables or other moving elevator equipment shall be limited so as not to provide greater than two (2) inches (51 mm) of clearance on all sides."

(4) Create a new subsection 2607.4.1 to read as follows: "2607.4.1 Mechanical ventilation: Mechanical ventilation shall be allowed in buildings other than Use Groups R-1, R-2, I-1, I-2 and similar uses with overnight sleeping quarters if outside exposure for the required vents is not possible. The mechanical ventilation shall conform to the mechanical code listed in Appendix A."

(5) Amend subsection 2607.5 to read as follows: "2607.5 Area of vents: Except as provided for herein, the area of the vents shall not be less than three and one-half (3 1/2) percent of the area of the hoistway nor less than three (3) square feet (0.28 m^2) for each elevator car, and not less than three and one-half (3 1/2) percent nor less than one-half (1/2) square foot (0.047 m^2) for each dumbwaiter car in the hoistway, whichever is greater. Of the total required vent area, not less than one-third (1/3) shall be of the permanently open type unless all vents activate upon detection of smoke from any of the elevator lobby smoke detectors. Where mechanical ventilation conforming to the mechanical code listed in Appendix A provides equivalent venting, the required vent area shall be reduced if compliance with subsection 2607.4.1 is met."

(6) Create a new Section 2612.0 entitled "Vertical Chairlifts and Wheelchair Lifts: to read as follows: "2612.1 General: Except as herein provided, inclined stairway chairlifts and inclined and vertical wheelchair lifts shall conform to the requirements of ASME A17.1 listed in Appendix A. Exception: Vertical wheelchair lifts may have a travel distance not to exceed 23 feet and penetrate a floor subject to the following additional requirements.

1. The platform shall be fully enclosed on the top and any side which is not used as an exit or entrance. Enclosures shall conform to the requirements of ASME A17.1 listed in Appendix A.
2. The runway shall be fully enclosed from the floor to the ceiling on all floors conforming with the requirements of Section 2608.0.
3. All runway entrances shall be protected by a door of unperforated construction conforming to the requirements of Section 2611.0.
4. All runway entrance doors shall be equipped with approved interlocks conforming to the requirements of ASME A17.1 listed in Appendix A."

(7) Create a new section 2613.0 entitled "Machine Rooms and Related Construction for Passenger and Freight Elevators and Dumbwaiters" to read as follows: "2613.1 General: The construction of machine rooms and related construction for passenger and freight elevators and dumbwaiters shall be protected from the weather, and shall be enclosed with fire resistive enclosures. Enclosures and access doors thereto shall have a fire endurance at least equal to that required to the hoistway enclosure in Table 401."

Section 27. Article 27, Electric Wiring, Equipment and Systems. Amend Article 27 by making the following additions, deletions or changes:

(1) Amend subsection 2700.1, Scope, by adding the following sentence: "Tentative Interim Amendments issued to NFiPA 70 and accepted by

the department shall be permitted to be used for interpretations of NFiPA 70."

(2) Create a new subsection 2700.5 to read as follows: "2700.5 Electrical Inspections: Inspections conducted to determine compliance with the National Electrical Code shall be conducted by a certified electrical inspector in accordance with Kentucky Administrative Regulation 815 KAR 35:015."

(3) In subsections 2702.1, 2702.3, and 2703.1 delete the words "code official" and insert in lieu thereof the words "certified electrical inspector."

(4) Delete subsections 2701.3, 2704.3, and 2704.4 in their entirety.

Section 28. Article 28, Plumbing Systems. Amend Article 28 by deleting sections 2800.1 through 2807.1 in their entirety and insert in lieu thereof the following: "2800.1 Scope: The design and installation of all plumbing systems, including sanitary and storm water sewage disposal in buildings shall comply with the requirements of Chapter 318 of the Kentucky Revised Statutes and the Kentucky State Plumbing Code as set out in Title 815, Chapter 20, Kentucky Administrative Regulations. Copies are available from the Kentucky Division of Plumbing, The 127 Building, 1047 U.S. 127 South, Frankfort, Kentucky 40601."

Section 29. Article 29, Signs, is deleted in its entirety.

Section 30. Article 30, Precautions During Building Operations. Amend subsection 3005.2 by deleting the words, "Section 2805.4" and insert in lieu thereof the words, "Article 28, 815 KAR 20:090 and Article 9, respectively."

Section 31. Article 31, Energy Conservation, is hereby adopted in its entirety.

Section 32. Article 32, Repair, Alteration, Addition to and Change of Use of Existing Buildings. Amend Article 32 by making the following additions, deletions or changes:

(1) Amend subsection 3202.1 to read as follows: "3202.1 General: The provisions in Section 3202.1.1 through 3202.1.5 shall apply to existing buildings that will continue to be, or are proposed to be, in Use Groups A, B, E, F, M, R and S. These provisions shall not apply to historic buildings as provided for in Section 102.5."

(2) Amend subsection 3202.1.5 to read as follows: "3202.1.5 Handicapped requirements: All portions of the buildings proposed for change in use shall conform to the provisions of Article 33 as required by Section 3302.1. Federal regulations issued by the Department of Justice may be more stringent than this Code."

Section 33. Create a new subsection, 3303.2, Preschool, day care and elementary school modifications, to read as follows: "Preschool, day care and elementary school modifications: The standards set forth in "Recommendations for Accessibility to serve Physically Handicapped Children in Elementary Schools" dated March, 1986, may be used for providing handicapped accessibility for students in lieu of the listed dimensions and heights identified in this Article. This document is published jointly by the General Services Administration, the United States Postal Service, and the Departments of Defense and Housing and Urban Development, and a copy may be obtained from the American National Standards Institute (ANSI), 11 West 42nd Street, New York, NY 10036. Copies are also available at the Department of Housing, Buildings and Construction, The 127 Building, 1047 U.S. 127 South, Frankfort, Kentucky, between 8 a.m. and 4:30 p.m., Monday through Friday."

Section 34. [33.] Appendix A, Referenced Standards. Amend Appendix A by making the following additions, deletions or changes:

(1) Amend the reference to the BOCA National Fire Prevention Code 1990 listed in Appendix A by adding the following language: "The Kentucky Standards of Safety (815 KAR 10:040 – Fire Prevention Code) as amended by the Kentucky Department of Housing, Buildings and Construction."

(2) Elevators. Amend the reference to Safety Code for Elevators and Escalators to read "A17.1–1990" [with the exception of rules 102.2(c)(4) and 700.4b, 700.5, 700.7b, 700.10b, and 704.4]."

(3) Add the following language and list of National Fire Protection Association (NFiPA) Pamphlets to Appendix A:

"These National Fire Protection Association (NFiPA) Pamphlets are listed for use in fire suppression design and installation only if referenced in a specific code required by Articles 2 through 32 of this code.

Aircraft Hangars	#409
Pyroxylin Plastics	#40C
Flammable Liquids	#30
Laboratories	#45
Fireworks	#1124
L.P. Gas Storage	#58
High Piled Storage in Excess of 12 ft. in height	#231
Rubber Tire Storage	#231D
Baled Cotton Storage	#231E
Rolled Paper Storage	#231F
Rangehoods	#96
Computer Rooms	#75
Archives and Record Centers	#232AM
L.P. Gas Storage and Handling	#59A
Explosion Prevention Systems	#69
Code for the Manufacture and Storage of Aerosol Products	#30B
Installation of Closed-head Foam Water Sprinkler Systems	#16A
Fur Storage	#81
Cooling Towers	#214
Marinas and Boatyards	#303"

(4) Amend Appendix A by changing the edition date to "1990" for the following National Fire Protection Association (NFiPA) Pamphlets: #10, #12B, #14, #15, #17, #17A, #30, #32, #43A, #50, #72E, #80, #82, #99, #418, #495 and #704.

(5) Amend Appendix A and all Articles of the Code by removing all reference to "NFiPA Pamphlets #72A, #72C, #72D, #72F" and in its place list NFiPA Pamphlet #72-90."

(6) Amend Appendix A by adding reference to "NFiPA Pamphlet Number 13D Sprinkler Systems for 1 & 2 Family Dwellings and Mobile Homes, 1989 Edition."

CHARLES A. COTTON, Commissioner
THEODORE T. COLLEY, Secretary
APPROVED BY AGENCY: November 21, 1991

FILED WITH LRC: December 9, 1991 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 21, 1992 at 10 a.m. in the office of the Department of Housing, Buildings and Construction, 1047 U.S. 127 South, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by January 16, 1992, (five days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is received. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Judith G. Walden, Office of General Counsel, Department of Housing, Buildings and Construction, The 127 Building, 1047 U.S. 127 South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Judith G. Walden

(1) Type and number of entities affected: Contractors, architects, engineers, users of the Kentucky Building Code.

(a) Direct and indirect costs or savings to those affected: No costs or savings because regulation only establishes clarification of standards as interpreted by the department.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition): No competition; KBC is a statewide code.

(b) Reporting and paperwork requirements: None to persons using KBC.

(2) Effects on the promulgating administrative body: None to the agency because the regulation merely provides accepted standards in construction.

(a) Direct and indirect costs or savings: Cost of printing KBC but this is recouped by the sale of the code books.

1. First year: See above.

2. Continuing costs or savings: Printing of revised or updated pages.

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Paperwork requirements to agency involve updating code by reprinting and distributing to purchasers.

(3) Assessment of anticipated effect on state and local revenues: No anticipated effect on state or local revenue.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative method of construction was rejected. Board of Housing reviews code sections for adoption or amendment within limits defined.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No known conflict.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? Yes. Different classifications of buildings and different sizes and different construction types call for different standards.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes X No___ (If yes, complete questions 2-4)

2. State what unit, part or division of local government this administrative regulation will affect. This regulation will affect a part of local government.

3. State the aspect or service of local government to which this administrative regulation relates. This regulation will affect local government where there is a local building inspection program. KRS 198B.060 requires local government to provide for building officials to enforce the KBC.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: There is no increased fiscal impact created by this regulation, nor does it increase the number of persons needed by local government. State revenues are neither increased nor decreased by this regulation.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management and Development
(Proposed Amendment)

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

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

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

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

personal care beds. Personal care services are described in 902 KAR 20:036. This regulation sets forth the provisions of the supplementation program.

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

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

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

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

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

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

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

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

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

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

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

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

(a) For eligibility determinations for personal care homes made on or after January 1, 1992 [July 1, 1991]: not less than $720 [705];

(b) For eligibility determinations for family care homes made on or after January 1, 1992 [Family care home]: not less than $525 [510, effective January 1, 1991];

(c) Caretaker.

1. For eligibility determinations for single individual, or eligible individual with ineligible spouse (one who is not aged, blind, or disabled) made on or after January 1, 1992: not less than $445 [440, effective January 1, 1991];

2. For eligibility determinations for married couple, both eligible (aged, blind, or disabled), with one (1) requiring care made on or after January 1, 1992: not less than $661 [638, effective January 1, 1991];

3. For eligibility determinations for married couple, both eligible and both requiring care made on or after January 1, 1992: not less than $705 [682, effective January 1, 1991].

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

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

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

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

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

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

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

(b) He is judged legally incompetent; or

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

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

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

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

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

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

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

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

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

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

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

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

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

(14) An individual eligible for and receiving a supplemental payment in October, 1979, shall be considered a Kentucky resident through July 4, 1984, even if he does not meet the residency requirements specified in this section, so long

as the individual continues to reside in Kentucky and his receipt of supplementary payments has not since October, 1979 been interrupted by a period of ineligibility.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Importance of proper medication administration.

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

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

(d) Characteristics of each major diagnosis, for example, paranoia, schizophrenia, bi-polar disorder, mental retardation, etc.

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

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

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

MI or MR training workshop at the closest location.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MIKE ROBINSON, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: November 21, 1991
FILED WITH LRC: November 27, 1991 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 21, 1992 at 9 a.m. at the Vital Statistics Conference Room, First Floor, CHR Building, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by January 16, 1992, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: James E. Randall

(1) Type and number of entities affected: 6,500 recipients of state supplementation.

(a) Direct and indirect costs or savings to those affected: 1) Recipients in personal care homes receive a $35 increase per month. 2) Recipients in family care homes receive a $26 increase per month. 3) Recipients in caretaker situations receive the following increase: single individual - $23; couple (one requiring care) - $33; couple (both requiring care) - $35.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: Increase in cost-of-living for state supplementation recipients.

1. First year: $327,400 cost, already anticipated in the state budget.
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative method assessed; set forth through department policy.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None
TIERING: Was tiering applied? No. The 3.7 percent increase in the cost-of-living is applied uniformly to all recipients of state supplementation. The department's pass-along agreement with the Social Security Administration mandates that the administrative process for state supplementation be implemented in a like manner on a statewide basis, thereby prohibiting tiering.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 20 CFR 416.2095, 20 CFR 416.2096.
2. State compliance standards. This amended administrative regulation includes the 1991 cost-of-living increases, to place Kentucky in compliance with federal SSI guidelines.
3. Minimum or uniform standards contained in the federal mandate. Maintain state supplementation payment and pass-along cost-of-living increases.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. None

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management and Development
(Proposed Amendment)

904 KAR 3:025. Technical requirements.

RELATES TO: KRS 194.050, 7 CFR 273.4, 273.5, 273.7, 273.21
STATUTORY AUTHORITY: KRS 194.0507, 7 CFR 271.4
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer a Food Stamp Program. KRS 194.050 provides that the secretary shall, by regulation, develop policies and operate programs concerned with the welfare of the citizens of the Commonwealth. This regulation sets forth the technical eligibility requirements used by the cabinet in the administration of the Food Stamp Program.

Section 1. Definitions. (1) "Certification period" means a definite period of time within which a household shall be eligible to receive food stamp benefits.
(2) "Quality control review" means a review of a statistically valid sample of active and denied or discontinued cases to determine the extent to which households are receiving the food stamp allotments to which they are entitled, and to ensure that inactive cases are not incorrectly denied or terminated.
(3) "Student status" means any person who is between the ages of eighteen (18) and sixty (60) inclusive, physically and mentally fit, and enrolled at least half-time in an institution of higher education.

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

Section 3. Technical Eligibility Criteria. Technical eligibility standards shall apply equally to all households and consist of:
(1) Residency. A household shall live in the county in which they make application;
(2) Identity.
(a) The applicant's identity shall be verified; and
(b) If an authorized representative applies for the household, both the applicant's and the authorized representative's identities shall be verified;
(3) Citizenship and alien status.
(a) Program participation shall be limited to:
1. Citizens of the United States; or
2. Eligible aliens as defined by 904 KAR 3:010.
(b) Individuals whose status is questionable shall be ineligible to participate until such status has been verified;
(c) A single household member shall attest in writing to the citizenship or alien status of each household member;
(d) The departmental form required for the declaration of citizenship or alien status is incorporated into this regulation by reference.
(4) Household size. Size of household shall be verified through readily available documentary evidence or through a collateral contact;
(5) Students. Any person who meets the definition of a student as specified in Section 1 of this regulation shall be ineligible to participate unless they meet at least one (1) of the following criteria:
(a) Shall be engaged in paid employment for a minimum of twenty (20) hours per week or, if self-employed, shall be employed for a minimum of twenty (20) hours per week and receive weekly earnings at least equal to the federal minimum wage multiplied by twenty (20) hours; or
(b) Shall participate in a federally financed work study program (funded in full or in part under 20 USC 1070) during the regular school year; or
(c) Shall be responsible for the care of a dependent household member under the age of six (6); or
(d) Shall be responsible for the care of a dependent household member who has reached the age of six (6) but is under age twelve (12) where the cabinet has determined that adequate child care is not available; or

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

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

(6) Mandatory monthly reporting (MMR).

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

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

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

2. Migrant or seasonal farm worker households;

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

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

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

(7) Social Security number (SSN).

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

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

(8) Work registration.

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

1. Register for work;

2. Accept suitable employment; and

3. Be subject to other work registration requirements.

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

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

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

b. A person age sixteen (16) or seventeen (17) who is not a head of a household or who is attending school, or enrolled in an employment training program on at least a half-time basis is exempt;

2. A person physically or mentally unfit for employment;

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

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

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

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

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

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

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

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

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

(c) Strikers whose households are eligible in accordance with 904 KAR 3:035, Section 6(9), shall be subject to the work registration requirements unless exempt for reasons other than employment at the time of application.

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

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

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

(e) A work registrant[s] who:

1. Is [are] required to participate in the:

a. Food stamp employment and training (E&T) program; or

b. Aid to Families with Dependent Children (AFDC), Job Opportunities and Basic Skills (JOBS) Program pursuant to 904 KAR 2:006; and [who]

2. Fails to do so shall be ineligible to receive food stamp benefits for two (2) months unless:

a. Good cause exists;

b. The noncompliance individual was participating in a JOBS component which is more stringent that the components of the E&T Program; or

c. The noncompliant JOBS participant is otherwise exempt from work registration in the E&T Program.

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

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

3. An individual who is not sanctioned in the Food Stamp Program as meeting the criteria in subparagraph 2b of this paragraph shall be work registered in the E&T Program unless otherwise exempt by paragraph (b) of this subsection.

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

Section 4. Material Incorporated by Reference. (1) Forms FS-301 and FS-301A are necessary for MMR and are incorporated effective June 1, 1991.

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

(3) These forms may be inspected and copied at the Department for Social Insurance, 275 East

Main Street, Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m.

MIKE ROBINSON, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: December 11, 1991
FILED WITH LRC: December 13, 1991 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 21, 1992 at 9 a.m. in the Vital Statistics Conference Room, 1st Floor, CHR Building. Individuals interested in attending this hearing shall notify this agency in writing by January 16, 1992, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street – 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: James E. Randall
(1) Type and number of entities affected: The amendment to this administrative regulation will affect AFDC, JOBS program participants who are required to work register in the Food Stamp E&T Program and are nonexempt in the JOBS program when the requirements of the JOBS component are equal to or less stringent than the requirements of the components of the E&T Program. The number of entities affected cannot be determined; however, it is anticipated that the impact of this policy or program participants will be minimal.
(a) Direct and indirect costs or savings to those affected: None
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect costs or savings: None
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict: None
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None
(6) Any additional information or comments: None
TIERING: Was tiering applied? 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 273.7(g)(2)
2. State compliance standards. This regulation pertains to the technical eligibility requirements for participation in the Food Stamp Program as prescribed by the Food and Nutrition Service. There are no separate state compliance standards.
3. Minimum or uniform standards contained in the federal mandate. The federal regulation mandates that state agencies consider the technical eligibility determination for food stamps in accordance with national uniform standards. Therefore, the technical eligibility requirements contained in this administrative regulation are applied in a like manner on a statewide basis and are consistent with the technical eligibility requirements applied to the National Food Stamp Program.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. The provisions of this administrative regulation coincide with those mandated by the Food and Nutrition Service.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation will not impose any stricter requirements or any additional or different responsibilities than those required by the federal mandate.

PROPOSED REGULATIONS RECEIVED THROUGH NOON, DECEMBER 13, 1991

GENERAL GOVERNMENT CABINET
Kentucky Board of Pharmacy

201 KAR 2:061. Procedures followed by the Kentucky Board of Pharmacy in the investigation and hearing of complaints.

RELATES TO: KRS 315.131
STATUTORY AUTHORITY: KRS 315.191(1)
NECESSITY AND FUNCTION: The Kentucky Board of Pharmacy in fulfilling provisions of KRS 315.131(1), (2), and (3) has implemented procedures to expedite and enhance the judicial process to effect appropriate resolution in a more timely fashion and in a manner consistent with the severity of the transgression.

Section 1. Complaints against licensees may be oral or written, with precedence given to written, from such sources as consumers, competitors, health professionals, government and provider agencies, or other interested parties.

Section 2. Upon receipt of any complaint meriting investigation as determined by the executive director, the board, or its representative, an inspector shall be dispatched to conduct an investigation and to file a report of his findings.

Section 3. As consideration of the investigatory findings by the executive director, inspector, the board or its appointee and, when necessary, the counsel for the board, concludes, the following options shall result:
(1) Admonition or other disposition by written communication to the licensee(s) involved, with proper notification of resolution to the complainant. Documentation shall be maintained in the appropriate board office files for reference purposes.
(2) Issuance of formal complaint, order, and notice of hearing. Alleged infractions may result in:
(a) Administrative conference before the executive director and inspector. Should proposed agreements be forthcoming, and after submission be ratified by the board, the matter shall be concluded without further process.
(b) Settlement conference, usually conducted between defense and prosecuting attorneys who strive to agree as to certain stipulations and proposed terms and conditions for an agreed order that appears reasonably acceptable to resolve the complaint. The proposed terms of agreement are then subject to approval of the board. If an agreed order is subsequently agreed to by all parties concerned, the matter is thereby resolved, the matter shall be concluded without further process.
(c) Hearing becomes necessary to resolve the matter.

Section 4. Hearings. (1) The president of the board or the duly appointed hearing officer shall preside over all administrative hearings and shall have the authority to rule on all motions, to control the procedure of the hearing and to admit or exclude testimony or other evidence.
(2) Evidence in support of the complaint shall be presented by the counsel for the board. In all cases, said counsel shall have the right to question witnesses and offer evidence into the record.
(3) Evidence may be admitted if it is of the type commonly relied upon by reasonably prudent men and women in the conduct of their affairs. Irrelevant, immaterial or unduly repetitious evidence shall be excluded. Hearsay evidence, including affidavits, may be admitted for the purpose of supplementing competent evidence in the discretion of the president of the board or the hearing officer appointed to conduct the hearing.
(4) All hearings before the board shall proceed in the following order, wherever practical:
(a) Opening statements in the following order:
1. Board counsel;
2. Licensee's counsel or licensee;
(b) Witnesses and evidence in support of the complaint;
(c) Witnesses and evidence on behalf of licensee;
(d) Closing statements in the following order:
1. Licensee's counsel or licensee;
2. Board counsel.
(5) Testimony to be considered by the board may be taken by deposition. A party or witness will be allowed to testify by deposition, rather than attend the hearing, upon a showing of inability to attend and that the other party will have an opportunity to cross-examine at said deposition.

Section 5. Posthearing Proceedings. The board shall deliberate on all cases in closed session. The specific findings of the board shall be made in open session following the board's deliberation.

DONALD J. RUWE, President
APPROVED BY AGENCY: December 4, 1991
FILED WITH LRC: December 5, 1991 at 8 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 22, 1992, 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 January 17, 1992, 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: 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: Only those who are involved in judicial process.
(a) Direct and indirect costs or savings to those affected: No additional direct or indirect costs would be involved except for those affected by the judicial process.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition): As in (1)(a) no increasing costs.
(b) Reporting and paperwork requirements: No additional reporting or paperwork.
(2) Effects on the promulgating administrative body: Would allow for consistent judicial process for violation of pharmacy statutes and regulations.
(a) Direct and indirect costs or savings: No additional direct or indirect costs or savings other than uniform procedures being followed.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: No additional reporting or paperwork.
(3) Assessment of anticipated effect on state and local revenues: No effect on state and local revenues.
(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternative method does not allow for consistent judicial process.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflict, overlapping, or duplication.
(a) Necessity of proposed regulation if in conflict:
(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. N/A

GENERAL GOVERNMENT CABINET
Kentucky State Board of Registration for Professional Engineers and Land Surveyors

201 KAR 18:131. Disciplinary and grievance hearing procedures.

RELATES TO: KRS 322.180, 322.190, 322.200, 322.210, 322.220, 322.250, 322.320
STATUTORY AUTHORITY: KRS 322.180, 322.190, 322.200, 322.220, 322.290
NECESSITY AND FUNCTION: Establishes procedural guidelines for board hearings and processing of informal charges, complaints and grievances as required under KRS Chapter 322.

Section 1. Administrative Adjudication Procedure. This rule governs the procedure in all proceedings before the board in which the legal rights, duties or privileges of any person are required by statute or administrative regulation to be determined after an opportunity for a hearing. This procedure shall be construed to secure a just, speedy and inexpensive determination of any proceeding while insuring that the requirements of due process are observed.

Section 2. Definitions. (1) "Person" means any individual, partnership, corporation or association.
(2) "Board" means the State Board of Registration for Professional Engineers and Land Surveyors as provided by KRS Chapter 322.
(3) "Order" means the whole or part of any final disposition of an adjudication.
(4) "Adjudication" means the board process in which a sanction may be imposed.
(5) "Sanction" means revocation or suspension of a license, reprimand or fine.
(6) "License" means any permit, certificate, or registration granted by the board.
(7) "Hearing officer" means a licensed practicing attorney appointed by the board to hear proof and recommend findings of fact.
(8) "Probable Cause Committee" means a committee of one (1) or more present or past board members, appointed by the chairman of the board, and the executive director and legal counsel of the board.
(9) "Grievance" means a formal complaint filed by any licensee or applicant contesting a refusal of the board to:
(a) Permit an applicant to sit for an exam;
(b) Issue a license;
(c) Renew a license.

Section 3. Public Information. (1) Publication, procedure. This procedure shall be published and made available to the public for the guidance of the public.
(2) Publication, adjudication. From time to time, as is convenient to the board, but at least once annually, a list of all adjudications of the board shall be published, identifying the respondent and the final disposition in the matter.
(3) Official record. All matters of official record in any adjudication shall be available to the public for inspection and copying except that the work product of the board investigatory staff shall not be, unless specifically made a part of the official record of an adjudication proceeding.

Section 4. Complaints. Complaints shall be classified as follows: formal and informal.
(1) Formal complaints. Formal charges may be made by any person filing an original and two (2) copies of a complaint with the executive director at the board offices, in the general pleading form used for complaints in any civil action in Kentucky. The complaint shall contain:
(a) The name and address of any person making charges, as well as the name and address of the person or persons against whom charges are being made;
(b) A clear and concise description of the issues of fact and law involved and the statutes, rules and regulations and sections of the Code of Professional Practice and Conduct and Standards of Practice which the party complained against is alleged to have violated;
(c) A demand for a formal hearing before the board according to the regulation;
(d) The relief sought.
(2) Informal complaints. Information of personal knowledge of any person, which, if true, would indicate a possible violation of the registration law by a registrant or applicant,

may be presented to the executive director. Upon receipt of such information, the executive director shall, without informing the board of any of the particulars:

(a) Investigate the matter, which investigation may be conducted by calling the parties involved to conference, by personally investigating the matter, or by having the matter investigated by the board staff, or any combination of these methods;

(b) Compile all relevant evidence of probative value.

Section 5. Commencement of Actions. (1) Formal complaints. Upon receipt of a formal complaint referred to in Section 4(1) of this regulation, the executive director shall transmit the complaint to the hearing officer who shall then proceed as set out in Section 6 of this regulation.

(2) Informal complaints. Upon completion of the investigation provided for in Section 4(2) of this regulation, the Probable Cause Committee shall evaluate the evidence developed by the investigation to determine its substantive value. Based on the decision of the Probable Cause Committee, the executive director shall then:

(a) If the informal complaint states no actionable violation of statutes, regulations or binding rules, transmit the committee's decision to the person who filed the informal complaint, after which the complainant may proceed under Section 4(1) of this regulation;

(b) In all other cases: cause to have prepared a formal complaint as provided in Section 4(1) of this regulation and transmit the complaint to the hearing officer, who shall proceed as set out in Section 6 of this regulation.

Section 6. Service and Response. (1) Upon receipt of a formal complaint, the hearing officer shall cause a copy of the complaint and any attachments to be served upon the respondent at the address set out in the complaint by certified mail, return receipt requested.

(2) Not later than twenty (20) days after receipt of the complaint, as shown on a certified mail receipt, the respondent shall serve upon the hearing officer and upon the board's attorney a response admitting or denying each allegation of fact or law contained in the complaint.

(3) The complaint need not contain documents in support of the complaint, but inspection and copies of any documents to be used upon hearing shall be available to the respondent at the board's office or the office of the board's attorney not later than the date of service of the complaint upon the respondent.

(4) If the respondent fails to file a responsive pleading within the time period set out in subsection (2) of this section, the hearing officer shall notify the respondent by certified mail, return receipt requested, that at the end of seven (7) days the hearing officer shall proceed to deem the respondent in default, the complaint confessed, and make recommended findings of fact and conclusions of law to the board, unless good cause is shown why the respondent is in default.

(5) Upon receipt of a responsive pleading, the hearing officer shall proceed to schedule a hearing on the complaint to be held not sooner than thirty (3) days nor more than sixty (60) days from the date of respondent's reply, the hearing to take place at a time and location most convenient to all parties, in the hearing officer's discretion.

(6) The hearing officer may continue a hearing for not more than thirty (30) days for good cause shown.

Section 7. Prehearing Procedure. Prehearing conferences. At the request of either party, prehearing conferences may be conducted by the hearing officer, who shall keep a record of any agreement as to issues, admission of facts, or stipulations. Any proposed agreement which, if accepted by the board, would settle all issues of the complaint shall:

(1) Be transmitted to the board.

(2) Not be considered to be a waiver of any defenses until accepted by the board.

(3) Be in writing and signed.

(4) Not be binding upon any of the parties until accepted by the board.

Section 8. Evidence. The respondent should be afforded every opportunity to defend and should not be surprised. In order to enable the respondent to defend:

(1) Board subpoenas authorized by law shall be issued to any party upon request.

(a) Prehearing disclosure of evidence.

1. By the board. The licensee or applicant shall have the right to inspect the investigative file relating to a disciplinary action either in person or by legal counsel. The names, addresses and telephone numbers of witnesses expected to be called by the board will be made available. Copies of documentary evidence may be obtained upon the payment of a reasonable charge therefore, except documents that may not be reproduced under the provisions of state or federal law. Nothing in this section shall be construed as giving the licensee or applicant the right to examine or copy the personal notes, observations, or conclusions of the board's investigators nor shall it be construed as allowing access to the work product of legal counsel for the board. Further, appointment for the examination of an investigative file must be made upon reasonable notice, during regular office hours, and at a time convenient to all parties. The licensee or applicant shall also be permitted to examine any items of tangible evidence in the possession of the board.

2. By the licensee or applicant. At least ten (10) days prior to the scheduled hearing date the licensee or applicant shall furnish to the investigator or legal counsel for the board copies of any documents which the licensee or applicant intends to introduce at the hearing and a list of the names, addresses, and home and work telephone numbers of any witnesses to be presented to the hearing panel by the licensee or applicant. The licensee or applicant shall also produce for inspection any items of tangible evidence within its possession or control which it intends to introduce at the hearing.

(b) The rules of evidence. The tribunal shall not be bound by the technical rules of evidence. The tribunal may receive any evidence which it considers to be reliable, including testimony which would be hearsay if presented in a court of law. Documentary evidence may be admitted in the form of copies or excerpts, and need be

authenticated only to the extent that the tribunal is satisfied of its genuineness and accuracy. Tangible items may be received into evidence without the necessity of establishing a technical legal chain of custody so long as the board is satisfied that the item is what it is represented to be and that it is in substantially the same condition as it was at the time of the events under consideration.

(2) Irrelevant, immaterial or unduly repetitious evidence shall be excluded.

(3) By agreement of the parties, all or part of the evidence may be received in written form.

(4) The hearing officer may take notice of judicially cognizable facts, and notice may be taken of generally recognized technical or scientific facts, provided, however, that either party shall be afforded an opportunity to contest the facts so noticed.

Section 9. Conduct of Hearings. (1) The hearing shall be adversarial, presided over by the hearing officer, with the charges and evidence against the licensee presented by an attorney designated by the board.

(2) The respondent may appear pro se or by counsel.

(3) The hearing shall be conducted as follows: the petitioner shall present its evidence with opportunity for the respondent to cross-examine; the respondent shall present his evidence, if any, with the petitioner having the right to cross-examine; petitioner shall have the right of rebuttal.

(4) The hearing shall be officially recorded.

(5) The hearing may be continued or adjourned for reasonable cause shown.

(6) The subject matter of the hearing shall be strictly limited to those charges set forth in the complaint. If it appears that additional subject matter should be considered, or additional charges filed, the hearing officer shall order an adjournment for an appropriate period to provide notice of those matters or charges to be communicated to the respondent and to allow reasonable time for the respondent to prepare a defense, unless the adjournment is waived by the respondent.

(7) Not later than fourteen (14) days following the hearing, the hearing officer shall make proposed findings of fact and conclusions of law based on the record, which shall be served on counsel for the petitioner and the respondent. The proposed findings of fact and conclusions of law shall contain: judicious summary of the evidence introduced; a basis for each finding; and any legal precedent or reference to codified law which the hearing officer deems appropriate. In those instances in which the hearing officer recommends that the respondent be found guilty of the charges alleged, he shall not include any recommendation as to the nature of disciplinary action to be taken.

(8) The parties shall have fourteen (14) days from service of the proposed findings of fact and conclusions of law to file exceptions with the hearing officer.

(9) Immediately upon the close of the period for filing exceptions, the hearing officer shall transmit his proposed findings and conclusions, together with the entire record, to the executive director. Not later than fourteen (14) days prior to the next succeeding quarterly meeting of the full board, copies of the hearing officer's recommended findings of fact and conclusions of law, together with exhibits made a part of the recommended findings, together with any written exceptions filed by the parties, shall be served on each member of the board.

Section 10. Adjudication. (1) At the next succeeding meeting of the full board, each case shall be considered by the board, and by majority vote of a quorum the board shall take one of the following actions:

(a) Adopt the hearing officer's recommendation in whole or in part;

(b) Reject the hearing officer's recommendation in whole or in part;

(c) Remand the matter back to the hearing officer to make additional findings of fact and conclusions of law, including the conducting of additional hearings.

(2) If the board finds the respondent guilty of any charge, determine a disciplinary action.

(3) All actions by the board shall be conducted in open session, as required by law.

(4) The board's decision shall be issued in writing, signed by the chairman and executive director, and served upon all parties not later than seven (7) days following the board's decision.

Section 11. Reconsideration. A petition to the board for vacation or reduction of the severity of a sanction imposed shall be in writing and may be submitted at any time subsequent to the issuance of an order. The petition shall be a complete statement of the respondent's grounds for vacation or reduction. The petition shall be considered by the board at the next succeeding quarterly meeting and a decision issued within seven (7) days.

Section 12. Nonregistrants. (1) Applicants for registration. Complaints related to an applicant's qualifications may be received and investigated as provided in Section 4 of this regulation. However, if registration is denied as a result of the investigation, the applicant shall be notified of:

(a) The basis for denial;

(b) His right to a grievance hearing before the board, if he wishes to contest the matter.

(2) A grievance shall be filed with the executive director in the same manner as complaints, as set out in Section 5 of this regulation, and hearings shall be conducted as set out in Section 6 of this regulation.

Section 13. Practice or Offer to Practice by Nonregistrants. Complaints related to an applicant's qualifications may be received and investigated as provided in Section 4 of this regulation. Upon receipt of such complaint the executive director shall:

(1) Attempt to have the complainant seek court action as provided for in KRS Chapter 322; or

(2) The executive director, after consultation with the Probable Cause Committee, may initiate court action as provided for in KRS Chapter 322.

Section 14. Ancillary Matters. (1) Board staff. In any case involving sanction, an employee or agent directly engaged in the performance of investigative or advocacy functions for the board shall not participate or advise in the decision, recommended decision, or

board review, except as witness or counsel in a public hearing.

(2) Subpoena. Any member of the board or its executive director may administer oaths and issue subpoenas for the board.

Section 15. Repealed. 201 KAR 18:130 is hereby repealed in its entirety.

GEORGE ELY, Chairman
APPROVED BY AGENCY: October 9, 1991
FILED WITH LRC: December 13, 1991 at noon
PUBLIC HEARING: A public hearing on the adoption of this regulation shall take place at the hour of 9 a.m. on the 23rd day of January, 1992, at the offices of the Kentucky State Board of Registration for Professional Engineers and Land Surveyors, Kentucky Engineering Center, 160 Democrat Drive, Frankfort, Kentucky 40601. Persons desiring to be heard shall contact Larry Perkins, Executive Director, not later than five (5) days prior to the hearing.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Larry S. Perkins
(1) Type and number of entities affected: This regulation will only affect registrants brought before the board on disciplinary proceedings. Approximately 15-20 per year.
(a) Direct and indirect costs or savings to those affected: No difference in costs to those affected than with previous regulation.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: No significant difference.
(2) Effects on the promulgating administrative body: This regulation will result in savings to the agency in board time and administrative savings in money.
(a) Direct and indirect costs or savings: See above.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: No significant difference.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: Savings in time and money.
(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 registrants involved in hearings will be treated the same.

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

405 KAR 7:001. Definitions for 405 KAR Chapter 7.

RELATES TO: KRS Chapter 350, 7 CFR Part 657, 30 CFR Parts 700.5, 701.5, 707.5, 730-733, 735, 761.5, 762.5, 773.5, 800.5, 843.5, 917, 30 USC 1253, 1255, 1291
STATUTORY AUTHORITY: KRS Chapter 13A, 350.028, 350.465, 7 CFR Part 657, 30 CFR Parts 700.5, 701.5, 707.5, 730-733, 735, 761.5, 762.5, 773.5, 800.5, 843.5, 917, 30 USC 1253, 1255, 1291
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations pertaining to surface coal mining and reclamation operations under the permanent regulatory program. This regulation provides for the defining of certain essential terms used in 405 KAR Chapter 7.

Section 1. Definitions. (1) "Adjacent area" means land located outside the affected area or permit area, depending on the context in which "adjacent area" is used, where air, surface or groundwater, fish, wildlife, vegetation or other resources protected by KRS Chapter 350 may be adversely impacted by surface coal mining and reclamation operations.
(2) "Administratively complete application" means an application for permit approval, or approval for coal exploration if required, which the cabinet determines to contain information addressing each application requirement of the regulatory program and to contain all information necessary to initiate technical processing and public review.
(3) "Affected area" means any land or water area which is used to facilitate, or is physically altered by, surface coal mining and reclamation operations. The affected area includes the disturbed area; any area upon which surface coal mining and reclamation operations are conducted; any adjacent lands the use of which is incidental to surface coal mining and reclamation operations; all areas covered by new or existing roads used to gain access to, or for hauling coal to or from, surface coal mining and reclamation operations, except as provided in this definition; any area covered by surface excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, shipping areas; any areas upon which are sited structures, facilities, or other property or material on the surface resulting from, or incident to, surface coal mining and reclamation operations; and the area located above underground workings associated with underground mining activities, auger mining, or in situ mining. The affected area shall include every road used for the purposes of access to, or for hauling coal to or from, surface coal mining and reclamation operations, unless the road:
(a) Was designated as a public road pursuant to the laws of the jurisdiction in which it is located;
(b) Is maintained with public funds, and constructed in a manner similar to other public roads of the same classification within the

jurisdiction; and

(c) There is substantial (more than incidental) public use.

(4) "Applicant" means any person seeking a permit, permit revision, permit amendment, permit renewal, or transfer, assignment, or sale of permit rights from the cabinet to conduct surface coal mining and reclamation operations or approval to conduct coal exploration operations pursuant to KRS Chapter 350 and all applicable regulations.

(5) "Application" means the documents and other information filed with the cabinet seeking issuance of permits; revisions; amendments; renewals; and transfer, assignment or sale of permit rights for surface coal mining and reclamation operations or, if required, seeking approval for coal exploration.

(6) "Approximate original contour" is defined in KRS 350.010.

(7) "Aquifer" means a zone, stratum, or group of strata that can store and transmit water in sufficient quantities for domestic, agricultural, industrial, or other beneficial use.

(8) "Auger mining" means a method of mining coal at a cliff or highwall by drilling holes into an exposed coal seam from the highwall and transporting the coal along an auger bit to the surface and shall also include all other methods of mining in which coal is extracted from beneath the overburden by mechanical devices located at the face of the cliff or highwall and extending laterally into the coal seam, such as extended depth, secondary recovery systems.

(9) "Blaster" means a person who is directly responsible for surface blasting operations in surface coal mining and reclamation operations or coal exploration operations.

(10) "Cabinet" is defined in KRS 350.010.

(11) "Cessation order" means an order for cessation and immediate compliance and any similar order issued by OSM under SMCRA or issued by any state pursuant to its laws or regulations under SMCRA.

(12) "CFR" means Code of Federal Regulations.

(13) "Coal" means combustible carbonaceous rock, classified as anthracite, bituminous, subbituminous, or lignite by ASTM Standard D 388-77.

(14) "Coal exploration" means the field gathering of:

(a) Surface or subsurface geologic, physical, or chemical data by mapping, trenching, drilling, geophysical, or other techniques necessary to determine the quality and quantity of overburden and coal of an area; or

(b) Environmental data to establish the conditions of an area before beginning surface coal mining and reclamation operations under the requirements of 405 KAR Chapters 7 through 24 if the activity may cause any disturbance of the land surface or may cause any appreciable effect upon land, air, water, or other environmental resources.

(15) "Coal mine waste" means coal processing waste and underground development waste.

(16) "Coal processing waste" means materials which are separated from the product coal during the cleaning, concentrating, or other processing or preparation of coal.

(17) "Collateral bond" means an indemnity agreement in a sum certain payable to the cabinet executed by the permittee and which is supported by the deposit with the cabinet of cash, negotiable certificates of deposit, or an irrevocable letter of credit of any bank organized and authorized to transact business in the United States.

(18) "Cumulative measurement period" means the period of time over which both cumulative production and cumulative revenue are measured.

(19) "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.

(20) "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.

(21) "Day" means calendar day unless otherwise specified to be a working day.

(22) "Department" means the Department for Surface Mining Reclamation and Enforcement.

(23) "Disturbed area" means an area where vegetation, topsoil, or overburden is removed or upon which topsoil, spoil, coal processing waste, underground development waste, or noncoal waste is placed by surface coal mining operations. Those areas are classified as "disturbed" until reclamation is complete and the performance bond or other assurance of performance required by 405 KAR Chapter 10 is released.

(24) "Embankment" means a manmade deposit of material that is raised above the natural surface of the land and used to contain, divert, or store water; to support roads or railways; or for other similar purposes.

(25) "Existing structure" means a structure or facility used in connection with or to facilitate surface coal mining and reclamation operations, for which construction began prior to January 18, 1983.

(26) "Extraction of coal as an incidental part" means the extraction of coal which is necessary to enable the construction to be accomplished. Only that coal extracted from within the right-of-way, in the case of a road, railroad, utility line, or similar construction, or within the boundaries of the area directly affected by other types of government-financed construction, may be considered incidental to that construction. Extraction of coal outside the right-of-way or boundary of the area directly affected by the construction shall be subject to the requirements of KRS Chapter 350 and 405 KAR Chapters 7 through 24.

(27) "Government-financed construction" means construction funded fifty (50) percent or more by funds appropriated from a government financing agency's budget or obtained from general revenue bonds, but shall not mean government financing agency guarantees, insurance, loans, funds obtained through industrial revenue bonds or their equivalent, or in-kind payments.

(28) "Government financing agency" means a federal, Commonwealth of Kentucky, county, municipal, or local unit of government, or a cabinet, department, agency, or office of the unit which, directly or through another unit of government, finances construction.

(29) "Groundwater" means subsurface water that fills available openings in rock or soil materials to the extent that they are considered water saturated.

(30) "Highwall" means the face of exposed overburden and coal in an open cut of a surface mining activity or for entry to underground mining activities.

(31) "Hydrologic balance" means the relationship between the quality and quantity of water inflow to, water outflow from, and water storage in a hydrologic unit such as a drainage basin, aquifer, soil zone, lake, or reservoir. It encompasses the dynamic relationship between precipitation, runoff, evaporation, and changes in ground and surface water storage.

(32) "Hydrologic regime" means the entire state of water movement in a given area. It is a function of the climate and includes the phenomena by which water first occurs as atmospheric water vapor, passes into a liquid or solid form, falls as precipitation, moves along or into the ground surface, and returns to the atmosphere as vapor by means of evaporation and transpiration.

(33) "Imminent danger to the health and safety of the public" means the existence of any condition or practice, or any violation of a permit or other requirements of KRS Chapter 350 in a surface coal mining and reclamation operation, which could reasonably be expected to cause substantial physical harm to persons outside the permit area before the condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same condition or practice giving rise to the peril, would avoid exposure to the danger during the time necessary for abatement.

(34) "Impoundment" means a closed basin, naturally formed or artificially built, which is dammed or excavated for the retention of water, sediment, or waste.

(35) "In situ processes" means activities conducted on the surface or underground in connection with in-place distillation, retorting, leaching, or other chemical or physical processing of coal. The term includes, but is not limited to, in situ gasification, in situ leaching, slurry mining, solution mining, borehole mining, and fluid recovery mining.

(36) "KAR" means Kentucky administrative regulations.

(37) "Knowingly" means that a person knew or had reason to know in authorizing, ordering, or carrying out an act or omission that the act or omission constituted a violation of SMCRA, KRS Chapter 350, 405 KAR Chapters 7 through 24, or a permit condition, or that the act or omission constituted a failure or refusal to comply with an order issued pursuant to SMCRA, KRS Chapter 350, or 405 KAR Chapters 7 through 24.

(38) "KRS" means Kentucky Revised Statutes.

(39) "Land use" means specific functions, uses, or management-related activities of an area, and may be identified in combination when joint or seasonal uses occur and may include land used for support facilities that are an integral part of the use. In some instances, a specific use can be identified without active management.

(40) "Mining area", as used in 405 KAR 7:035, means an individual excavation site or pit from which coal, other minerals, and overburden are removed.

(41) "Monitoring" means the collection of environmental data by either continuous or periodic sampling methods.

(42) "MSHA" means Mine Safety and Health Administration.

(43) "Notice of noncompliance and order for remedial measures" means a written document and order prepared by an authorized representative of the cabinet which sets forth with specificity the violations of KRS Chapter 350, 405 KAR Chapters 7 through 24, or permit conditions which the authorized representative of the cabinet determines to have occurred based upon his inspection, and the necessary remedial actions, if any, and the time schedule for completion thereof, which the authorized representative deems necessary and appropriate to correct the violations.

(44) "Operations" is defined in KRS 350.010.

(45) "Operator" is defined in KRS 350.010.

(46) "Order for cessation and immediate compliance" means a written document and order issued by an authorized representative of the cabinet when:

(a) A person to whom a notice of noncompliance and order for remedial measures was issued has failed, as determined by a cabinet inspection, to comply with the terms of the notice of noncompliance and order for remedial measures within the time limits set therein, or as subsequently extended; or

(b) The authorized representative finds, on the basis of a cabinet inspection, any condition or practice or any violation of KRS Chapter 350, 405 KAR Chapters 7 through 24, or any condition of a permit or exploration approval which:

1. Creates an imminent danger to the health or safety of the public; or

2. Is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resources.

(47) "OSM" means Office of Surface Mining Reclamation and Enforcement, United States Department of the Interior.

(48) "Other mineral" means any commercially valuable substance mined for its mineral value, excluding coal, topsoil, waste, and fill material.

(49) "Overburden" is defined in KRS 350.010.

(50) "Performance bond" means a surety bond, a collateral bond, or a combination thereof, or bonds filed pursuant to the provisions of the Kentucky Bond Pool Program (405 KAR 10:200, KRS 350.595, and KRS 350.700 through 350.755), by which a permittee assures faithful performance of all the requirements of KRS Chapter 350, 405 KAR Chapters 7 through 24, and the requirements of the permit and reclamation plan.

(51) "Permit" means written approval issued by the cabinet to conduct surface coal mining and reclamation operations.

(52) "Permit area" means the area of land and water within boundaries designated in the approved permit application, which shall include, at a minimum, all areas which are or will be affected by surface coal mining and reclamation operations under that permit.

(53) "Permittee" means an operator or a person holding or required by KRS Chapter 350 or 405 KAR Chapters 7 through 24 to hold a permit to conduct surface coal mining and reclamation operations during the permit term and until all reclamation obligations imposed by KRS Chapter 350 and 405 KAR Chapters 7 through 24 are satisfied.

(54) "Person" is defined in KRS 350.010.

(55) "Prime farmland" means those lands which are defined by the Secretary of Agriculture in 7

CFR 657 and which have been "historically used for cropland" as that phrase is defined above.

(56) "Probable cumulative impacts" means the expected total qualitative, and quantitative, direct and indirect effects of surface coal mining and reclamation operations on the hydrologic regime.

(57) "Probable hydrologic consequences" means the projected results of proposed surface coal mining and reclamation operations which may reasonably be expected to change the quantity or quality of the surface and groundwater; the surface or groundwater flow, timing, and pattern; and the stream channel conditions on the permit area and adjacent areas.

(58) "Reclamation" is defined in KRS 350.010.

(59) "Refuse pile" means a surface deposit of coal mine waste that is not retained by an impounding structure and does not impound water, slurry, or other liquid or semiliquid material.

(60) "Road" means a surface right-of-way for purposes of travel by land vehicles used in coal exploration or surface coal mining and reclamation operations. A road consists of the entire area within the right-of-way, including the roadbed, shoulders, parking and side area, approaches, structures, ditches, surface, and contiguous appendages necessary for the total structure. The term includes access and haul roads constructed, used, reconstructed, improved, or maintained for use in coal exploration or surface coal mining and reclamation operations, including use by coal hauling vehicles leading to transfer, processing, or storage areas. The term does not include pioneer or construction roadways used for part of the road construction procedure and promptly replaced by a road pursuant to 405 KAR Chapters 16 and 18 located in the identical right-of-way as the pioneer or construction roadway. The term also excludes any roadway within the immediate mining pit area.

(61) "SCS" means Soil Conservation Service.

(62) "Secretary" is defined in KRS 350.010.

(63) "Sedimentation pond" means a primary sediment control structure designed, constructed, and maintained in accordance with 405 KAR 16:090 or 405 KAR 18:090 and including but not limited to a barrier, dam, or excavated depression which slows down water runoff to allow suspended solids to settle out. A sedimentation pond shall not include secondary sedimentation control structures, such as straw dikes, riprap, check dams, mulches, dugouts, and other measures that reduce overland flow velocity, reduce runoff volume, or trap sediment, to the extent that the secondary sedimentation structures drain to a sedimentation pond.

(64) "Significant, imminent environmental harm" means an adverse impact on land, air, or water resources which resources include, but are not limited to, plant and animal life as further defined in this subsection.

(a) An environmental harm is imminent, if a condition, practice, or violation exists which:

1. Is causing environmental harm; or

2. May reasonably be expected to cause environmental harm at any time before the end of the reasonable abatement time that would be set by the cabinet's authorized agents pursuant to the provisions of KRS Chapter 350.

(b) An environmental harm is significant if that harm is appreciable and not immediately reparable.

(65) "Small operator", as used in 405 KAR 7:080, means an operator whose combined actual and attributed production of coal does not exceed 300,000 tons during any period of twelve (12) consecutive months.

(66) "SMCRA" means Surface Mining Control and Reclamation Act of 1977 (Public Law 95-87), as amended.

(67) "Soil horizons" means contrasting layers of soil parallel or nearly parallel to the land surface. Soil horizons are differentiated on the basis of field characteristics and laboratory data. The four (4) master soil horizons are:

(a) "A horizon." The uppermost mineral layer, often called the surface soil. It is the part of the soil in which organic matter is most abundant, and leaching of soluble or suspended particles is typically the greatest.

(b) "E horizon." The layer commonly near the surface below an A horizon and above a B horizon. An E horizon is most commonly differentiated from an overlying A horizon by lighter color and generally has measurably less organic matter than the A horizon. An E horizon is most commonly differentiated from an underlying B horizon in the same sequum by color of higher value or lower chroma, by coarser texture, or by a combination of these properties.

(c) "B horizon." The layer that typically is immediately beneath the E horizon and often called the subsoil. This middle layer commonly contains more clay, iron, or aluminum than the A, E, or C horizons.

(d) "C horizon." The deepest layer of soil profile. It consists of loose material or weathered rock that is relatively unaffected by biologic activity.

(68) "Spoil" means overburden and other materials, excluding topsoil, coal mine waste, and mined coal, that are excavated during surface coal mining and reclamation operations.

(69) "Surety bond" means an indemnity agreement in a sum certain, payable to the cabinet and executed by the permittee, which is supported by the performance guarantee of a corporation licensed to do business as a surety in the Commonwealth of Kentucky.

(70) "Surface blasting operations" means the on-site storage, transportation, and use of explosives in association with coal exploration operations, surface mining activities, and surface disturbances of underground mining activities. The term shall be interpreted broadly and shall encompass activities including, but not limited to, the design of individual blasts, the implementation of blast designs, the initiation of blasts, the monitoring of airblast and ground vibration, and the use of protective measures such as access control and warning and all-clear signals.

(71) "Surface coal mining and reclamation operations" is defined in KRS 350.010.

(72) "Surface coal mining operations" is defined in KRS 350.010.

(73) "Surface mining activities" means those surface coal mining and reclamation operations incident to the extraction of coal from the earth by removing the materials over a coal seam before recovering the coal, by auger coal mining, by extraction of coal from coal refuse piles, or by recovery of coal from slurry ponds.

(74) "Ton" means 2000 pounds avoirdupois (.90718 metric ton).

(75) "Topsoil" means the A and E soil horizon layers of the four (4) master soil horizons.

(76) "Transfer, assignment, or sale of permit rights" means a change in ownership or other effective control over the right to conduct surface coal mining operations under a permit issued by the cabinet.

(77) "Underground mining activities" means a combination of:

(a) Surface operations incident to underground extraction of coal or in situ processing, including construction, use, maintenance, and reclamation of roads, above-ground repair areas, storage areas, processing areas, and shipping areas; areas upon which are sited support facilities including hoist and ventilating ducts; areas utilized for the disposal and storage of waste; and areas on which materials incident to underground mining operations are placed; and

(b) Underground operations such as underground construction, operation, and reclamation of shafts, adits, underground support facilities; in situ processing; and underground mining, hauling, storage, and blasting.

(78) "Unwarranted failure to comply" means the failure of the permittee due to indifference, lack of diligence, or lack of reasonable care:

(a) To prevent the occurrence of any violation of any applicable requirement of KRS Chapter 350, 405 KAR Chapters 7 through 24, or permit conditions; or

(b) To abate any violation of any applicable requirement of KRS Chapter 350, 405 KAR Chapters 7 through 24, or permit conditions.

(79) "Willfully" and "willful violation" mean that a person acted either intentionally, voluntarily, or consciously, and with intentional disregard or plain indifference to legal requirements, in authorizing, ordering, or carrying out an act or omission that constituted a violation of SMCRA, KRS Chapter 350, 405 KAR Chapters 7 through 24, or a permit condition, or that constituted a failure or refusal to comply with an order issued pursuant to SMCRA, KRS Chapter 350, or 405 KAR Chapters 7 through 24.

JOHN F. NICHOLS, JR., Secretary
FRANK DICKERSON, Commissioner

APPROVED BY AGENCY: November 25, 1991

FILED WITH LRC: November 25, 1991 at 2 p.m.

PUBLIC HEARING: A public hearing on this proposed amendment has been scheduled for 9 a.m. (EST) Thursday, January 30, 1992 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 January 25, 1992. The scheduled hearing will be cancelled if the contact person has not received any written notice of intent to testify by January 25, 1992, 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 amendment 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 amendment but does not wish to testify at the hearing may submit written comments on the proposed amendment at any time before 4:30 p.m. (EST) on January 30, 1992. 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, KY 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact: Jim Villines

(1) Type and number of entities affected: This regulation applies to surface coal mining and reclamation operations and coal exploration operations. This regulation also affects landowners of mined land, adjacent landowners, and the general public in the coal field regions that may be impacted by mining operations. There are approximately 3800 surface coal mining operations and approximately 500 coal exploration operations in this state.

(a) Direct and indirect costs or savings to those affected:

1. First year: Presently, one regulation (405 KAR 7:020) near the beginning of the series of regulations (405 KAR Chapters 7-24) relating to surface coal mining operations contains nearly all of the definitions applicable to that series of related regulations. A few definitions are located in individual regulations. However, the surface coal mining regulations span eight related chapters of Title 405. It is the opinion of the Administrative Regulations Review Subcommittee that KRS Chapter 13A requires that each chapter of a Title must contain any necessary definitions of terms used in that chapter; and that this must be accomplished either by placing the definitions in the first section of each regulation that uses the defined terms, or by placing all definitions in a separate definitions regulation at the beginning of the chapter. Therefore, this regulation is being promulgated to define the terms used in 405 KAR Chapter 7. For the most part, there are no substantive changes since these definitions are simply being transferred, with a few minor changes, from 405 KAR 7:020 and other existing regulations to this new regulation. Each term defined in KRS Chapter 350 has had its regulatory definition deleted and a notation inserted that the term is defined in KRS 350.010. Therefore, there are no direct or indirect costs or savings to those affected due to existing definitions being placed in this regulation. There are new definitions of "knowingly" and "willfully" and "willful violation" which relate to the assessment of individual civil penalties. These definitions clarify terms that are used to describe conduct for which some individuals within corporations may be subject to individual civil penalties. There are several new terms related to proposed 405 KAR 7:035 and 7:080 which are presently in the promulgation process. These were included in those proposed regulations when filed with LRC. For a discussion of the effect of those new regulations, including the effect of the new definitions, please see the Regulatory Impact

Analyses filed with proposed 405 KAR 7:035 and 7:080 on July 15, 1991.

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: No direct costs or savings to the cabinet will result from the definitions in this regulation. However, additional indirect administrative costs to the cabinet will result from having a separate definitions regulation in each chapter rather than having a single definitions regulation for the entire series of related regulations. Because 405 KAR Chapters 7-24 constitute a single regulatory program and contain related subject matter, many defined terms are used in more than one chapter. Thus, when it becomes necessary in the future to add, modify or delete a definition, as many as eight regulations must be amended to make that change. This will increase the time and effort associated with preparing amended regulations and associated documents for the promulgation process. Printing and mailing costs also will increase due to the substantial increase in the number of pages of these regulations.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: See above discussion in (a).

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: This alternative was selected by agreement with the Administrative Regulation Review Subcommittee. The only other alternative available is to place the definitions in the first section of each regulation in which the defined terms are used. That alternative was rejected because it would have been more duplicative and burdensome on the cabinet than the alternative selected.

(5) Identify any statute, administrative regulation, or governmental policy which may be in conflict, overlapping or duplication: None

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. Tiering is not applicable to this proposed administrative regulation because, under the federal and Kentucky surface mining laws and regulations, these requirements must apply equally to all permittees under 405 KAR Chapters 7-24.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 7 CFR Part 657, 30 CFR Parts 700.5, 701.5, 707.5, 730-733, 735, 761.5, 762.5, 773.5, 800.5, 843.5, 917; 30 USC 1253, 1255, 1291.

2. State compliance standards. This regulation defines terms used in 405 KAR Chapter 7. For the most part, these definitions are the same as the existing definitions in 405 KAR 7:020 and other existing regulations, with minor changes, and are being moved to this chapter by agreement with the Administrative Regulation Review Subcommittee to comply with KRS Chapter 13A. There are some new terms included in this regulation: "knowingly" and "willfully" are related to the assessment of individual civil penalties; there are several new terms related to proposed 405 KAR 7:035 and 7:080 which were originally included in those regulations as filed with LRC on July 15, 1991.

3. Minimum or uniform standards contained in the federal mandate. The federal regulations provide definitions of terms used in the federal surface mining regulations which are substantially the same or similar to those proposed in the state regulation.

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.

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

405 KAR 7:021. Repeal of 405 KAR 7:020.

RELATES TO: KRS Chapter 350, 7 CFR Part 657, 30 CFR Parts 700.5, 701.5, 707.5, 730-733, 735, 761.5, 762.5, 773.5, 800.5, 843.5, 917, 30 USC 1253, 1255, 1291

STATUTORY AUTHORITY: KRS Chapter 13A, 350.028, 350.465, 7 CFR Part 657, 30 CFR Parts 700.5, 701.5, 707.5, 730-733, 735, 761.5, 762.5, 773.5, 800.5, 843.5, 917, 30 USC 1253, 1255, 1291

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations pertaining to surface coal mining and reclamation operations under the permanent regulatory program. This administrative regulation repeals 405 KAR 7:020, which defines certain terms used in 405 KAR Chapters 7 through 24. 405 KAR 7:020 is no longer necessary because a new administrative regulation is being promulgated in each chapter of 405 KAR Chapters 7 through 24 that will contain the definitions for that chapter.

Section 1. 405 KAR 7:020 is hereby repealed.

JOHN F. NICHOLS, JR., Secretary
FRANK DICKERSON, Commissioner

APPROVED BY AGENCY: November 25, 1991

FILED WITH LRC: November 25, 1991 at 2 p.m.

PUBLIC HEARING: A public hearing on this proposed amendment has been scheduled for 9 a.m. (EST) Thursday, January 30, 1992 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 January 25, 1992. The scheduled hearing will be cancelled if the contact person has not received any written notice of intent to testify by January 25, 1992, 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 amendment 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 amendment but does not wish to testify at the hearing may submit written comments on the proposed amendment at any time before 4:30 p.m. (EST) on January 30, 1992. 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, KY 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact: Jim Villines

(1) Type and number of entities affected: This regulation applies to surface coal mining and reclamation operations and coal exploration operations. This regulation also affects landowners of mined land, adjacent landowners, and the general public in the coal field regions that may be impacted by mining operations. There are approximately 3800 surface coal mining operations and approximately 500 coal exploration operations in this state.

(a) Direct and indirect costs or savings to those affected:

1. First year: Presently, one regulation (405 KAR 7:020) near the beginning of the series of regulations (405 KAR Chapters 7-24) relating to surface coal mining operations contains nearly all of the definitions applicable to that series of related regulations. A few definitions are located in individual regulations. However, the surface coal mining regulations span eight related chapters of Title 405. It is the opinion of the Administrative Regulations Review Subcommittee that KRS Chapter 13A requires that each chapter of a title must contain any necessary definitions of terms used in that chapter; and that this must be accomplished either by placing the definitions in the first section of each regulation that uses the defined terms, or by placing all definitions in a separate definitions regulation at the beginning of the chapter. Therefore, a new regulation is being promulgated in each chapter of 405 KAR Chapters 7-24 that will contain the definitions for that chapter. This regulation is being promulgated to repeal 405 KAR 7:020 because it is no longer necessary. This regulation repealing 405 KAR 7:020 will have no substantive effect on persons affected by the definitions in 405 KAR 7:020 because the definitions are simply being transferred, with a few minor changes, from 405 KAR 7:020 to a new definitions regulation at the beginning of each chapter, and 405 KAR 7:020 definitions of terms defined in KRS 350.010 are being replaced by references to that statute. Therefore, there are no direct or indirect costs or savings to those affected by repeal of 405 KAR 7:020.

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: No direct costs or savings to the cabinet will result specifically from this regulation repealing 405 KAR 7:020. However, additional indirect administrative costs to the cabinet will result from having a separate definitions regulation in each chapter rather than having a single definitions regulation for the entire series of related regulations. Because 405 KAR Chapters 7-24 constitute a single regulatory program and contain related subject matter, many defined terms are used in more than one chapter. Thus, when it becomes necessary in the future to add, modify or delete a definition, as many as eight regulations must be amended to make that change. This will increase the time and effort associated with preparing amended regulations and associated documents for the promulgation process. Printing and mailing costs also will increase due to the substantial increase in the number of pages of these regulations.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: See above discussion in (a).

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: This action is being taken for consistency with KRS Chapter 13A, by agreement with the Administrative Regulation Review Subcommittee. There is no reasonable alternative to repealing 405 KAR 7:020, given the need to place its definitions in a new regulation at the beginning of each chapter.

(5) Identify any statute, administrative regulation, or governmental policy which may be in conflict, overlapping or duplication: None

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. Tiering is not applicable to this proposed administrative regulation because, under the federal and Kentucky surface mining laws and regulations, these requirements must apply equally to all permittees under 405 KAR Chapters 7-24.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 7 CFR Part 657, 30 CFR Parts 700.5, 701.5, 707.5, 730-733, 735, 761.5, 762.5, 773.5, 800.5, 843.5, 917; 30 USC 1253, 1255, 1291.

2. State compliance standards. This regulation repeals 405 KAR 7:020, which defines terms used in 405 KAR Chapters 7-24. By agreement with the Administrative Regulation Review Subcommittee the definitions in 405 KAR 7:020 are being moved

to a new definitions regulation in each chapter, to comply with KRS Chapter 13A.

3. Minimum or uniform standards contained in the federal mandate. The federal regulations provide definitions of terms used in the federal surface mining regulations which are substantially the same or similar to those in the state regulation being repealed and replaced by new regulations. The federal mandate does not dictate how the state regulations must be structured.

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.

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

405 KAR 8:001. Definitions for 405 KAR Chapter 8.

RELATES TO: KRS 146.410, Chapter 350, 7 CFR Part 657, 30 CFR Parts 700.5, 701.5, 707.5, 730-733, 735, 761.5, 762.5, 773.5, 800.5, 843.5, 917, 30 USC 1253, 1255, 1291

STATUTORY AUTHORITY: KRS Chapter 13A, 350.028, 350.465, 7 CFR Part 657, 30 CFR Parts 700.5, 701.5, 707.5, 730-733, 735, 761.5, 762.5, 773.5, 800.5, 843.5, 917, 30 USC 1253, 1255, 1291

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations pertaining to surface coal mining and reclamation operations under the permanent regulatory program. This regulation provides for the defining of certain essential terms used in 405 KAR Chapter 8.

Section 1. Definitions. (1) "Acid drainage" means water with a pH of less than six (6.0) and in which total acidity exceeds total alkalinity, discharged from an active, inactive, or abandoned surface coal mine and reclamation operation or from an area affected by surface coal mining and reclamation operations.

(2) "Acid-forming materials" means earth materials that contain sulfide minerals or other materials which, if exposed to air, water, or weathering processes, form acids that may create acid drainage.

(3) "Adjacent area" means land located outside the affected area or permit area, depending on the context in which "adjacent area" is used, where air, surface or groundwater, fish, wildlife, vegetation or other resources protected by KRS Chapter 350 may be adversely impacted by surface coal mining and reclamation operations.

(4) "Administratively complete application" means an application for permit approval, or approval for coal exploration if required, which the cabinet determines to contain information addressing each application requirement of the regulatory program and to contain all information necessary to initiate technical processing and public review.

(5) "Affected area" means any land or water area which is used to facilitate, or is physically altered by, surface coal mining and reclamation operations. The affected area includes the disturbed area; any area upon which surface coal mining and reclamation operations are conducted; any adjacent lands the use of which is incidental to surface coal mining and reclamation operations; all areas covered by new or existing roads used to gain access to, or for hauling coal to or from, surface coal mining and reclamation operations, except as provided in this definition; any area covered by surface excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, shipping areas; any areas upon which are sited structures, facilities, or other property or material on the surface resulting from, or incident to, surface coal mining and reclamation operations; and the area located above underground workings associated with underground mining activities, auger mining, or in situ mining. The affected area shall include every road used for the purposes of access to, or for hauling coal to or from, surface coal mining and reclamation operations, unless the road:

(a) Was designated as a public road pursuant to the laws of the jurisdiction in which it is located;

(b) Is maintained with public funds, and constructed in a manner similar to other public roads of the same classification within the jurisdiction; and

(c) There is substantial (more than incidental) public use.

(6) "Applicant" means any person seeking a permit, permit revision, permit amendment, permit renewal, or transfer, assignment, or sale of permit rights from the cabinet to conduct surface coal mining and reclamation operations or approval to conduct coal exploration operations pursuant to KRS Chapter 350 and all applicable regulations.

(7) "Application" means the documents and other information filed with the cabinet seeking issuance of permits; revisions; amendments; renewals; and transfer, assignment or sale of permit rights for surface coal mining and reclamation operations or, if required, seeking approval for coal exploration.

(8) "Approximate original contour" is defined in KRS 350.010

(9) "Aquifer" means a zone, stratum, or group of strata that can store and transmit water in sufficient quantities for domestic, agricultural, industrial, or other beneficial use.

(10) "Auger mining" means a method of mining coal at a cliff or highwall by drilling holes into an exposed coal seam from the highwall and transporting the coal along an auger bit to the surface and shall also include all other methods of mining in which coal is extracted from beneath the overburden by mechanical devices located at the face of the cliff or highwall and extending laterally into the coal seam, such as extended depth, secondary recovery systems.

(11) "Best technology currently available" means equipment, devices, systems, methods, or techniques which will prevent, to the extent possible, additional contributions of suspended solids to stream flow or runoff outside the permit area and minimize, to the extent possible, disturbances and adverse impacts on fish, wildlife, and related environmental

values, and achieve enhancement of those resources where practicable. The term includes equipment, devices, systems, methods, or techniques which are currently available anywhere as determined by the cabinet, even if they are not in routine use. The term includes, but is not limited to, construction practices, siting requirements, vegetative selection and planting requirements, animal stocking requirements, scheduling of activities and design of sedimentation ponds in accordance with 405 KAR Chapters 16 and 18. The cabinet shall have the discretion to determine the best technology currently available on a case-by-case basis, as authorized by KRS Chapter 350 and 405 KAR Chapters 7 through 24.

(12) "Cabinet" is defined in KRS 350.010.

(13) "Cemetery" means any area where human bodies are interred.

(14) "Cessation order" means an order for cessation and immediate compliance and any similar order issued by OSM under SMCRA or issued by any state pursuant to its laws or regulations under SMCRA.

(15) "CFR" means Code of Federal Regulations.

(16) "Coal" means combustible carbonaceous rock, classified as anthracite, bituminous, subbituminous, or lignite by ASTM Standard D 388-77.

(17) "Coal exploration" means the field gathering of:

(a) Surface or subsurface geologic, physical, or chemical data by mapping, trenching, drilling, geophysical, or other techniques necessary to determine the quality and quantity of overburden and coal of an area; or

(b) Environmental data to establish the conditions of an area before beginning surface coal mining and reclamation operations under the requirements of 405 KAR Chapters 7 through 24 if the activity may cause any disturbance of the land surface or may cause any appreciable effect upon land, air, water, or other environmental resources.

(18) "Coal mine waste" means coal processing waste and underground development waste.

(19) "Coal processing plant" means a facility where coal is subjected to chemical or physical processing or cleaning, concentrating, crushing, sizing, screening, or other processing or preparation including all associated support facilities including but not limited to: loading facilities; storage and stockpile facilities; sheds, shops, and other buildings; water treatment and water storage facilities; settling basins and impoundments; and coal processing and other waste disposal areas.

(20) "Coal processing waste" means materials which are separated from the product coal during the cleaning, concentrating, or other processing or preparation of coal.

(21) "Collateral bond" means an indemnity agreement in a sum certain payable to the cabinet executed by the permittee and which is supported by the deposit with the cabinet of cash, negotiable certificates of deposit, or an irrevocable letter of credit of any bank organized and authorized to transact business in the United States.

(22) "Combustible material" means organic material that is capable of burning, either by fire or through oxidation, accompanied by the evolution of heat and a significant temperature rise.

(23) "Compaction" means increasing the density of a material by reducing the voids between the particles by mechanical effort.

(24) "Complete and accurate application" means an application for permit approval, or approval for coal exploration if required, which the cabinet determines to contain all information required under, and necessary to comply with, KRS Chapter 350 and 405 KAR Chapters 7 through 24, in order to make decisions concerning its administrative and technical acceptability and whether a permit or exploration approval may be issued.

(25) "Cropland" means land used for the production of adapted crops for harvest, alone or in a rotation with grasses and legumes, and includes row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar specialty crops. Land used for facilities in support of cropland farming operations which is adjacent to or an integral part of these operations is also included for purposes of land use categories.

(26) "Cumulative impact area" means the area, including the permit area, within which impacts resulting from the proposed operation may interact with the impacts of all anticipated mining on surface and groundwater systems. Anticipated mining shall include, at a minimum, the entire projected lives through bond release of:

(a) The proposed operation;

(b) All existing operations;

(c) Any operation for which a permit application has been submitted to the cabinet; and

(d) All operations required to meet diligent development requirements for leased federal coal for which there is actual mine development information available.

(27) "Day" means calendar day unless otherwise specified to be a working day.

(28) "Department" means the Department for Surface Mining Reclamation and Enforcement.

(29) "Developed water resources land" means land used for storing water for beneficial uses such as stockponds, irrigation, fire protection, flood control, and water supply.

(30) "Disturbed area" means an area where vegetation, topsoil, or overburden is removed or upon which topsoil, spoil, coal processing waste, underground development waste, or noncoal waste is placed by surface coal mining operations. Those areas are classified as "disturbed" until reclamation is complete and the performance bond or other assurance of performance required by 405 KAR Chapter 10 is released.

(31) "Diversion" means a channel, embankment, or other manmade structure constructed to divert water from one (1) area to another.

(32) "Embankment" means a manmade deposit of material that is raised above the natural surface of the land and used to contain, divert, or store water; to support roads or railways; or for other similar purposes.

(33) "Ephemeral stream" means a stream which flows only in direct response to precipitation in the immediate watershed or in response to the melting of a cover of snow and ice, and which has a channel bottom that is always above the local water table.

(34) "Excess spoil" means spoil disposed of in a location other than the coal extraction area, except that spoil material used to achieve the approximate original contour shall not be

considered excess spoil.

(35) "Existing structure" means a structure or facility used in connection with or to facilitate surface coal mining and reclamation operations, for which construction began prior to January 18, 1983.

(36) "Federal lands" means any lands, including mineral interests, owned by the United States, without regard to how the United States acquired ownership of the lands or which agency manages the lands. It does not include Indian lands.

(37) "Forest land" means land used or managed for the long-term production of wood, wood fiber, or wood derived products.

(38) "Fugitive dust" means that particulate matter which becomes airborne due to wind erosion from exposed surfaces.

(39) "General area" means, with respect to hydrology, the topographic and groundwater basin surrounding a permit area which is of sufficient size, including areal extent and depth, to include one (1) or more watersheds containing perennial streams and groundwater zones and to allow assessment of the probable cumulative impacts on the quality and quantity of surface and groundwater systems in the basins.

(40) "Ground cover" means the area of ground covered by the combined aerial parts of vegetation and litter produced and distributed naturally and seasonally on site, expressed as a percentage of the total area of measurement.

(41) "Groundwater" means subsurface water that fills available openings in rock or soil materials to the extent that they are considered water saturated.

(42) "Growing season" means the period during a one (1) year cycle, from the last killing frost in the spring to the first killing frost in the fall, in which climatic conditions are favorable for plant growth. In Kentucky, this period normally extends from mid-April to mid-October.

(43) "Highwall" means the face of exposed overburden and coal in an open cut of a surface mining activity or for entry to underground mining activities.

(44) "Historically used for cropland."

(a) "Historically used for cropland" means that lands have been used for cropland for any five (5) years or more out of the ten (10) years immediately preceding:

1. The application; or

2. The acquisition of the land for the purpose of conducting surface coal mining and reclamation operations.

(b) Lands meeting either paragraph (a)1 or 2 of this subsection shall be considered "historically used for cropland."

(c) In addition to the lands covered by paragraph (a) of this subsection, other lands shall be considered "historically used for cropland" as described below:

1. Lands that would likely have been used as cropland for any five (5) out of the last ten (10) years immediately preceding the acquisition or the application but for some fact of ownership or control of the land unrelated to the productivity of the land; and

2. Lands that the cabinet determines, on the basis of additional cropland history of the surrounding lands and the lands under consideration, are clearly cropland but fall outside the specific five (5) years in ten (10) criterion.

(d) Acquisition includes purchase, lease, or option of the land for the purpose of conducting or allowing through resale, lease or option, the conduct of surface coal mining and reclamation operations.

(45) "Hydrologic balance" means the relationship between the quality and quantity of water inflow to, water outflow from, and water storage in a hydrologic unit such as a drainage basin, aquifer, soil zone, lake, or reservoir. It encompasses the dynamic relationship between precipitation, runoff, evaporation, and changes in ground and surface water storage.

(46) "Hydrologic regime" means the entire state of water movement in a given area. It is a function of the climate and includes the phenomena by which water first occurs as atmospheric water vapor, passes into a liquid or solid form, falls as precipitation, moves along or into the ground surface, and returns to the atmosphere as vapor by means of evaporation and transpiration.

(47) "Imminent danger to the health and safety of the public" means the existence of any condition or practice, or any violation of a permit or other requirements of KRS Chapter 350 in a surface coal mining and reclamation operation, which could reasonably be expected to cause substantial physical harm to persons outside the permit area before the condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same condition or practice giving rise to the peril, would avoid exposure to the danger during the time necessary for abatement.

(48) "Important stream" means one that:

(a) Is classified as an outstanding resource water pursuant to 401 KAR 5:026 or 401 KAR 5:031;

(b) Based on the Kentucky Rivers Assessment, is a Class 1, 2, or 3 stream in the water quality category or is a Class 1 or 2 stream in the fish resource category. Class 3 streams in the fish resource category may be determined case-by-case to be important streams by the cabinet. These streams that occur in the coal fields are listed in TRM #20, "Methodologies for the Evaluation, Protection, and Enhancement of Fish and Wildlife Resources for Coal Mining and Reclamation Operations", Kentucky Department for Fish and Wildlife Resources and Kentucky Department for Surface Mining Reclamation and Enforcement, September 13, 1991. This document is incorporated by reference, only for purposes of the definitions in this chapter. It may be reviewed, copied, 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.; or

(c) Is otherwise considered to be an important stream by the cabinet, including but not limited to a stream contained within, immediately upstream of, or bordering a publicly-owned wildlife management area or a nature preserve dedicated pursuant to KRS 146.410 et seq.

(49) "Impoundment" means a closed basin, naturally formed or artificially built, which is dammed or excavated for the retention of water, sediment, or waste.

(50) "Incidental boundary revision" means an extension to a permit area that is necessary for reasons unforeseen when the original permit application was prepared and that is small in relation to the original or amended permit area.

(51) "In situ processes" means activities conducted on the surface or underground in connection with in-place distillation, retorting, leaching, or other chemical or physical processing of coal. The term includes, but is not limited to, in situ gasification, in situ leaching, slurry mining, solution mining, borehole mining, and fluid recovery mining.

(52) "Intermittent stream" means:

(a) A stream or reach of stream that drains a watershed of one (1) square mile or more but does not flow continuously during the calendar year; or

(b) A stream or reach of a stream that is below the local water table for at least some part of the year, and obtains its flow from both surface runoff and groundwater discharge.

(53) "Irreparable damage to the environment" means any damage to the environment, in violation of SMCRA, KRS Chapter 350, or 405 KAR Chapters 7 through 24, that cannot be corrected by actions of the applicant.

(54) "KAR" means Kentucky administrative regulations.

(55) "KRS" means Kentucky Revised Statutes.

(56) "Land use" means specific functions, uses, or management-related activities of an area, and may be identified in combination when joint or seasonal uses occur and may include land used for support facilities that are an integral part of the use. In some instances, a specific use can be identified without active management.

(57) "Monitoring" means the collection of environmental data by either continuous or periodic sampling methods.

(58) "MRP" means mining and reclamation plan.

(59) "MSHA" means Mine Safety and Health Administration.

(60) "Mulch" means vegetation residues or other suitable materials that aid in soil stabilization and soil moisture conservation, thus providing micro-climatic conditions suitable for germination and growth.

(61) "Notice of noncompliance and order for remedial measures" means a written document and order prepared by an authorized representative of the cabinet which sets forth with specificity the violations of KRS Chapter 350, 405 KAR Chapters 7 through 24, or permit conditions which the authorized representative of the cabinet determines to have occurred based upon his inspection, and the necessary remedial actions, if any, and the time schedule for completion thereof, which the authorized representative deems necessary and appropriate to correct the violations.

(62) "Notice of violation" means any written notification from a governmental entity of a violation of law or regulation, whether by letter, memorandum, legal or administrative pleading, or other written communication. This shall include a notice of noncompliance and order for remedial measures.

(63) "Occupied dwelling" means any building that is currently being used on a regular or temporary basis for human habitation.

(64) "Operations" is defined in KRS 350.010.

(65) "Operator" is defined in KRS 350.010.

(66) "Order for cessation and immediate compliance" means a written document and order issued by an authorized representative of the cabinet when:

(a) A person to whom a notice of noncompliance and order for remedial measures was issued has failed, as determined by a cabinet inspection, to comply with the terms of the notice of noncompliance and order for remedial measures within the time limits set therein, or as subsequently extended; or

(b) The authorized representative finds, on the basis of a cabinet inspection, any condition or practice or any violation of KRS Chapter 350, 405 KAR Chapters 7 through 24, or any condition of a permit or exploration approval which:

1. Creates an imminent danger to the health or safety of the public; or

2. Is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resources.

(67) "OSM" means Office of Surface Mining Reclamation and Enforcement, United States Department of the Interior.

(68) "Other mineral" means any commercially valuable substance mined for its mineral value, excluding coal, topsoil, waste, and fill material.

(69) "Overburden" is defined in KRS 350.010.

(70) "Owned or controlled" and "owns or controls" mean any one (1) or a combination of the relationships specified in paragraphs (a) and (b) of this definition:

(a)1. Being a permittee of a surface coal mining operation;

2. Based on instruments of ownership or voting securities, owning of record in excess of fifty (50) percent of an entity; or

3. Having any other relationship that gives one (1) person authority directly or indirectly to determine the manner in which an applicant, an operator, or other entity conducts surface coal mining operations.

(b) The following relationships are presumed to constitute ownership or control unless a person can demonstrate that the person subject to the presumption does not in fact have the authority directly or indirectly to determine the manner in which the relevant surface coal mining operation is conducted:

1. Being an officer or director of an entity;

2. Being the operator of a surface coal mining operation;

3. Having the ability to commit the financial or real property assets or working resources of an entity;

4. Being a general partner in a partnership;

5. Based on the instruments of ownership or the voting securities of a corporate entity, owning of record ten (10) through fifty (50) percent of the entity; or

6. Owning or controlling coal to be mined by another person under a lease, sublease, or other contract and having the right to receive the coal after mining or having authority to determine the manner in which that person or another person conducts a surface coal mining operation.

(71) "Pastureland" means land used primarily for the long-term production of adapted, domesticated forage plants to be grazed by livestock or occasionally cut and cured for livestock feed. Land used for facilities in support of pastureland which is adjacent to or an integral part of these operations is also included.

(72) "Perennial stream" means a stream or that part of a stream that flows continuously during all of the calendar year as a result of groundwater discharge or surface runoff. The term does not include "intermittent stream" or

"ephemeral stream."

(73) "Performance bond" means a surety bond, a collateral bond, or a combination thereof, or bonds filed pursuant to the provisions of the Kentucky Bond Pool Program (405 KAR 10:200, KRS 350.595, and KRS 350.700 through 350.755), by which a permittee assures faithful performance of all the requirements of KRS Chapter 350, 405 KAR Chapters 7 through 24, and the requirements of the permit and reclamation plan.

(74) "Permanent diversion" means a diversion remaining after surface coal mining and reclamation operations are completed which has been approved for retention by the cabinet and other appropriate Kentucky and federal agencies.

(75) "Permit" means written approval issued by the cabinet to conduct surface coal mining and reclamation operations.

(76) "Permit area" means the area of land and water within boundaries designated in the approved permit application, which shall include, at a minimum, all areas which are or will be affected by surface coal mining and reclamation operations under that permit.

(77) "Permittee" means an operator or a person holding or required by KRS Chapter 350 or 405 KAR Chapters 7 through 24 to hold a permit to conduct surface coal mining and reclamation operations during the permit term and until all reclamation obligations imposed by KRS Chapter 350 and 405 KAR Chapters 7 through 24 are satisfied.

(78) "Person" is defined in KRS 350.010.

(79) "Person having an interest which is or may be adversely affected" or "person with a valid legal interest" shall include any person:

(a) Who uses any resource of economic, recreational, aesthetic, or environmental value that may be adversely affected by coal exploration or surface coal mining and reclamation operations, or by any related action of the cabinet; or

(b) Whose property is or may be adversely affected by coal exploration or surface coal mining and reclamation operations, or by any related action of the cabinet.

(80) "Previously mined area" means land that was disturbed or affected by coal mining operations conducted prior to August 3, 1977, that has not been reclaimed to the standards of this title, and for which there is no continuing responsibility to reclaim to the standards of this title.

(81) "Prime farmland" means those lands which are defined by the Secretary of Agriculture in 7 CFR 657 and which have been "historically used for cropland" as that phrase is defined above.

(82) "Principal shareholder" means any person who is the record or beneficial owner of ten (10) percent or more of any class of voting stock of the applicant.

(83) "Probable cumulative impacts" means the expected total qualitative, and quantitative, direct and indirect effects of surface coal mining and reclamation operations on the hydrologic regime.

(84) "Probable hydrologic consequences" means the projected results of proposed surface coal mining and reclamation operations which may reasonably be expected to change the quantity or quality of the surface and groundwater; the surface or groundwater flow, timing, and pattern; and the stream channel conditions on the permit area and adjacent areas.

(85) "Property to be mined" means both the surface and mineral estates on and underneath lands which are within the permit area.

(86) "Public building" means any structure that is owned or leased, and principally used by a governmental agency for public business or meetings.

(87) "Publicly-owned park" means a public park that is owned by a federal, state, or local governmental entity.

(88) "Public office" means a facility under the direction and control of a governmental entity which is open to public access on a regular basis during reasonable business hours.

(89) "Public park" means an area dedicated or designated by any federal, state, or local agency primarily for public recreational use, despite whether the use is limited to certain times or days. It includes any land leased, reserved, or held open to the public because of that use.

(90) "Public road" means any publicly owned thoroughfare for the passage of vehicles.

(91) "Recharge capacity" means the ability of the soils and underlying materials to allow precipitation and runoff to infiltrate and reach the zone of saturation.

(92) "Reclamation" is defined in KRS 350.010.

(93) "Recreation land" means land used for public or private leisure-time use, including developed recreation facilities such as parks, camps, and amusement areas, as well as areas for less intensive uses such as hiking, canoeing, and other undeveloped recreational uses.

(94) "Reference area" means a land unit maintained under appropriate management for the purpose of measuring vegetative ground cover, productivity, and plant species diversity that are produced naturally or by crop production methods approved by the cabinet.

(95) "Refuse pile" means a surface deposit of coal mine waste that is not retained by an impounding structure and does not impound water, slurry, or other liquid or semiliquid material.

(96) "Remining" means conducting surface coal mining and reclamation operations which affect previously mined areas.

(97) "Renewable resource lands."

(a) As used in 405 KAR Chapter 24, "renewable resource lands" means geographic areas which contribute significantly to the long-range productivity of water supplies or of food or fiber products, these lands to include aquifers and aquifer recharge areas.

(b) As used in 405 KAR 8:040, Section 26, "renewable resource lands" means aquifers and areas for the recharge of aquifers and other underground waters, areas for agricultural or silvicultural production of food and fiber, and grazing lands.

(98) "Residential land" means tracts employed for single and multiple-family housing, mobile home parks, and other residential lodgings. Also included is land used for support facilities such as vehicle parking, open space, and other facilities which directly relate to the residential use of the land.

(99) "Road" means a surface right-of-way for purposes of travel by land vehicles used in coal exploration or surface coal mining and reclamation operations. A road consists of the entire area within the right-of-way, including the roadbed, shoulders, parking and side area, approaches, structures, ditches, surface, and contiguous appendages necessary for the total structure. The term includes access and haul

roads constructed, used, reconstructed, improved, or maintained for use in coal exploration or surface coal mining and reclamation operations, including use by coal hauling vehicles leading to transfer, processing, or storage areas. The term does not include pioneer or construction roadways used for part of the road construction procedure and promptly replaced by a road pursuant to 405 KAR Chapters 16 and 18 located in the identical right-of-way as the pioneer or construction roadway. The term also excludes any roadway within the immediate mining pit area.

(100) "SCS" means Soil Conservation Service.

(101) "Secretary" is defined in KRS 350.010.

(102) "Sedimentation pond" means a primary sediment control structure designed, constructed, and maintained in accordance with 405 KAR 16:090 or 405 KAR 18:090 and including but not limited to a barrier, dam, or excavated depression which slows down water runoff to allow suspended solids to settle out. A sedimentation pond shall not include secondary sedimentation control structures, such as straw dikes, riprap, check dams, mulches, dugouts, and other measures that reduce overland flow velocity, reduce runoff volume, or trap sediment, to the extent that the secondary sedimentation structures drain to a sedimentation pond.

(103) "Significant, imminent environmental harm" means an adverse impact on land, air, or water resources which resources include, but are not limited to, plant and animal life as further defined in this subsection.

(a) An environmental harm is imminent, if a condition, practice, or violation exists which:

1. Is causing environmental harm; or

2. May reasonably be expected to cause environmental harm at any time before the end of the reasonable abatement time that would be set by the cabinet's authorized agents pursuant to the provisions of KRS Chapter 350.

(b) An environmental harm is significant if that harm is appreciable and not immediately reparable.

(104) "Slope" means average inclination of a surface, measured from the horizontal, generally expressed as the ratio of a unit of vertical distance to a given number of units of horizontal distance (e.g., 1v:5h). It may also be expressed as a percent or in degrees.

(105) "Slurry mining" means the hydraulic breakdown of subsurface coal with drill-hole equipment, and the eduction of the resulting slurry to the surface for processing.

(106) "Small operator", as used in 405 KAR 8:030, Section 3(5) and 405 KAR 8:040, Section 3(5), is defined at KRS 350.450(4)(c).

(107) "SMCRA" means Surface Mining Control and Reclamation Act of 1977 (Public Law 95-87), as amended.

(108) "Soil horizons" means contrasting layers of soil parallel or nearly parallel to the land surface. Soil horizons are differentiated on the basis of field characteristics and laboratory data. The four (4) master soil horizons are:

(a) "A horizon." The uppermost mineral layer, often called the surface soil. It is the part of the soil in which organic matter is most abundant, and leaching of soluble or suspended particles is typically the greatest.

(b) "E horizon." The layer commonly near the surface below an A horizon and above a B horizon. An E horizon is most commonly differentiated from an overlying A horizon by lighter color and generally has measurably less organic matter than the A horizon. An E horizon is most commonly differentiated from an underlying B horizon in the same sequum by color of higher value or lower chroma, by coarser texture, or by a combination of these properties.

(c) "B horizon." The layer that typically is immediately beneath the E horizon and often called the subsoil. This middle layer commonly contains more clay, iron, or aluminum than the A, E, or C horizons.

(d) "C horizon." The deepest layer of soil profile. It consists of loose material or weathered rock that is relatively unaffected by biologic activity.

(109) "Soil survey" means a field and other investigation, resulting in a map showing the geographic distribution of different kinds of soils and an accompanying report that describes, classifies, and interprets the soils for use. Soil surveys shall meet the standards of the National Cooperative Soil Survey.

(110) "Spoil" means overburden and other materials, excluding topsoil, coal mine waste, and mined coal, that are excavated during surface coal mining and reclamation operations.

(111) "Stabilize" means to control movement of soil, spoil piles, or areas of disturbed earth by modifying the geometry of the mass, or by otherwise modifying physical or chemical properties, such as by providing a protective surface coating.

(112) "Steep slope" means any slope of more than twenty (20) degrees.

(113) A "stream or reach of stream with valuable environmental resources" means one that:

(a) Contains, or could reasonably be expected to contain, listed or proposed endangered or threatened species of plants or animals or their critical habitats listed by the Secretary of the Interior under the Endangered Species Act of 1973, as amended (16 USC Sec. 1531 et seq.), or those species or habitats protected by similar state statutes;

(b) Is an intermittent or perennial stream that supports a high level of habitat development and quality as reflected by the integrity of fish or macroinvertebrate populations, as set forth in TRM #20; or

(c) Is an important stream.

(114) "Substantial legal and financial commitments" means significant investments, that have been made on the basis of a long-term coal contract, consisting of actual expenditures of substantial monies or execution of valid and binding contracts involving substantial monies for such things as power plants; railroads; coal handling, preparation, extraction, and storage facilities; and other capital-intensive activities such as:

(a)1. Improvement or modification of coal lands within, for access to, or in support of surface coal mining and reclamation operations in the petitioned area;

2. Acquisition of capital equipment for use in, for access to, or for use in support of surface coal mining and reclamation operations in the petitioned area; and

3. Exploration, mapping, surveying, and geological work, as well as expenditures of engineering and legal fees, associated with the acquisition of the property or preparation of an application to conduct surface coal mining and reclamation operations in the petitioned area.

(b) The costs of acquiring the coal in place or the right to mine such coal are not sufficient to constitute a substantial legal and financial commitment in the absence of other investments as described in paragraph (a) of this subsection.

(115) "Substantially disturb" means, for purposes of coal exploration, to significantly impact land or water resources by blasting; by removal of vegetation, topsoil, or overburden; by construction of roads or other access routes; by placement of excavated earth or waste material on the natural land surface; or by other activities, or to remove more than twenty-five (25) tons of coal.

(116) "Successor in interest" means any person who succeeds to rights granted under a permit, by transfer, assignment, or sale of those rights.

(117) "Surety bond" means an indemnity agreement in a sum certain, payable to the cabinet and executed by the permittee, which is supported by the performance guarantee of a corporation licensed to do business as a surety in the Commonwealth of Kentucky.

(118) "Surface coal mining and reclamation operations" is defined in KRS 350.010.

(119) "Surface coal mining operations" is defined in KRS 350.010.

(120) "Surface mining activities" means those surface coal mining and reclamation operations incident to the extraction of coal from the earth by removing the materials over a coal seam before recovering the coal, by auger coal mining, by extraction of coal from coal refuse piles, or by recovery of coal from slurry ponds.

(121) "Suspended solids" or nonfilterable residue, expressed as milligrams per liter, means organic or inorganic materials carried or held in suspension in water which are retained by a standard glass fiber filter in the procedure outlined by the U.S. EPA's regulations for waste water and analyses (40 CFR 136).

(122) "Temporary diversion" means a diversion of a stream or overland flow which is used during coal exploration or surface coal mining and reclamation operations and not approved by the cabinet to remain after reclamation as part of the approved postmining land use.

(123) "Ton" means 2000 pounds avoirdupois (.90718 metric ton).

(124) "Topsoil" means the A and E soil horizon layers of the four (4) master soil horizons.

(125) "Toxic-forming materials" means earth materials or wastes which, if acted upon by air, water, weathering, or microbiological processes, are likely to produce chemical conditions in soils or water that are detrimental to biota or uses of water.

(126) "Toxic mine drainage" means water that is discharged from active or abandoned mines or other areas affected by coal exploration or surface coal mining and reclamation operations, which contains a substance that through chemical action is likely to kill, injure, or impair biota commonly present in the area that might be exposed to it.

(127) "Transfer, assignment, or sale of permit rights" means a change in ownership or other effective control over the right to conduct surface coal mining operations under a permit issued by the cabinet.

(128) "TRM" means Technical Reclamation Memorandum.

(129) "Underground development waste" means waste coal, shale, claystone, siltstone, sandstone, limestone, or similar materials that are extracted from underground workings in connection with underground mining activities.

(130) "Underground mining activities" means a combination of:

(a) Surface operations incident to underground extraction of coal or in situ processing, including construction, use, maintenance, and reclamation of roads, above-ground repair areas, storage areas, processing areas, and shipping areas; areas upon which are sited support facilities including hoist and ventilating ducts; areas utilized for the disposal and storage of waste; and areas on which materials incident to underground mining operations are placed; and

(b) Underground operations such as underground construction, operation, and reclamation of shafts, adits, underground support facilities; in situ processing; and underground mining, hauling, storage, and blasting.

(131) "USDA" means United States Department of Agriculture.

(132) "U.S. EPA" means United States Environmental Protection Agency (133) "USGS" means United States Geological Survey.

(134) "Valid existing rights" means:

(a) Except for haul roads, property rights in existence on August 3, 1977, that were created by a legally binding conveyance, lease, contract or other instrument which authorizes the applicant to produce coal and the person proposing to conduct a surface coal mining operation on the lands either:

1. Had been validly issued or had made a good faith effort to obtain, on or before August 3, 1977, all state and federal permits necessary to conduct surface coal mining operations on those lands, application for the permits being deemed to constitute good faith efforts to obtain the permits; or

2. Can demonstrate to the cabinet that the coal is both needed for, and immediately adjacent to, an ongoing surface coal mining operation for which all permits were obtained prior to August 3, 1977.

(b) For haul roads:

1. A recorded right-of-way, recorded easement, or a permit for coal haul road recorded as of August 3, 1977; or

2. Any other road in existence as of August 3, 1977.

(c) Valid existing rights does not mean the mere expectation of a right to conduct surface coal mining operations or the right to conduct underground coal mining.

(135) "Water transmitting zone" means a body of consolidated or unconsolidated rocks which, due to their greater primary or secondary permeability relative to the surrounding rocks, can reasonably be considered to function as a single hydraulic medium for the flow of groundwater.

(136) "Wetland" means land that has a predominance of hydric soils and that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions.

(a) "Hydric soil" means soil that, in its undrained condition, is saturated, flooded, or ponded long enough during a growing season to develop an anaerobic condition that supports the

growth and regeneration of hydrophytic vegetation.

(b) "Hydrophytic vegetation" means a plant growing in:

1. Water; or

2. A substrate that is at least periodically deficient in oxygen during a growing season as a result of excessive water content.

(137) "Willfully" and "willful violation" mean that a person acted either intentionally, voluntarily, or consciously, and with intentional disregard or plain indifference to legal requirements, in authorizing, ordering, or carrying out an act or omission that constituted a violation of SMCRA, KRS Chapter 350, 405 KAR Chapters 7 through 24, or a permit condition, or that constituted a failure or refusal to comply with an order issued pursuant to SMCRA, KRS Chapter 350, or 405 KAR Chapters 7 through 24.

JOHN F. NICHOLS, JR., Secretary
FRANK DICKERSON, Commissioner

APPROVED BY AGENCY: November 25, 1991

FILED WITH LRC: November 25, 1991 at 2 p.m.

PUBLIC HEARING: A public hearing on this proposed amendment has been scheduled for 9:00 a.m. (EST) Thursday, January 30, 1992 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 January 25, 1992. The scheduled hearing will be cancelled if the contact person has not received any written notice of intent to testify by January 25, 1992, 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 amendment 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 amendment but does not wish to testify at the hearing may submit written comments on the proposed amendment at any time before 4:30 p.m. (EST) on January 30, 1992. 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, KY 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact: Jim Villines

(1) Type and number of entities affected: This regulation applies to surface coal mining and reclamation operations and coal exploration operations. This regulation also affects landowners of mined land, adjacent landowners, and the general public in the coal field regions that may be impacted by mining operations. There are approximately 3800 surface coal mining operations and approximately 500 coal exploration operations in this state.

(a) Direct and indirect costs or savings to those affected:

1. First year: Presently, one regulation (405 KAR 7:020) near the beginning of the series of regulations (405 KAR Chapters 7-24) relating to surface coal mining operations contains nearly all of the definitions applicable to that series of related regulations. A few definitions are located in individual regulations. However, the surface coal mining regulations span eight related chapters of Title 405. It is the opinion of the Administrative Regulations Review Subcommittee that KRS Chapter 13A requires that each chapter of a Title must contain any necessary definitions of terms used in that chapter; and that this must be accomplished either by placing the definitions in the first section of each regulation that uses the defined terms, or by placing all definitions in a separate definitions regulation at the beginning of the chapter. Therefore, this regulation is being promulgated to define the terms used in 405 KAR Chapter 8. For most of these definitions there are no substantive changes since these definitions are simply being transferred, with a few minor changes, from 405 KAR 7:020 and other existing regulations to this new regulation. Each term defined in KRS Chapter 350 has had its regulatory definition deleted and a notation inserted that the term is defined in KRS Chapter 350.010. Therefore there are no direct or indirect costs or savings to those affected due to existing definitions being placed in this regulation. There are a few new definitions and amendments to a few of the existing definitions, the most significant of these being "stream or reach of stream with valuable environmental resources" and "important stream". These terms are used in the cabinet's new fish and wildlife protection program embodied in currently proposed 405 KAR 8:030, 8:040, 16:180, and 18:180. These definitions were included in proposed 405 KAR 16:180 and 18:180 when those regulations were filed with LRC on July 15, 1991. The effect of these definitions is to identify those streams which will receive specific protective measures established in the above mentioned proposed regulations. For a full discussion of the impacts of the proposed fish and wildlife protection program, see the Regulatory Impact Analyses filed with the above mentioned proposed regulations. There will be some additional costs to the industry as a result of these new requirements.

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: No direct costs or savings to the cabinet will result from the definitions in this regulation. However, additional indirect administrative costs to the cabinet will result from having a separate definitions regulation in each chapter rather than having a single definitions regulation for the entire series of related regulations. Because 405 KAR Chapters 7-24 constitute a single regulatory program and contain related subject matter, many defined terms are used in more than one chapter. Thus,

when it becomes necessary in the future to add, modify or delete a definition, as many as eight regulations must be amended to make that change. This will increase the time and effort associated with preparing amended regulations and associated documents for the promulgation process. Printing and mailing costs also will increase due to the substantial increase in the number of pages of these regulations.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: See above discussion in (a).

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: This alternative was selected by agreement with the Administrative Regulation Review Subcommittee. The only other alternative available is to place the definitions in the first section of each regulation in which the defined terms are used. That alternative was rejected because it would have been more duplicative and burdensome on the cabinet than the alternative selected.

(5) Identify any statute, administrative regulation, or governmental policy which may be in conflict, overlapping or duplication: None

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. Tiering is not applicable to this proposed administrative regulation because, under the federal and Kentucky surface mining laws and regulations, these requirements must apply equally to all permittees under 405 KAR Chapters 7-24.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 7 CFR Part 657, 30 CFR Parts 700.5, 701.5, 707.5, 730-733, 735, 761.5, 762.5, 773.5, 800.5, 843.5, 917; 30 USC 1253, 1255, 1291.

2. State compliance standards. This regulation defines terms used in 405 KAR Chapter 8. For the most part, these definitions are the same as the existing definitions in 405 KAR 7:020 and other existing regulations, with minor changes, and are being moved to this chapter by agreement with the Administrative Regulation Review Subcommittee to comply with KRS Chapter 13A. There are a few new definitions and amendments to a few of the existing definitions, the most significant of these being "stream or reach of stream with valuable environmental resources" and "important stream". These terms are used in the cabinet's new fish and wildlife protection program embodied in currently proposed 405 KAR 8:030, 8:040, 16:180, and 18:180. These definitions were included in proposed 405 KAR 16:180 and 18:180 when those regulations were filed with LRC on July 15, 1991. The effect of these definitions is to identify those streams which will receive specific protective measures established in the above mentioned proposed regulations. These definitions have been designed specifically for Kentucky.

3. Minimum or uniform standards contained in the federal mandate. The federal regulations provide definitions of terms used in the federal surface mining regulations which, for the most part, are substantially the same or similar to those proposed in the state regulation. The definitions of "stream or reach of stream with valuable environmental resources" and "important stream" are not in the federal regulations. However the federal regulation does require each state to establish the detailed requirements of its fish and wildlife program within the general parameters set forth in the federal regulation, and these definitions are designed to meet that federal mandate.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

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

405 KAR 10:001. Definitions for 405 KAR Chapter 10.

RELATES TO: KRS Chapter 350, 7 CFR Part 657, 30 CFR Parts 700.5, 701.5, 707.5, 730-733, 735, 761.5, 762.5, 773.5, 800.5, 843.5, 917, 40 CFR Part 136, 30 USC 1253, 1255, 1291

STATUTORY AUTHORITY: KRS Chapter 13A, 350.028, 350.465, 7 CFR Part 657, 30 CFR Parts 700.5, 701.5, 707.5, 730-733, 735, 761.5, 762.5, 773.5, 800.5, 843.5, 917, 40 CFR Part 136, 30 USC 1253, 1255, 1291

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations pertaining to surface coal mining and reclamation operations under the permanent regulatory program. This regulation provides for the defining of certain essential terms used in 405 KAR Chapter 10.

Section 1. Definitions. (1) "Adjacent area" means land located outside the affected area or permit area, depending on the context in which "adjacent area" is used, where air, surface or groundwater, fish, wildlife, vegetation or other resources protected by KRS Chapter 350 may be adversely impacted by surface coal mining and reclamation operations.

(2) "Administrator" or "bond pool administrator", as used in 405 KAR 10:200, 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.

(3) "Affected area" means any land or water area which is used to facilitate, or is physically altered by, surface coal mining and reclamation operations. The affected area includes the disturbed area; any area upon which surface coal mining and reclamation operations are conducted; any adjacent lands the use of which is incidental to surface coal mining and reclamation operations; all areas covered by new or existing roads used to gain access to, or for hauling coal to or from, surface coal mining and reclamation operations, except as provided in

this definition; any area covered by surface excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, shipping areas; any areas upon which are sited structures, facilities, or other property or material on the surface resulting from, or incident to, surface coal mining and reclamation operations; and the area located above underground workings associated with underground mining activities, auger mining, or in situ mining. The affected area shall include every road used for the purposes of access to, or for hauling coal to or from, surface coal mining and reclamation operations, unless the road:

(a) Was designated as a public road pursuant to the laws of the jurisdiction in which it is located;

(b) Is maintained with public funds, and constructed in a manner similar to other public roads of the same classification within the jurisdiction; and

(c) There is substantial (more than incidental) public use.

(4) "Applicant", as used in 405 KAR 10:010, means any person seeking a permit, permit revision, permit amendment, permit renewal, or transfer, assignment, or sale of permit rights from the cabinet to conduct surface coal mining and reclamation operations pursuant to KRS Chapter 350 and all applicable regulations.

(5) "Bond pool" or "Kentucky Bond Pool" means the voluntary alternative bonding program established at KRS 350.700 through 350.755.

(6) "Cabinet" is defined in KRS 350.010.

(7) "CFR" means Code of Federal Regulations.

(8) "Coal" means combustible carbonaceous rock, classified as anthracite, bituminous, subbituminous, or lignite by ASTM Standard D 388-77.

(9) "Collateral bond" means an indemnity agreement in a sum certain payable to the cabinet executed by the permittee and which is supported by the deposit with the cabinet of cash, negotiable certificates of deposit, or an irrevocable letter of credit of any bank organized and authorized to transact business in the United States.

(10) "Commission" or "bond pool commission" means the body established at KRS 350.705.

(11) "Cropland" means land used for the production of adapted crops for harvest, alone or in a rotation with grasses and legumes, and includes row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar specialty crops. Land used for facilities in support of cropland farming operations which is adjacent to or an integral part of these operations is also included for purposes of land use categories.

(12) "Day" means calendar day unless otherwise specified to be a working day.

(13) "Department" means the Department for Surface Mining Reclamation and Enforcement.

(14) "Disturbed area" means an area where vegetation, topsoil, or overburden is removed or upon which topsoil, spoil, coal processing waste, underground development waste, or noncoal waste is placed by surface coal mining operations. Those areas are classified as "disturbed" until reclamation is complete and the performance bond or other assurance of performance required by 405 KAR Chapter 10 is released.

(15) "FDIC" means Federal Deposit Insurance Corporation.

(16) "Federal lands" means any lands, including mineral interests, owned by the United States, without regard to how the United States acquired ownership of the lands or which agency manages the lands. It does not include Indian lands.

(17) "FSLIC" means Federal Savings and Loan Insurance Corporation.

(18) "Historically used for cropland."

(a) "Historically used for cropland" means that lands have been used for cropland for any five (5) years or more out of the ten (10) years immediately preceding:

1. The application; or

2. The acquisition of the land for the purpose of conducting surface coal mining and reclamation operations.

(b) Lands meeting either paragraph (a)1 or 2 of this subsection shall be considered "historically used for cropland."

(c) In addition to the lands covered by paragraph (a) of this subsection, other lands shall be considered "historically used for cropland" as described below:

1. Lands that would likely have been used as cropland for any five (5) out of the last ten (10) years immediately preceding the acquisition or the application but for some fact of ownership or control of the land unrelated to the productivity of the land; and

2. Lands that the cabinet determines, on the basis of additional cropland history of the surrounding lands and the lands under consideration, are clearly cropland but fall outside the specific five (5) years in ten (10) criterion.

(d) Acquisition includes purchase, lease, or option of the land for the purpose of conducting or allowing through resale, lease or option, the conduct of surface coal mining and reclamation operations.

(19) "Impoundment" means a closed basin, naturally formed or artificially built, which is dammed or excavated for the retention of water, sediment, or waste.

(20) "KAR" means Kentucky administrative regulations.

(21) "KRS" means Kentucky Revised Statutes.

(22) "Land use" means specific functions, uses, or management-related activities of an area, and may be identified in combination when joint or seasonal uses occur and may include land used for support facilities that are an integral part of the use. In some instances, a specific use can be identified without active management.

(23) "Month of operation," as used in 405 KAR 10:200, Section 7, 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.

(24) "Notice of noncompliance and order for remedial measures" means a written document and order prepared by an authorized representative of the cabinet which sets forth with specificity the violations of KRS Chapter 350, 405 KAR Chapters 7 through 24, or permit conditions which the authorized representative of the cabinet determines to have occurred based upon his inspection, and the necessary remedial actions, if any, and the time schedule for

completion thereof, which the authorized representative deems necessary and appropriate to correct the violations.

(25) "Operations" is defined in KRS 350.010.

(26) "Operator" is defined in KRS 350.010.

(27) "Order for cessation and immediate compliance" means a written document and order issued by an authorized representative of the cabinet when:

(a) A person to whom a notice of noncompliance and order for remedial measures was issued has failed, as determined by a cabinet inspection, to comply with the terms of the notice of noncompliance and order for remedial measures within the time limits set therein, or as subsequently extended; or

(b) The authorized representative finds, on the basis of a cabinet inspection, any condition or practice or any violation of KRS Chapter 350, 405 KAR Chapters 7 through 24, or any condition of a permit or exploration approval which:

1. Creates an imminent danger to the health or safety of the public; or

2. Is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resources.

(28) "Owned or controlled" and "owns or controls" mean any one (1) or a combination of the relationships specified in paragraphs (a) and (b) of this definition:

(a)1. Being a permittee of a surface coal mining operation;

2. Based on instruments of ownership or voting securities, owning of record in excess of fifty (50) percent of an entity; or

3. Having any other relationship that gives one (1) person authority directly or indirectly to determine the manner in which an applicant, an operator, or other entity conducts surface coal mining operations.

(b) The following relationships are presumed to constitute ownership or control unless a person can demonstrate that the person subject to the presumption does not in fact have the authority directly or indirectly to determine the manner in which the relevant surface coal mining operation is conducted:

1. Being an officer or director of an entity;

2. Being the operator of a surface coal mining operation;

3. Having the ability to commit the financial or real property assets or working resources of an entity;

4. Being a general partner in a partnership;

5. Based on the instruments of ownership or the voting securities of a corporate entity, owning of record ten (10) through fifty (50) percent of the entity; or

6. Owning or controlling coal to be mined by another person under a lease, sublease, or other contract and having the right to receive the coal after mining or having authority to determine the manner in which that person or another person conducts a surface coal mining operation.

(29) "Performance bond" means a surety bond, a collateral bond, or a combination thereof, or bonds filed pursuant to the provisions of the Kentucky Bond Pool Program (405 KAR 10:200, KRS 350.595, and KRS 350.700 through 350.755), by which a permittee assures faithful performance of all the requirements of KRS Chapter 350, 405 KAR Chapters 7 through 24, and the requirements of the permit and reclamation plan.

(30) "Permit" means written approval issued by the cabinet to conduct surface coal mining and reclamation operations.

(31) "Permit area" means the area of land and water within boundaries designated in the approved permit application, which shall include, at a minimum, all areas which are or will be affected by surface coal mining and reclamation operations under that permit.

(32) "Permittee" means an operator or a person holding or required by KRS Chapter 350 or 405 KAR Chapters 7 through 24 to hold a permit to conduct surface coal mining and reclamation operations during the permit term and until all reclamation obligations imposed by KRS Chapter 350 and 405 KAR Chapters 7 through 24 are satisfied.

(33) "Person" is defined in KRS 350.010.

(34) "Person having an interest which is or may be adversely affected" or "person with a valid legal interest" shall include any person:

(a) Who uses any resource of economic, recreational, aesthetic, or environmental value that may be adversely affected by coal exploration or surface coal mining and reclamation operations, or by any related action of the cabinet; or

(b) Whose property is or may be adversely affected by coal exploration or surface coal mining and reclamation operations, or by any related action of the cabinet.

(35) "Prime farmland" means those lands which are defined by the Secretary of Agriculture in 7 CFR 657 and which have been "historically used for cropland" as that phrase is defined above.

(36) "Reclamation" is defined in KRS 350.010.

(37) "Secretary" is defined in KRS 350.010.

(38) "SMCRA" means Surface Mining Control and Reclamation Act of 1977 (Public Law 95-87), as amended.

(39) "Surety bond" means an indemnity agreement in a sum certain, payable to the cabinet and executed by the permittee, which is supported by the performance guarantee of a corporation licensed to do business as a surety in the Commonwealth of Kentucky.

(40) "Surface coal mining and reclamation operations" is defined in KRS 350.010.

(41) "Surface coal mining operations" is defined in KRS 350.010.

(42) "Suspended solids" or nonfilterable residue, expressed as milligrams per liter, means organic or inorganic materials carried or held in suspension in water which are retained by a standard glass fiber filter in the procedure outlined by the U.S. EPA's regulations for waste water and analyses (40 CFR 136).

(43) "Ton" means 2000 pounds avoirdupois (.90718 metric ton).

(44) "Topsoil" means the A and E soil horizon layers of the four (4) master soil horizons.

(45) "U.S. EPA" means United States Environmental Protection Agency.

(46) "Willfully" and "willful violation" mean that a person acted either intentionally, voluntarily, or consciously, and with intentional disregard or plain indifference to legal requirements, in authorizing, ordering, or carrying out an act or omission that constituted a violation of SMCRA, KRS Chapter 350, 405 KAR Chapters 7 through 24, or a permit condition, or that constituted a failure or refusal to comply with an order issued pursuant to SMCRA, KRS Chapter 350, or 405 KAR Chapters 7 through 24.

JOHN F. NICHOLS, JR., Secretary
FRANK DICKERSON, Commissioner
APPROVED BY AGENCY: November 25, 1991
FILED WITH LRC: November 25, 1991 at 2 p.m.

PUBLIC HEARING: A public hearing on this proposed amendment has been scheduled for 9:00 a.m. (EST) Thursday, January 30, 1992 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 January 25, 1992. The scheduled hearing will be cancelled if the contact person has not received any written notice of intent to testify by January 25, 1992, 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 amendment 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 amendment but does not wish to testify at the hearing may submit written comments on the proposed amendment at any time before 4:30 p.m. (EST) on January 30, 1992. 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, KY 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact: Jim Villines

(1) Type and number of entities affected: This regulation applies to surface coal mining and reclamation operations. This regulation also affects landowners of mined land, adjacent landowners, and the general public in the coal field regions that may be impacted by mining operations. There are approximately 3800 surface coal mining operations in this state.

(a) Direct and indirect costs or savings to those affected:

1. First year: Presently, one regulation (405 KAR 7:020) near the beginning of the series of regulations (405 KAR Chapters 7-24) relating to surface coal mining operations contains nearly all of the definitions applicable to that series of related regulations. A few definitions are located in individual regulations. However, the surface coal mining regulations span eight related chapters of Title 405. It is the opinion of the Administrative Regulations Review Subcommittee that KRS Chapter 13A requires that each chapter of a title must contain any necessary definitions of terms used in that chapter; and that this must be accomplished either by placing the definitions in the first section of each regulation that uses the defined terms, or by placing all definitions in a separate definitions regulation at the beginning of the chapter. Therefore, this regulation is being promulgated to define the terms used in 405 KAR Chapter 10. There are no substantive changes since these definitions are simply being transferred, with a few minor changes, from 405 KAR 7:020 to this new regulation. Each term defined in KRS Chapter 350 has had its regulatory definition deleted and a notation inserted that the term is defined in KRS Chapter 350.010. Therefore there are no direct or indirect costs or savings to those affected due to existing definitions being placed in this regulation.

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: No direct costs or savings to the cabinet will result from the definitions in this regulation. However, additional indirect administrative costs to the cabinet will result from having a separate definitions regulation in each chapter rather than having a single definitions regulation for the entire series of related regulations. Because 405 KAR Chapters 7-24 constitute a single regulatory program and contain related subject matter, many defined terms are used in more than one chapter. Thus, when it becomes necessary in the future to add, modify or delete a definition, as many as eight regulations must be amended to make that change. This will increase the time and effort associated with preparing amended regulations and associated documents for the promulgation process. Printing and mailing costs also will increase due to the substantial increase in the number of pages of these regulations.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: See above discussion in (a).

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: This alternative was selected by agreement with the Administrative Regulation Review Subcommittee. The only other alternative available is to place the definitions in the first section of each regulation in which the defined terms are used. That alternative was rejected because it would have been more duplicative and burdensome on the cabinet than the alternative selected.

(5) Identify any statute, administrative regulation, or governmental policy which may be in conflict, overlapping or duplication: None

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. Tiering is not applicable to this proposed administrative regulation because, under the federal and Kentucky surface mining laws and regulations, these requirements must apply equally to all permittees under 405 KAR Chapters 7-24.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 7 CFR Part 657, 30 CFR Parts 700.5, 701.5, 707.5, 730-733, 735, 761.5, 762.5, 773.5, 800.5, 843.5, 917; 30 USC 1253, 1255, 1291.
2. State compliance standards. This regulation defines terms used in 405 KAR Chapter 10. These definitions are the same as the existing definitions in 405 KAR 7:020, with minor changes, and are being moved to this chapter by agreement with the Administrative Regulation Review Subcommittee to comply with KRS Chapter 13A.
3. Minimum or uniform standards contained in the federal mandate. The federal regulations provide definitions of terms used in the federal surface mining regulations which are substantially the same or similar to those proposed in the state regulation.
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.

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

405 KAR 12:001. Definitions for 405 KAR Chapter 12.

RELATES TO: KRS Chapter 350, 30 CFR Parts 700.5, 701.5, 707.5, 730-733, 735, 761.5, 762.5, 773.5, 800.5, 843.5, 917, 30 USC 1253, 1255, 1291
STATUTORY AUTHORITY: KRS Chapter 13A, 350.028, 350.465, 30 CFR Parts 700.5, 701.5, 707.5, 730-733, 735, 761.5, 762.5, 773.5, 800.5, 843.5, 917, 30 USC 1253, 1255, 1291
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations pertaining to surface coal mining and reclamation operations under the permanent regulatory program. This regulation provides for the defining of certain essential terms used in 405 KAR Chapter 12.

Section 1. Definitions. (1) "Adjacent area" means land located outside the affected area or permit area, depending on the context in which "adjacent area" is used, where air, surface or groundwater, fish, wildlife, vegetation or other resources protected by KRS Chapter 350 may be adversely impacted by surface coal mining and reclamation operations.
(2) "Affected area" means any land or water area which is used to facilitate, or is physically altered by, surface coal mining and reclamation operations. The affected area includes the disturbed area; any area upon which surface coal mining and reclamation operations are conducted; any adjacent lands the use of which is incidental to surface coal mining and reclamation operations; all areas covered by new or existing roads used to gain access to, or for hauling coal to or from, surface coal mining and reclamation operations, except as provided in this definition; any area covered by surface excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, shipping areas; any areas upon which are sited structures, facilities, or other property or material on the surface resulting from, or incident to, surface coal mining and reclamation operations; and the area located above underground workings associated with underground mining activities, auger mining, or in situ mining. The affected area shall include every road used for the purposes of access to, or for hauling coal to or from, surface coal mining and reclamation operations, unless the road:
(a) Was designated as a public road pursuant to the laws of the jurisdiction in which it is located;
(b) Is maintained with public funds, and constructed in a manner similar to other public roads of the same classification within the jurisdiction; and
(c) There is substantial (more than incidental) public use.
(3) "Application" means the documents and other information filed with the cabinet seeking issuance of permits; revisions; amendments; renewals; and transfer, assignment or sale of permit rights for surface coal mining and reclamation operations or, if required, seeking approval for coal exploration.
(4) "Cabinet" is defined in KRS 350.010.
(5) "CFR" means Code of Federal Regulations.
(6) "Coal" means combustible carbonaceous rock, classified as anthracite, bituminous, subbituminous, or lignite by ASTM Standard D 388-77.
(7) "Coal exploration" means the field gathering of:
(a) Surface or subsurface geologic, physical, or chemical data by mapping, trenching, drilling, geophysical, or other techniques necessary to determine the quality and quantity of overburden and coal of an area; or
(b) Environmental data to establish the conditions of an area before beginning surface coal mining and reclamation operations under the requirements of 405 KAR Chapters 7 through 24 if the activity may cause any disturbance of the land surface or may cause any appreciable effect upon land, air, water, or other environmental resources.
(8) "Day" means calendar day unless otherwise specified to be a working day.
(9) "Department" means the Department for Surface Mining Reclamation and Enforcement.
(10) "Disturbed area" means an area where vegetation, topsoil, or overburden is removed or upon which topsoil, spoil, coal processing waste, underground development waste, or noncoal waste is placed by surface coal mining operations. Those areas are classified as "disturbed" until reclamation is complete and the performance bond or other assurance of performance required by 405 KAR Chapter 10 is released.
(11) "Imminent danger to the health and safety of the public" means the existence of any condition or practice, or any violation of a permit or other requirements of KRS Chapter 350 in a surface coal mining and reclamation operation, which could reasonably be expected to cause substantial physical harm to persons outside the permit area before the condition, practice, or violation can be abated. A

reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same condition or practice giving rise to the peril, would avoid exposure to the danger during the time necessary for abatement.

(12) "KAR" means Kentucky administrative regulations.

(13) "Monitoring" means the collection of environmental data by either continuous or periodic sampling methods.

(14) "Notice of noncompliance and order for remedial measures" means a written document and order prepared by an authorized representative of the cabinet which sets forth with specificity the violations of KRS Chapter 350, 405 KAR Chapters 7 through 24, or permit conditions which the authorized representative of the cabinet determines to have occurred based upon his inspection, and the necessary remedial actions, if any, and the time schedule for completion thereof, which the authorized representative deems necessary and appropriate to correct the violations.

(15) "Operations" is defined in KRS 350.010.

(16) "Operator" is defined in KRS 350.010.

(17) "Order for cessation and immediate compliance" means a written document and order issued by an authorized representative of the cabinet when:

(a) A person to whom a notice of noncompliance and order for remedial measures was issued has failed, as determined by a cabinet inspection, to comply with the terms of the notice of noncompliance and order for remedial measures within the time limits set therein, or as subsequently extended; or

(b) The authorized representative finds, on the basis of a cabinet inspection, any condition or practice or any violation of KRS Chapter 350, 405 KAR Chapters 7 through 24, or any condition of a permit or exploration approval which:

1. Creates an imminent danger to the health or safety of the public; or

2. Is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resources.

(18) "Performance bond" means a surety bond, a collateral bond, or a combination thereof, or bonds filed pursuant to the provisions of the Kentucky Bond Pool Program (405 KAR 10:200, KRS 350.595, and KRS 350.700 through 350.755), by which a permittee assures faithful performance of all the requirements of KRS Chapter 350, 405 KAR Chapters 7 through 24, and the requirements of the permit and reclamation plan.

(19) "Permit" means written approval issued by the cabinet to conduct surface coal mining and reclamation operations.

(20) "Permit area" means the area of land and water within boundaries designated in the approved permit application, which shall include, at a minimum, all areas which are or will be affected by surface coal mining and reclamation operations under that permit.

(21) "Permittee" means an operator or a person holding or required by KRS Chapter 350 or 405 KAR Chapters 7 through 24 to hold a permit to conduct surface coal mining and reclamation operations during the permit term and until all reclamation obligations imposed by KRS Chapter 350 and 405 KAR Chapters 7 through 24 are satisfied.

(22) "Person" is defined in KRS 350.010.

(23) "Person having an interest which is or may be adversely affected" or "person with a valid legal interest" shall include any person:

(a) Who uses any resource of economic, recreational, aesthetic, or environmental value that may be adversely affected by coal exploration or surface coal mining and reclamation operations, or by any related action of the cabinet; or

(b) Whose property is or may be adversely affected by coal exploration or surface coal mining and reclamation operations, or by any related action of the cabinet.

(24) "Reclamation" is defined in KRS 350.010.

(25) "Secretary" is defined in KRS 350.010.

(26) "Significant, imminent environmental harm" means an adverse impact on land, air, or water resources which resources include, but are not limited to, plant and animal life as further defined in this subsection.

(a) An environmental harm is imminent, if a condition, practice, or violation exists which:

1. Is causing environmental harm; or

2. May reasonably be expected to cause environmental harm at any time before the end of the reasonable abatement time that would be set by the cabinet's authorized agents pursuant to the provisions of KRS Chapter 350.

(b) An environmental harm is significant if that harm is appreciable and not immediately reparable.

(27) "Surface coal mining and reclamation operations" is defined in KRS 350.010.

(28) "Surface coal mining operations" is defined in KRS 350.010.

FRANK DICKERSON, Commissioner
JOHN F. NICHOLS, JR., Secretary
APPROVED BY AGENCY: November 25, 1991
FILED WITH LRC: November 25, 1991 at 2 p.m.

PUBLIC HEARING: A public hearing on this proposed amendment has been scheduled for 9 a.m. (EST) Thursday, January 30, 1992 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 January 25, 1992. The scheduled hearing will be cancelled if the contact person has not received any written notice of intent to testify by January 25, 1992, 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 amendment 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 amendment but does not wish to testify at the hearing may submit written comments on the proposed amendment at any time before 4:30 p.m. (EST) on January 30, 1992. 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, KY 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact: Jim Villines
(1) Type and number of entities affected: This regulation applies to surface coal mining and reclamation operations and coal exploration operations. This regulation also affects landowners of mined land, adjacent landowners, and the general public in the coal field regions that may be impacted by mining operations. There are approximately 3800 surface coal mining operations and approximately 500 coal exploration operations in this state.
(a) Direct and indirect costs or savings to those affected:
1. First year: Presently, one regulation (405 KAR 7:020) near the beginning of the series of regulations (405 KAR Chapters 7-24) relating to surface coal mining operations contains nearly all of the definitions applicable to that series of related regulations. A few definitions are located in individual regulations. However, the surface coal mining regulations span eight related chapters of Title 405. It is the opinion of the Administrative Regulations Review Subcommittee that KRS Chapter 13A requires that each chapter of a Title must contain any necessary definitions of terms used in that chapter; and that this must be accomplished either by placing the definitions in the first section of each regulation that uses the defined terms, or by placing all definitions in a separate definitions regulation at the beginning of the chapter. Therefore, this regulation is being promulgated to define the terms used in 405 KAR Chapter 12. There are no substantive changes since these definitions are simply being transferred, with a few minor changes, from 405 KAR 7:020 to this new regulation. Each term defined in KRS Chapter 350 has had its regulatory definition deleted and a notation inserted that the term is defined in KRS Chapter 350.010. Therefore there are no direct or indirect costs or savings to those affected due to existing definitions being placed in this regulation.
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: No direct costs or savings to the cabinet will result from the definitions in this regulation. However, additional indirect administrative costs to the cabinet will result from having a separate definitions regulation in each chapter rather than having a single definitions regulation for the entire series of related regulations. Because 405 KAR Chapters 7-24 constitute a single regulatory program and contain related subject matter, many defined terms are used in more than one chapter. Thus, when it becomes necessary in the future to add, modify or delete a definition, as many as eight regulations must be amended to make that change. This will increase the time and effort associated with preparing amended regulations and associated documents for the promulgation process. Printing and mailing costs also will increase due to the substantial increase in the number of pages of these regulations.
2. Continuing costs or savings: Same as first year.
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: See above discussion in (a).
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: This alternative was selected by agreement with the Administrative Regulation Review Subcommittee. The only other alternative available is to place the definitions in the first section of each regulation in which the defined terms are used. That alternative was rejected because it would have been more duplicative and burdensome on the cabinet than the alternative selected.
(5) Identify any statute, administrative regulation, or governmental policy which may be in conflict, overlapping or duplication: None
(a) Necessity of proposed regulation if in conflict: Not applicable.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.
(6) Any additional information or comments: None
TIERING: Was tiering applied? No. Tiering is not applicable to this proposed administrative regulation because, under the federal and Kentucky surface mining laws and regulations, these requirements must apply equally to all permittees under 405 KAR Chapters 7-24.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 7 CFR Part 657, 30 CFR Parts 700.5, 701.5, 707.5, 730-733, 735, 761.5, 762.5, 773.5, 800.5, 843.5, 917; 30 USC 1253, 1255, 1291.
2. State compliance standards. This regulation defines terms used in 405 KAR Chapter 12. These definitions are the same as the existing definitions in 405 KAR 7:020, with minor changes, and are being moved to this chapter by agreement with the Administrative Regulation Review Subcommittee to comply with KRS Chapter 13A.
3. Minimum or uniform standards contained in the federal mandate. The federal regulations provide definitions of terms used in the federal surface mining regulations which are substantially the same or similar to those proposed in the state regulation.
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.

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

405 KAR 16:001. Definitions for 405 KAR Chapter 16.

RELATES TO: KRS Chapter 350c 7 CFR Part 657, 30 CFR Parts 700.5, 701.5, 707.5, 730-733, 735, 761.5, 762.5, 773.5, 800.5, 843.5, 917c 30 USC 1253, 1255, 1291

STATUTORY AUTHORITY: KRS Chapter 13A, 350.028, 350.465c 30 CFR Parts 700.5, 701.5, 707.5, 730-733, 735, 761.5, 762.5, 773.5, 800.5, 843.5, 917, 30 USC 1253, 1255, 1291

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations pertaining to surface coal mining and reclamation operations under the permanent regulatory program. This regulation provides for the defining of certain essential terms used in 405 KAR Chapter 16.

Section 1. Definitions. (1) "Acid drainage" means water with a pH of less than six (6.0) and in which total acidity exceeds total alkalinity, discharged from an active, inactive, or abandoned surface coal mine and reclamation operation or from an area affected by surface coal mining and reclamation operations.

(2) "Acid-forming materials" means earth materials that contain sulfide minerals or other materials which, if exposed to air, water, or weathering processes, form acids that may create acid drainage.

(3) "Adjacent area" means land located outside the affected area or permit area, depending on the context in which "adjacent area" is used, where air, surface or groundwater, fish, wildlife, vegetation or other resources protected by KRS Chapter 350 may be adversely impacted by surface coal mining and reclamation operations.

(4) "Affected area" means any land or water area which is used to facilitate, or is physically altered by, surface coal mining and reclamation operations. The affected area includes the disturbed area; any area upon which surface coal mining and reclamation operations are conducted; any adjacent lands the use of which is incidental to surface coal mining and reclamation operations; all areas covered by new or existing roads used to gain access to, or for hauling coal to or from, surface coal mining and reclamation operations, except as provided in this definition; any area covered by surface excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, shipping areas; any areas upon which are sited structures, facilities, or other property or material on the surface resulting from, or incident to, surface coal mining and reclamation operations; and the area located above underground workings associated with underground mining activities, auger mining, or in situ mining. The affected area shall include every road used for the purposes of access to, or for hauling coal to or from, surface coal mining and reclamation operations, unless the road:

(a) Was designated as a public road pursuant to the laws of the jurisdiction in which it is located;

(b) Is maintained with public funds, and constructed in a manner similar to other public roads of the same classification within the jurisdiction; and

(c) There is substantial (more than incidental) public use.

(5) "Applicant" means any person(s) seeking a permit, permit revision, permit amendment, permit renewal, or transfer, assignment, or sale of permit rights from the cabinet to conduct surface coal mining and reclamation operations or approval to conduct coal exploration operations pursuant to KRS Chapter 350 and all applicable regulations.

(6) "Application" means the documents and other information filed with the cabinet seeking issuance of permits; revisions; amendments; renewals; and transfer, assignment or sale of permit rights for surface coal mining and reclamation operations or, if required, seeking approval for coal exploration.

(7) "Approximate original contour" is defined in KRS 350.010.

(8) "Aquifer" means a zone, stratum, or group of strata that can store and transmit water in sufficient quantities for domestic, agricultural, industrial, or other beneficial use.

(9) "Auger mining" means a method of mining coal at a cliff or highwall by drilling holes into an exposed coal seam from the highwall and transporting the coal along an auger bit to the surface and shall also include all other methods of mining in which coal is extracted from beneath the overburden by mechanical devices located at the face of the cliff or highwall and extending laterally into the coal seam, such as extended depth, secondary recovery systems.

(10) "Best technology currently available" means equipment, devices, systems, methods, or techniques which will prevent, to the extent possible, additional contributions of suspended solids to stream flow or runoff outside the permit area and minimize, to the extent possible, disturbances and adverse impacts on fish, wildlife, and related environmental values, and achieve enhancement of those resources where practicable. The term includes equipment, devices, systems, methods, or techniques which are currently available anywhere as determined by the cabinet, even if they are not in routine use. The term includes, but is not limited to, construction practices, siting requirements, vegetative selection and planting requirements, animal stocking requirements, scheduling of activities and design of sedimentation ponds in accordance with 405 KAR Chapters 16 and 18. The cabinet shall have the discretion to determine the best technology currently available on a case-by-case basis, as authorized by KRS Chapter 350 and 405 KAR Chapters 7 through 24.

(11) "Blaster" means a person who is directly responsible for surface blasting operations in surface coal mining and reclamation operations or coal exploration operations.

(12) "Bond pool" or "Kentucky Bond Pool" means the voluntary alternative bonding program established at KRS 350.700 through 350.755.

(13) "Cabinet" is defined in KRS 350.010.

(14) "CFR" means Code of Federal Regulations.

(15) "Coal" means combustible carbonaceous rock, classified as anthracite, bituminous, subbituminous, or lignite by ASTM Standard D

388-77.

(16) "Coal exploration" means the field gathering of:

(a) Surface or subsurface geologic, physical, or chemical data by mapping, trenching, drilling, geophysical, or other techniques necessary to determine the quality and quantity of overburden and coal of an area; or

(b) Environmental data to establish the conditions of an area before beginning surface coal mining and reclamation operations under the requirements of 405 KAR Chapters 7 through 24 if the activity may cause any disturbance of the land surface or may cause any appreciable effect upon land, air, water, or other environmental resources.

(17) "Coal mine waste" means coal processing waste and underground development waste.

(18) "Coal processing waste" means materials which are separated from the product coal during the cleaning, concentrating, or other processing or preparation of coal.

(19) "Collateral bond" means an indemnity agreement in a sum certain payable to the cabinet executed by the permittee and which is supported by the deposit with the cabinet of cash, negotiable certificates of deposit, or an irrevocable letter of credit of any bank organized and authorized to transact business in the United States.

(20) "Combustible material" means organic material that is capable of burning, either by fire or through oxidation, accompanied by the evolution of heat and a significant temperature rise.

(21) "Compaction" means increasing the density of a material by reducing the voids between the particles by mechanical effort.

(22) "Cropland" means land used for the production of adapted crops for harvest, alone or in a rotation with grasses and legumes, and includes row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar specialty crops. Land used for facilities in support of cropland farming operations which is adjacent to or an integral part of these operations is also included for purposes of land use categories.

(23) "Cumulative impact area" means the area, including the permit area, within which impacts resulting from the proposed operation may interact with the impacts of all anticipated mining on surface and groundwater systems. Anticipated mining shall include, at a minimum, the entire projected lives through bond release of:

(a) The proposed operation;

(b) All existing operations;

(c) Any operation for which a permit application has been submitted to the cabinet; and

(d) All operations required to meet diligent development requirements for leased federal coal for which there is actual mine development information available.

(24) "Day" means calendar day unless otherwise specified to be a working day.

(25) "dB" means decibels.

(26) "Department" means the Department for Surface Mining Reclamation and Enforcement.

(27) "Developed water resources land" means land used for storing water for beneficial uses such as stockponds, irrigation, fire protection, flood control, and water supply.

(28) "Disturbed area" means an area where vegetation, topsoil, or overburden is removed or upon which topsoil, spoil, coal processing waste, underground development waste, or noncoal waste is placed by surface coal mining operations. Those areas are classified as "disturbed" until reclamation is complete and the performance bond or other assurance of performance required by 405 KAR Chapter 10 is released.

(29) "Diversion" means a channel, embankment, or other manmade structure constructed to divert water from one (1) area to another.

(30) "Downslope" means the land surface below the projected outcrop of the lowest coalbed being mined along each highwall.

(31) "Durable rock" means rock that does not slake in water and that is not reasonably expected to degrade to such a size or condition as to block, cause failure of, or otherwise impair or restrict the effectiveness of the internal drainage system. The cabinet shall consider rock to be durable if it is demonstrated, to the satisfaction of the cabinet in the application, that the rock has an SDI value of ninety (90) or greater as determined by the Kentucky Department of Transportation "Method for Determination of Slake Durability Index" (Kentucky Method 64-513-79), incorporated herein by reference. This document may be obtained from the Kentucky Transportation Cabinet, Division of Materials, Wilkinson Blvd., Frankfort, KY 40601; or the Kentucky Transportation Cabinet, Division of Management Services, State Office Building, Frankfort, KY 40601. It may be reviewed, copied, 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. The cabinet may accept other test methods of demonstrating that rock is durable if it is demonstrated to the satisfaction of the cabinet that the alternative test methods yield equivalent measure of durability based upon correlation of results with Kentucky Method 64-513-79.

(32) "Embankment" means a manmade deposit of material that is raised above the natural surface of the land and used to contain, divert, or store water; to support roads or railways; or for other similar purposes.

(33) "Ephemeral stream" means a stream which flows only in direct response to precipitation in the immediate watershed or in response to the melting of a cover of snow and ice, and which has a channel bottom that is always above the local water table.

(34) "Excess spoil" means spoil disposed of in a location other than the coal extraction area, except that spoil material used to achieve the approximate original contour shall not be considered excess spoil.

(35) "Fish and wildlife land use", as used in 405 KAR 16:210 and in similar situations when referring to a premining or postmining land use, means land dedicated wholly or partially to the production, protection, or management of fish or wildlife. Areas considered as having the fish and wildlife land use are typically characterized by a diversity of habitats in which use by wildlife is the dominant characteristic, whether actively managed or not.

(36) "Forest land" means land used or managed for the long term production of wood, wood fiber, or wood derived products.

(37) "Fugitive dust" means that particulate

matter which becomes airborne due to wind erosion from exposed surfaces.

(38) "Ground cover" means the area of ground covered by the combined aerial parts of vegetation and litter produced and distributed naturally and seasonally on site, expressed as a percentage of the total area of measurement.

(39) "Groundwater" means subsurface water that fills available openings in rock or soil materials to the extent that they are considered water saturated.

(40) "Growing season" means the period during a one (1) year cycle, from the last killing frost in the spring to the first killing frost in the fall, in which climatic conditions are favorable for plant growth. In Kentucky, this period normally extends from mid-April to mid-October.

(41) "Head-of-hollow fill" means a fill structure consisting of any material, other than coal processing waste and organic material, placed in the uppermost reaches of a hollow near the approximate elevation of the ridgeline, where there is no significant natural drainage area above the fill, and where the side slopes of the existing hollow measured at the steepest point are greater than twenty (20) degrees or the average slope of the profile of the hollow from the toe of the fill to the top of the fill is greater than ten (10) degrees.

(42) "Higher or better uses" means postmining land uses that have a higher economic value or nonmonetary benefit to the landowner or the community than the premining land uses.

(43) "Highwall" means the face of exposed overburden and coal in an open cut of a surface mining activity or for entry to underground mining activities.

(44) "Highwall remnant" means that portion of highwall that remains after backfilling and grading of a remining permit area.

(45) "Historically used for cropland."

(a) "Historically used for cropland" means that lands have been used for cropland for any five (5) years or more out of the ten (10) years immediately preceding:

1. The application; or

2. The acquisition of the land for the purpose of conducting surface coal mining and reclamation operations.

(b) Lands meeting either paragraph (a)1 or 2 of this subsection shall be considered "historically used for cropland."

(c) In addition to the lands covered by paragraph (a) of this subsection, other lands shall be considered "historically used for cropland" as described below:

1. Lands that would likely have been used as cropland for any five (5) out of the last ten (10) years immediately preceding the acquisition or the application but for some fact of ownership or control of the land unrelated to the productivity of the land; and

2. Lands that the cabinet determines, on the basis of additional cropland history of the surrounding lands and the lands under consideration, are clearly cropland but fall outside the specific five (5) years in ten (10) criterion.

(d) Acquisition includes purchase, lease, or option of the land for the purpose of conducting or allowing through resale, lease or option, the conduct of surface coal mining and reclamation operations.

(46) "Hydrologic balance" means the relationship between the quality and quantity of water inflow to, water outflow from, and water storage in a hydrologic unit such as a drainage basin, aquifer, soil zone, lake, or reservoir. It encompasses the dynamic relationship between precipitation, runoff, evaporation, and changes in ground and surface water storage.

(47) "Hz" means hertz.

(48) "Imminent danger to the health and safety of the public" means the existence of any condition or practice, or any violation of a permit or other requirements of KRS Chapter 350 in a surface coal mining and reclamation operation, which could reasonably be expected to cause substantial physical harm to persons outside the permit area before the condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same condition or practice giving rise to the peril, would avoid exposure to the danger during the time necessary for abatement.

(49) "Important stream" means one that:

(a) Is classified as an outstanding resource water pursuant to 401 KAR 5:026 or 401 KAR 5:031;

(b) Based on the Kentucky rivers sssessment, is a Class 1, 2, or 3 stream in the water quality category or is a Class 1 or 2 stream in the fish resource category. Class 3 streams in the fish resource category may be determined case-by-case to be important streams by the cabinet. These streams that occur in the coal fields are listed in TRM #20, "Methodologies for the Evaluation, Protection, and Enhancement of Fish and Wildlife Resources for Coal Mining and Reclamation Operations", Kentucky Department for Fish and Wildlife Resources and Kentucky Department for Surface Mining Reclamation and Enforcement, September 13, 1991. This document is incorporated by reference, only for purposes of the definitions in this chapter. It may be reviewed, copied, 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.; or

(c) Is otherwise considered to be an important stream by the cabinet, including but not limited to a stream contained within, immediately upstream of, or bordering a publicly-owned wildlife management area or a nature preserve dedicated pursuant to KRS 146.410 et seq.

(50) "Impoundment" means a closed basin, naturally formed or artificially built, which is dammed or excavated for the retention of water, sediment, or waste.

(51) "Industrial/commercial lands" means lands used for:

(a) Extraction or transformation of materials for fabrication of products, wholesaling of products, or long-term storage of products, and heavy and light manufacturing facilities. Land used for facilities in support of these operations which is adjacent to or an integral part of that operation is also included.

(b) Retail or trade of goods or services, including hotels, motels, stores, restaurants, and other commercial establishments. Land used for facilities in support of commercial operations which is adjacent to or an integral part of these operations is also included.

(52) "In situ processes" means activities conducted on the surface or underground in connection with in-place distillation, retorting, leaching, or other chemical or

physical processing of coal. The term includes, but is not limited to, in situ gasification, in situ leaching, slurry mining, solution mining, borehole mining, and fluid recovery mining.

(53) "Intermittent stream" means:

(a) A stream or reach of stream that drains a watershed of one (1) square mile or more but does not flow continuously during the calendar year; or

(b) A stream or reach of a stream that is below the local water table for at least some part of the year, and obtains its flow from both surface runoff and groundwater discharge.

(54) "KAR" means Kentucky administrative regulations.

(55) "KPDES" means Kentucky Pollutant Discharge Elimination System.

(56) "KRS" means Kentucky Revised Statutes.

(57) "Land use" means specific functions, uses, or management-related activities of an area, and may be identified in combination when joint or seasonal uses occur and may include land used for support facilities that are an integral part of the use. In some instances, a specific use can be identified without active management.

(58) "Modified highwall" means either:

(a) The highwall resulting from remining where the preexisting highwall face is removed; or

(b) The highwall resulting from remining where the preexisting highwall is vertically enlarged.

(59) "Monitoring" means the collection of environmental data by either continuous or periodic sampling methods.

(60) "MRP" means mining and reclamation plan.

(61) "MSHA" means Mine Safety and Health Administration.

(62) "Mulch" means vegetation residues or other suitable materials that aid in soil stabilization and soil moisture conservation, thus providing micro-climatic conditions suitable for germination and growth.

(63) "Notice of noncompliance and order for remedial measures" means a written document and order prepared by an authorized representative of the cabinet which sets forth with specificity the violations of KRS Chapter 350, 405 KAR Chapters 7 through 24, or permit conditions which the authorized representative of the cabinet determines to have occurred based upon his inspection, and the necessary remedial actions, if any, and the time schedule for completion thereof, which the authorized representative deems necessary and appropriate to correct the violations.

(64) "Noxious plants" means species classified under Kentucky law as noxious plants.

(65) "Operations" is defined in KRS 350.010.

(66) "Operator" is defined in KRS 350.010.

(67) "Order for cessation and immediate compliance" means a written document and order issued by an authorized representative of the cabinet when:

(a) A person to whom a notice of noncompliance and order for remedial measures was issued has failed, as determined by a cabinet inspection, to comply with the terms of the notice of noncompliance and order for remedial measures within the time limits set therein, or as subsequently extended; or

(b) The authorized representative finds, on the basis of a cabinet inspection, any condition or practice or any violation of KRS Chapter 350, 405 KAR Chapters 7 through 24, or any condition of a permit or exploration approval which:

1. Creates an imminent danger to the health or safety of the public; or

2. Is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resources.

(68) "OSM" means Office of Surface Mining Reclamation and Enforcement, United States Department of the Interior.

(69) "Outslope" means the face of the spoil or embankment sloping downward from the highest elevation to the toe.

(70) "Overburden" is defined in KRS 350.010.

(71) "Pastureland" means land used primarily for the long-term production of adapted, domesticated forage plants to be grazed by livestock or occasionally cut and cured for livestock feed. Land used for facilities in support of pastureland which is adjacent to or an integral part of these operations is also included.

(72) "Perennial stream" means a stream or that part of a stream that flows continuously during all of the calendar year as a result of groundwater discharge or surface runoff. The term does not include "intermittent stream" or "ephemeral stream."

(73) "Performance bond" means a surety bond, a collateral bond, or a combination thereof, or bonds filed pursuant to the provisions of the Kentucky Bond Pool Program (405 KAR 10:200, KRS 350.595, and KRS 350.700 through 350.755), by which a permittee assures faithful performance of all the requirements of KRS Chapter 350, 405 KAR Chapters 7 through 24, and the requirements of the permit and reclamation plan.

(74) "Permanent diversion" means a diversion remaining after surface coal mining and reclamation operations are completed which has been approved for retention by the cabinet and other appropriate Kentucky and federal agencies.

(75) "Permit" means written approval issued by the cabinet to conduct surface coal mining and reclamation operations.

(76) "Permit area" means the area of land and water within boundaries designated in the approved permit application, which shall include, at a minimum, all areas which are or will be affected by surface coal mining and reclamation operations under that permit.

(77) "Permittee" means an operator or a person holding or required by KRS Chapter 350 or 405 KAR Chapters 7 through 24 to hold a permit to conduct surface coal mining and reclamation operations during the permit term and until all reclamation obligations imposed by KRS Chapter 350 and 405 KAR Chapters 7 through 24 are satisfied.

(78) "Person" is defined in KRS 350.010.

(79) "Precipitation event" means a quantity of water resulting from drizzle, rain, snowmelt, sleet, or hail in a specified period of time.

(80) "Previously mined area" means land that was disturbed or affected by coal mining operations conducted prior to August 3, 1977, that has not been reclaimed to the standards of this title, and for which there is no continuing responsibility to reclaim to the standards of this title.

(81) "Prime farmland" means those lands which are defined by the Secretary of Agriculture in 7 CFR 657 and which have been "historically used for cropland" as that phrase is defined above.

(82) "Probable hydrologic consequences" means the projected results of proposed surface coal

mining and reclamation operations which may reasonably be expected to change the quantity or quality of the surface and groundwater; the surface or groundwater flow, timing, and pattern; and the stream channel conditions on the permit area and adjacent areas.

(83) "Public building" means any structure that is owned or leased, and principally used by a governmental agency for public business or meetings.

(84) "Public road" means any publicly owned thoroughfare for the passage of vehicles.

(85) "RAM" means Reclamation Advisory Memorandum.

(86) "Reasonably available spoil" means spoil and suitable coal mine waste material generated by the remining operation and other spoil or suitable coal mine waste material located in the permit area that is accessible and available for use and that when rehandled will not cause a hazard to public safety or significant damage to the environment. For this purpose, the permit area shall include all spoil of this nature located in the immediate vicinity of the mining operation.

(87) "Recharge capacity" means the ability of the soils and underlying materials to allow precipitation and runoff to infiltrate and reach the zone of saturation.

(88) "Reclamation" is defined in KRS 350.010.

(89) "Recreation land" means land used for public or private leisure-time use, including developed recreation facilities such as parks, camps, and amusement areas, as well as areas for less intensive uses such as hiking, canoeing, and other undeveloped recreational uses.

(90) "Reference area" means a land unit maintained under appropriate management for the purpose of measuring vegetative ground cover, productivity, and plant species diversity that are produced naturally or by crop production methods approved by the cabinet.

(91) "Refuse pile" means a surface deposit of coal mine waste that is not retained by an impounding structure and does not impound water, slurry, or other liquid or semiliquid material.

(92) "Remining" means conducting surface coal mining and reclamation operations which affect previously mined areas.

(93) "Residential land" means tracts employed for single and multiple-family housing, mobile home parks, and other residential lodgings. Also included is land used for support facilities such as vehicle parking, open space, and other facilities which directly relate to the residential use of the land.

(94) "Road" means a surface right-of-way for purposes of travel by land vehicles used in coal exploration or surface coal mining and reclamation operations. A road consists of the entire area within the right-of-way, including the roadbed, shoulders, parking and side area, approaches, structures, ditches, surface, and contiguous appendages necessary for the total structure. The term includes access and haul roads constructed, used, reconstructed, improved, or maintained for use in coal exploration or surface coal mining and reclamation operations, including use by coal hauling vehicles leading to transfer, processing, or storage areas. The term does not include pioneer or construction roadways used for part of the road construction procedure and promptly replaced by a road pursuant to 405 KAR Chapters 16 and 18 located in the identical right-of-way as the pioneer or construction roadway. The term also excludes any roadway within the immediate mining pit area.

(95) "Safety factor" means the ratio of the available shear strength to the developed shear stress, or the ratio of the sum of the resisting forces to the sum of the loading or driving forces, as determined by accepted engineering practices.

(96) "SCS" means Soil Conservation Service.

(97) "Sedimentation pond" means a primary sediment control structure designed, constructed, and maintained in accordance with 405 KAR 16:090 or 405 KAR 18:090 and including but not limited to a barrier, dam, or excavated depression which slows down water runoff to allow suspended solids to settle out. A sedimentation pond shall not include secondary sedimentation control structures, such as straw dikes, riprap, check dams, mulches, dugouts, and other measures that reduce overland flow velocity, reduce runoff volume, or trap sediment, to the extent that the secondary sedimentation structures drain to a sedimentation pond.

(98) "Significant, imminent environmental harm" means an adverse impact on land, air, or water resources which resources include, but are not limited to, plant and animal life as further defined in this subsection.

(a) An environmental harm is imminent, if a condition, practice, or violation exists which:

1. Is causing environmental harm; or

2. May reasonably be expected to cause environmental harm at any time before the end of the reasonable abatement time that would be set by the cabinet's authorized agents pursuant to the provisions of KRS Chapter 350.

(b) An environmental harm is significant if that harm is appreciable and not immediately reparable.

(99) "Slope" means average inclination of a surface, measured from the horizontal, generally expressed as the ratio of a unit of vertical distance to a given number of units of horizontal distance (e.g., 1v:5h). It may also be expressed as a percent or in degrees.

(100) "Slurry mining" means the hydraulic breakdown of subsurface coal with drill-hole equipment, and the eduction of the resulting slurry to the surface for processing.

(101) "SMCRA" means Surface Mining Control and Reclamation Act of 1977 (Public Law 95-87), as amended.

(102) "Soil horizons" means contrasting layers of soil parallel or nearly parallel to the land surface. Soil horizons are differentiated on the basis of field characteristics and laboratory data. The four (4) master soil horizons are:

(a) "A horizon." The uppermost mineral layer, often called the surface soil. It is the part of the soil in which organic matter is most abundant, and leaching of soluble or suspended particles is typically the greatest.

(b) "E horizon." The layer commonly near the surface below an A horizon and above a B horizon. An E horizon is most commonly differentiated from an overlying A horizon by lighter color and generally has measurably less organic matter than the A horizon. An E horizon is most commonly differentiated from an underlying B horizon in the same sequum by color of higher value or lower chroma, by coarser texture, or by a combination of these properties.

(c) "B horizon." The layer that typically is

immediately beneath the E horizon and often called the subsoil. This middle layer commonly contains more clay, iron, or aluminum than the A, E, or C horizons.

(d) "C horizon." The deepest layer of soil profile. It consists of loose material or weathered rock that is relatively unaffected by biologic activity.

(103) "Spoil" means overburden and other materials, excluding topsoil, coal mine waste, and mined coal, that are excavated during surface coal mining and reclamation operations.

(104) "Stabilize" means to control movement of soil, spoil piles, or areas of disturbed earth by modifying the geometry of the mass, or by otherwise modifying physical or chemical properties, such as by providing a protective surface coating.

(105) "Steep slope" means any slope of more than twenty (20) degrees.

(106) "Stream or reach of stream with valuable environmental resources" means one that:

(a) Contains, or could reasonably be expected to contain, listed or proposed endangered or threatened species of plants or animals or their critical habitats listed by the Secretary of the Interior under the Endangered Species Act of 1973, as amended (16 USC Sec. 1531 et seq.), or those species or habitats protected by similar state statutes;

(b) Is an intermittent or perennial stream that supports a high level of habitat development and quality as reflected by the integrity of fish or macroinvertebrate populations, as set forth in TRM #20; or

(c) Is an important stream.

(107) "Surety bond" means an indemnity agreement in a sum certain, payable to the cabinet and executed by the permittee, which is supported by the performance guarantee of a corporation licensed to do business as a surety in the Commonwealth of Kentucky.

(108) "Surface blasting operations" means the on-site storage, transportation, and use of explosives in association with coal exploration operations, surface mining activities, and surface disturbances of underground mining activities. The term shall be interpreted broadly and shall encompass activities including, but not limited to, the design of individual blasts, the implementation of blast designs, the initiation of blasts, the monitoring of airblast and ground vibration, and the use of protective measures such as access control and warning and all-clear signals.

(109) "Surface coal mining and reclamation operations" is defined in KRS 350.010.

(110) "Surface coal mining operations" is defined in KRS 350.010.

(111) "Surface mining activities" means those surface coal mining and reclamation operations incident to the extraction of coal from the earth by removing the materials over a coal seam before recovering the coal, by auger coal mining, by extraction of coal from coal refuse piles, or by recovery of coal from slurry ponds.

(112) "Suspended solids" or nonfilterable residue, expressed as milligrams per liter, means organic or inorganic materials carried or held in suspension in water which are retained by a standard glass fiber filter in the procedure outlined by the U.S. EPA's regulations for waste water and analyses (40 CFR 136).

(113) "Temporary diversion" means a diversion of a stream or overland flow which is used during coal exploration or surface coal mining and reclamation operations and not approved by the cabinet to remain after reclamation as part of the approved postmining land use.

(114) "Ton" means 2000 pounds avoirdupois (.90718 metric ton).

(115) "Topsoil" means the A and E soil horizon layers of the four (4) master soil horizons.

(116) "Toxic-forming materials" means earth materials or wastes which, if acted upon by air, water, weathering, or microbiological processes, are likely to produce chemical conditions in soils or water that are detrimental to biota or uses of water.

(117) "Toxic mine drainage" means water that is discharged from active or abandoned mines or other areas affected by coal exploration or surface coal mining and reclamation operations, which contains a substance that through chemical action is likely to kill, injure, or impair biota commonly present in the area that might be exposed to it.

(118) "Transfer, assignment, or sale of permit rights" means a change in ownership or other effective control over the right to conduct surface coal mining operations under a permit issued by the cabinet.

(119) "TRM" means Technical Reclamation Memorandum.

(120) "Underground development waste" means waste coal, shale, claystone, siltstone, sandstone, limestone, or similar materials that are extracted from underground workings in connection with underground mining activities.

(121) "Underground mining activities" means a combination of:

(a) Surface operations incident to underground extraction of coal or in situ processing, including construction, use, maintenance, and reclamation of roads, aboveground repair areas, storage areas, processing areas, and shipping areas; areas upon which are sited support facilities including hoist and ventilating ducts; areas utilized for the disposal and storage of waste; and areas on which materials incident to underground mining operations are placed; and

(b) Underground operations such as underground construction, operation, and reclamation of shafts, adits, underground support facilities; in situ processing; and underground mining, hauling, storage, and blasting.

(122) "Undeveloped land or no current use or land management" means land that is undeveloped or, if previously developed, land that has been allowed to return naturally to an undeveloped state or has been allowed to return to forest through natural succession.

(123) "U.S. EPA" means United States Environmental Protection Agency.

(124) "Valley fill" means a fill structure consisting of any material other than coal waste and organic material that is placed in a valley where side slopes of the existing valley measured at the steepest point are greater than twenty (20) degrees or the average slope of the profile of the valley from the toe of the fill to the top of the fill is greater than ten (10) degrees.

(125) "Water table" means the upper surface of a zone of saturation, where the body of groundwater is not confined by an overlying impermeable zone.

(126) "Water transmitting zone" means a body of consolidated or unconsolidated rocks which,

due to their greater primary or secondary permeability relative to the surrounding rocks, can reasonably be considered to function as a single hydraulic medium for the flow of groundwater.

(127) "Wetland" means land that has a predominance of hydric soils and that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions.

(a) "Hydric soil" means soil that, in its undrained condition, is saturated, flooded, or ponded long enough during a growing season to develop an anaerobic condition that supports the growth and regeneration of hydrophytic vegetation.

(b) "Hydrophytic vegetation" means a plant growing in:

1. Water; or

2. A substrate that is at least periodically deficient in oxygen during a growing season as a result of excessive water content.

FRANK DICKERSON, Commissioner
JOHN F. NICHOLS, Jr., Secretary

APPROVED BY AGENCY: November 25, 1991

FILED WITH LRC: November 25, 1991 at 2 p.m.

PUBLIC HEARING: A public hearing on this proposed amendment has been scheduled for 9 a.m. (EST) Thursday, January 30, 1992 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 January 25, 1992. The scheduled hearing will be cancelled if the contact person has not received any written notice of intent to testify by January 25, 1992, 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 amendment 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 amendment but does not wish to testify at the hearing may submit written comments on the proposed amendment at any time before 4:30 p.m. (EST) on January 30, 1992. 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, KY 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact: Jim Villines

(1) Type and number of entities affected: This regulation applies to surface coal mining and reclamation operations. This regulation also affects landowners of mined land, adjacent landowners, and the general public in the coal field regions that may be impacted by mining operations. There are approximately 3800 surface coal mining operations in this state.

(a) Direct and indirect costs or savings to those affected:

1. First year: Presently, one regulation (405 KAR 7:020) near the beginning of the series of regulations (405 KAR Chapters 7-24) relating to surface coal mining operations contains nearly all of the definitions applicable to that series of related regulations. A few definitions are located in individual regulations. However, the surface coal mining regulations span eight related chapters of Title 405. It is the opinion of the Administrative Regulations Review Subcommittee that KRS Chapter 13A requires that each chapter of a title must contain any necessary definitions of terms used in that chapter; and that this must be accomplished either by placing the definitions in the first section of each regulation that uses the defined terms, or by placing all definitions in a separate definitions regulation at the beginning of the chapter. Therefore, this regulation is being promulgated to define the terms used in 405 KAR Chapter 16. For the most part, there are no substantive changes since these definitions are simply being transferred, with a few minor changes, from 405 KAR 7:020 and other existing regulations to this new regulation. Each term defined in KRS Chapter 350 has had its regulatory definition deleted and a notation inserted that the term is defined in KRS Chapter 350.010. Therefore there are no direct or indirect costs or savings to those affected due to existing definitions being placed in this regulation. There are a few new definitions and amendments to a few of the existing definitions, the most significant of these being "stream or reach of stream with valuable environmental resources" and "important stream". These terms are used in the cabinet's new fish and wildlife protection program embodied in currently proposed 405 KAR 8:030, 8:040, 16:180, and 18:180. These definitions were included in proposed 405 KAR 16:180 and 18:180 when those regulations were filed with LRC on July 15, 1991. The effect of these definitions is to identify those streams which will receive specific protective measures established in the above mentioned proposed regulations. For a full discussion of the impacts of the proposed fish and wildlife protection program, see the Regulatory Impact Analyses filed with the above mentioned proposed regulations. There will be some additional costs to the industry as a result of these new requirements. The definition of "previously mined area" is being amended to comply with a federal court ruling. The definition of "industrial/commercial lands" is being amended to comply with the federal regulations and because OSM has notified the state that the Kentucky definition is deficient. These changes will not have broad impact, but might increase costs on a few operations. There are several other changes that are of less significance that should not impact costs to those affected.

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: No direct costs or savings to the cabinet will result from the definitions in this regulation. However, additional indirect administrative costs to the cabinet will result from having a separate definitions regulation in each chapter rather than having a single definitions regulation for the entire series of related regulations. Because 405 KAR Chapters 7–24 constitute a single regulatory program and contain related subject matter, many defined terms are used in more than one chapter. Thus, when it becomes necessary in the future to add, modify or delete a definition, as many as eight regulations must be amended to make that change. This will increase the time and effort associated with preparing amended regulations and associated documents for the promulgation process. Printing and mailing costs also will increase due to the substantial increase in the number of pages of these regulations.
2. Continuing costs or savings: Same as first year.
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: See above discussion in (a).
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: This alternative was selected by agreement with the Administrative Regulation Review Subcommittee. The only other alternative available is to place the definitions in the first section of each regulation in which the defined terms are used. That alternative was rejected because it would have been more duplicative and burdensome on the cabinet than the alternative selected.
(5) Identify any statute, administrative regulation, or governmental policy which may be in conflict, overlapping or duplication: None
(a) Necessity of proposed regulation if in conflict: Not applicable.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.
(6) Any additional information or comments: None
TIERING: Was tiering applied? No. Tiering is not applicable to this proposed administrative regulation because, under the federal and Kentucky surface mining laws and regulations, these requirements must apply equally to all permittees under 405 KAR Chapters 7–24. A fiscal note is not required for this regulation because it will have no impact on local government.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 7 CFR Part 657, 30 CFR Parts 700.5, 701.5, 707.5, 730–733, 735, 761.5, 762.5, 773.5, 800.5, 843.5, 917; 30 USC 1253, 1255, 1291.
2. State compliance standards. This regulation defines terms used in 405 KAR Chapter 16. For the most part, these definitions are the same as the existing definitions in 405 KAR 7:020 and other existing regulations, with minor changes, and are being moved to this chapter by agreement with the Administrative Regulation Review Subcommittee to comply with KRS Chapter 13A. There are a few new definitions and amendments to a few of the existing definitions, the most significant of these being "stream or reach of stream with valuable environmental resources" and "important stream". These terms are used in the cabinet's new fish and wildlife protection program embodied in currently proposed 405 KAR 8:030, 8:040, 16:180, and 18:180. These definitions were included in proposed 405 KAR 16:180 and 18:180 when those regulations were filed with LRC on July 15, 1991. The effect of these definitions is to identify those streams which will receive specific protective measures established in the above mentioned proposed regulations. These definitions have been designed specifically for Kentucky. There are several other new and amended definitions as well.
3. Minimum or uniform standards contained in the federal mandate. The federal regulations provide definitions of terms used in the federal surface mining regulations which, for the most part, are substantially the same or similar to those proposed in the state regulation. The definitions of "stream or reach of stream with valuable environmental resources" and "important stream" are not in the federal regulations. However the federal regulation does require each state to establish the detailed requirements of its fish and wildlife program within the general parameters set forth in the federal regulation, and these definitions are designed to meet that federal mandate.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

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

405 KAR 18:001. Definitions for 405 KAR Chapter 18.

RELATES TO: KRS Chapter 350, 7 CFR Part 657, 30 CFR Parts 700.5, 701.5, 707.5, 730–733, 735, 761.5, 762.5, 773.5, 800.5, 843.5, 917, 30 USC 1253, 1255, 1291
STATUTORY AUTHORITY: KRS Chapter 13A, 350.028, 350.465, 30 CFR Parts 700.5, 701.5, 707.5, 730–733, 735, 761.5, 762.5, 773.5, 800.5, 843.5, 917, 30 USC 1253, 1255, 1291
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations pertaining to surface coal mining and reclamation operations under the permanent regulatory program. This regulation provides for the defining of certain essential terms used in 405 KAR Chapter 18.

Section 1. Definitions. (1) "Acid drainage" means water with a pH of less than six (6.0) and in which total acidity exceeds total alkalinity, discharged from an active, inactive, or abandoned surface coal mine and reclamation operation or from an area affected by surface coal mining and reclamation operations.
(2) "Acid-forming materials" means earth

materials that contain sulfide minerals or other materials which, if exposed to air, water, or weathering processes, form acids that may create acid drainage.

(3) "Adjacent area" means land located outside the affected area or permit area, depending on the context in which "adjacent area" is used, where air, surface or groundwater, fish, wildlife, vegetation or other resources protected by KRS Chapter 350 may be adversely impacted by surface coal mining and reclamation operations.

(4) "Affected area" means any land or water area which is used to facilitate, or is physically altered by, surface coal mining and reclamation operations. The affected area includes the disturbed area; any area upon which surface coal mining and reclamation operations are conducted; any adjacent lands the use of which is incidental to surface coal mining and reclamation operations; all areas covered by new or existing roads used to gain access to, or for hauling coal to or from, surface coal mining and reclamation operations, except as provided in this definition; any area covered by surface excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, shipping areas; any areas upon which are sited structures, facilities, or other property or material on the surface resulting from, or incident to, surface coal mining and reclamation operations; and the area located above underground workings associated with underground mining activities, auger mining, or in situ mining. The affected area shall include every road used for the purposes of access to, or for hauling coal to or from, surface coal mining and reclamation operations, unless the road:

(a) Was designated as a public road pursuant to the laws of the jurisdiction in which it is located;

(b) Is maintained with public funds, and constructed in a manner similar to other public roads of the same classification within the jurisdiction; and

(c) There is substantial (more than incidental) public use.

(5) "Applicant" means any person(s) seeking a permit, permit revision, permit amendment, permit renewal, or transfer, assignment, or sale of permit rights from the cabinet to conduct surface coal mining and reclamation operations or approval to conduct coal exploration operations pursuant to KRS Chapter 350 and all applicable regulations.

(6) "Application" means the documents and other information filed with the cabinet seeking issuance of permits; revisions; amendments; renewals; and transfer, assignment or sale of permit rights for surface coal mining and reclamation operations or, if required, seeking approval for coal exploration.

(7) "Approximate original contour" is defined in KRS 350.010.

(8) "Aquifer" means a zone, stratum, or group of strata that can store and transmit water in sufficient quantities for domestic, agricultural, industrial, or other beneficial use.

(9) "Auger mining" means a method of mining coal at a cliff or highwall by drilling holes into an exposed coal seam from the highwall and transporting the coal along an auger bit to the surface and shall also include all other methods of mining in which coal is extracted from beneath the overburden by mechanical devices located at the face of the cliff or highwall and extending laterally into the coal seam, such as extended depth, secondary recovery systems.

(10) "Best technology currently available" means equipment, devices, systems, methods, or techniques which will prevent, to the extent possible, additional contributions of suspended solids to stream flow or runoff outside the permit area and minimize, to the extent possible, disturbances and adverse impacts on fish, wildlife, and related environmental values, and achieve enhancement of those resources where practicable. The term includes equipment, devices, systems, methods, or techniques which are currently available anywhere as determined by the cabinet, even if they are not in routine use. The term includes, but is not limited to, construction practices, siting requirements, vegetative selection and planting requirements, animal stocking requirements, scheduling of activities and design of sedimentation ponds in accordance with 405 KAR Chapters 16 and 18. The cabinet shall have the discretion to determine the best technology currently available on a case-by-case basis, as authorized by KRS Chapter 350 and 405 KAR Chapters 7 through 24.

(11) "Blaster" means a person who is directly responsible for surface blasting operations in surface coal mining and reclamation operations or coal exploration operations.

(12) "Bond pool" or "Kentucky Bond Pool" means the voluntary alternative bonding program established at KRS 350.700 through 350.755.

(13) "Cabinet" is defined in KRS 350.010.

(14) "CFR" means Code of Federal Regulations.

(15) "Coal" means combustible carbonaceous rock, classified as anthracite, bituminous, subbituminous, or lignite by ASTM Standard D 388-77.

(16) "Coal exploration" means the field gathering of:

(a) Surface or subsurface geologic, physical, or chemical data by mapping, trenching, drilling, geophysical, or other techniques necessary to determine the quality and quantity of overburden and coal of an area; or

(b) Environmental data to establish the conditions of an area before beginning surface coal mining and reclamation operations under the requirements of 405 KAR Chapters 7 through 24 if the activity may cause any disturbance of the land surface or may cause any appreciable effect upon land, air, water, or other environmental resources.

(17) "Coal mine waste" means coal processing waste and underground development waste.

(18) "Coal processing plant" means a facility where coal is subjected to chemical or physical processing or cleaning, concentrating, crushing, sizing, screening, or other processing or preparation including all associated support facilities including but not limited to: loading facilities; storage and stockpile facilities; sheds, shops, and other buildings; water treatment and water storage facilities; settling basins and impoundments; and coal processing and other waste disposal areas.

(19) "Coal processing waste" means materials which are separated from the product coal during the cleaning, concentrating, or other processing

or preparation of coal.

(20) "Collateral bond" means an indemnity agreement in a sum certain payable to the cabinet executed by the permittee and which is supported by the deposit with the cabinet of cash, negotiable certificates of deposit, or an irrevocable letter of credit of any bank organized and authorized to transact business in the United States.

(21) "Combustible material" means organic material that is capable of burning, either by fire or through oxidation, accompanied by the evolution of heat and a significant temperature rise.

(22) "Compaction" means increasing the density of a material by reducing the voids between the particles by mechanical effort.

(23) "Cropland" means land used for the production of adapted crops for harvest, alone or in a rotation with grasses and legumes, and includes row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar specialty crops. Land used for facilities in support of cropland farming operations which is adjacent to or an integral part of these operations is also included for purposes of land use categories.

(24) "Cumulative impact area" means the area, including the permit area, within which impacts resulting from the proposed operation may interact with the impacts of all anticipated mining on surface and groundwater systems. Anticipated mining shall include, at a minimum, the entire projected lives through bond release of:

(a) The proposed operation;

(b) All existing operations;

(c) Any operation for which a permit application has been submitted to the cabinet; and

(d) All operations required to meet diligent development requirements for leased federal coal for which there is actual mine development information available.

(25) "Day" means calendar day unless otherwise specified to be a working day.

(26) "dB" means decibels.

(27) "Department" means the Department for Surface Mining Reclamation and Enforcement.

(28) "Developed water resources land" means land used for storing water for beneficial uses such as stockponds, irrigation, fire protection, flood control, and water supply.

(29) "Disturbed area" means an area where vegetation, topsoil, or overburden is removed or upon which topsoil, spoil, coal processing waste, underground development waste, or noncoal waste is placed by surface coal mining operations. Those areas are classified as "disturbed" until reclamation is complete and the performance bond or other assurance of performance required by 405 KAR Chapter 10 is released.

(30) "Diversion" means a channel, embankment, or other manmade structure constructed to divert water from one (1) area to another.

(31) "Downslope" means the land surface below the projected outcrop of the lowest coalbed being mined along each highwall.

(32) "Durable rock" means rock that does not slake in water and that is not reasonably expected to degrade to such a size or condition as to block, cause failure of, or otherwise impair or restrict the effectiveness of the internal drainage system. The cabinet shall consider rock to be durable if it is demonstrated, to the satisfaction of the cabinet in the application, that the rock has an SDI value of ninety (90) or greater as determined by the Kentucky Department of Transportation "Method for Determination of Slake Durability Index" (Kentucky Method 64-513-79), incorporated herein by reference. This document may be obtained from the Kentucky Transportation Cabinet, Division of Materials, Wilkinson Blvd., Frankfort, KY 40601; or the Kentucky Transportation Cabinet, Division of Management Services, State Office Building, Frankfort, KY 40601. It may be reviewed, copied, 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. The cabinet may accept other test methods of demonstrating that rock is durable if it is demonstrated to the satisfaction of the cabinet that the alternative test methods yield equivalent measure of durability based upon correlation of results with Kentucky Method 64-513-79.

(33) "Embankment" means a manmade deposit of material that is raised above the natural surface of the land and used to contain, divert, or store water; to support roads or railways; or for other similar purposes.

(34) "Ephemeral stream" means a stream which flows only in direct response to precipitation in the immediate watershed or in response to the melting of a cover of snow and ice, and which has a channel bottom that is always above the local water table.

(35) "Excess spoil" means spoil disposed of in a location other than the coal extraction area, except that spoil material used to achieve the approximate original contour shall not be considered excess spoil.

(36) "Fish and wildlife land use", as used in 405 KAR 16:210 and in similar situations when referring to a premining or postmining land use, means land dedicated wholly or partially to the production, protection, or management of fish or wildlife. Areas considered as having the fish and wildlife land use are typically characterized by a diversity of habitats in which use by wildlife is the dominant characteristic, whether actively managed or not.

(37) "Forest land" means land used or managed for the long term production of wood, wood fiber, or wood derived products.

(38) "Fugitive dust" means that particulate matter which becomes airborne due to wind erosion from exposed surfaces.

(39) "Ground cover" means the area of ground covered by the combined aerial parts of vegetation and litter produced and distributed naturally and seasonally on site, expressed as a percentage of the total area of measurement.

(40) "Groundwater" means subsurface water that fills available openings in rock or soil materials to the extent that they are considered water saturated.

(41) "Growing season" means the period during a one (1) year cycle, from the last killing frost in the spring to the first killing frost in the fall, in which climatic conditions are favorable for plant growth. In Kentucky, this period normally extends from mid-April to mid-October.

(42) "Head-of-hollow fill" means a fill structure consisting of any material, other than coal processing waste and organic material,

placed in the uppermost reaches of a hollow near the approximate elevation of the ridgeline, where there is no significant natural drainage area above the fill, and where the side slopes of the existing hollow measured at the steepest point are greater than twenty (20) degrees or the average slope of the profile of the hollow from the toe of the fill to the top of the fill is greater than ten (10) degrees.

(43) "Higher or better uses" means postmining land uses that have a higher economic value or nonmonetary benefit to the landowner or the community than the premining land uses.

(44) "Highwall" means the face of exposed overburden and coal in an open cut of a surface mining activity or for entry to underground mining activities.

(45) "Highwall remnant" means that portion of highwall that remains after backfilling and grading of a remining permit area.

(46) "Historically used for cropland."

(a) "Historically used for cropland" means that lands have been used for cropland for any five (5) years or more out of the ten (10) years immediately preceding:

1. The application; or

2. The acquisition of the land for the purpose of conducting surface coal mining and reclamation operations.

(b) Lands meeting either paragraph (a)1 or 2 of this subsection shall be considered "historically used for cropland."

(c) In addition to the lands covered by paragraph (a) of this subsection, other lands shall be considered "historically used for cropland" as described below:

1. Lands that would likely have been used as cropland for any five (5) out of the last ten (10) years immediately preceding the acquisition or the application but for some fact of ownership or control of the land unrelated to the productivity of the land; and

2. Lands that the cabinet determines, on the basis of additional cropland history of the surrounding lands and the lands under consideration, are clearly cropland but fall outside the specific five (5) years in ten (10) criterion.

(d) Acquisition includes purchase, lease, or option of the land for the purpose of conducting or allowing through resale, lease or option, the conduct of surface coal mining and reclamation operations.

(47) "Hydrologic balance" means the relationship between the quality and quantity of water inflow to, water outflow from, and water storage in a hydrologic unit such as a drainage basin, aquifer, soil zone, lake, or reservoir. It encompasses the dynamic relationship between precipitation, runoff, evaporation, and changes in ground and surface water storage.

(48) "Hz" means hertz.

(49) "Important stream" means one that:

(a) Is classified as an outstanding resource water pursuant to 401 KAR 5:026 or 401 KAR 5:031;

(b) Based on the Kentucky rivers assessment, is a Class 1, 2, or 3 stream in the water quality category or is a Class 1 or 2 stream in the fish resource category. Class 3 streams in the fish resource category may be determined case-by-case to be important streams by the cabinet. These streams that occur in the coal fields are listed in TRM #20, "Methodologies for the Evaluation, Protection, and Enhancement of Fish and Wildlife Resources for Coal Mining and Reclamation Operations", Kentucky Department for Fish and Wildlife Resources and Kentucky Department for Surface Mining Reclamation and Enforcement, September 13, 1991. This document is incorporated by reference, only for purposes of the definitions in this chapter. It may be reviewed, copied, 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.; or

(c) Is otherwise considered to be an important stream by the cabinet, including but not limited to a stream contained within, immediately upstream of, or bordering a publicly-owned wildlife management area or a nature preserve dedicated pursuant to KRS 146.410 et seq.

(50) "Impoundment" means a closed basin, naturally formed or artificially built, which is dammed or excavated for the retention of water, sediment, or waste.

(51) "Industrial/commercial lands" means lands used for:

(a) Extraction or transformation of materials for fabrication of products, wholesaling of products, or long-term storage of products, and heavy and light manufacturing facilities. Land used for facilities in support of these operations which is adjacent to or an integral part of that operation is also included.

(b) Retail or trade of goods or services, including hotels, motels, stores, restaurants, and other commercial establishments. Land used for facilities in support of commercial operations which is adjacent to or an integral part of these operations is also included.

(52) "In situ processes" means activities conducted on the surface or underground in connection with in-place distillation, retorting, leaching, or other chemical or physical processing of coal. The term includes, but is not limited to, in situ gasification, in situ leaching, slurry mining, solution mining, borehole mining, and fluid recovery mining.

(53) "Intermittent stream" means:

(a) A stream or reach of stream that drains a watershed of one (1) square mile or more but does not flow continuously during the calendar year; or

(b) A stream or reach of a stream that is below the local water table for at least some part of the year, and obtains its flow from both surface runoff and groundwater discharge.

(54) "KAR" means Kentucky administrative regulations.

(55) "KPDES" means Kentucky Pollutant Discharge Elimination System.

(56) "KRS" means Kentucky Revised Statutes.

(57) "Land use" means specific functions, uses, or management-related activities of an area, and may be identified in combination when joint or seasonal uses occur and may include land used for support facilities that are an integral part of the use. In some instances, a specific use can be identified without active management.

(58) "Modified highwall" means either:

(a) The highwall resulting from remining where the preexisting highwall face is removed; or

(b) The highwall resulting from remining where the preexisting highwall is vertically enlarged.

(59) "Monitoring" means the collection of environmental data by either continuous or periodic sampling methods.

(60) "MRP" means mining and reclamation plan.

(61) "MSHA" means Mine Safety and Health

Administration.

(62) "Mulch" means vegetation residues or other suitable materials that aid in soil stabilization and soil moisture conservation, thus providing micro-climatic conditions suitable for germination and growth.

(63) "Noxious plants" means species classified under Kentucky law as noxious plants.

(64) "Operations" is defined in KRS 350.010.

(65) "Operator" is defined in KRS 350.010.

(66) "OSM" means Office of Surface Mining Reclamation and Enforcement, United States Department of the Interior.

(67) "Outslope" means the face of the spoil or embankment sloping downward from the highest elevation to the toe.

(68) "Overburden" is defined in KRS 350.010.

(69) "Pastureland" means land used primarily for the long-term production of adapted, domesticated forage plants to be grazed by livestock or occasionally cut and cured for livestock feed. Land used for facilities in support of pastureland which is adjacent to or an integral part of these operations is also included.

(70) "Perennial stream" means a stream or that part of a stream that flows continuously during all of the calendar year as a result of groundwater discharge or surface runoff. The term does not include "intermittent stream" or "ephemeral stream."

(71) "Performance bond" means a surety bond, a collateral bond, or a combination thereof, or bonds filed pursuant to the provisions of the Kentucky Bond Pool Program (405 KAR 10:200, KRS 350.595, and KRS 350.700 through 350.755), by which a permittee assures faithful performance of all the requirements of KRS Chapter 350, 405 KAR Chapters 7 through 24, and the requirements of the permit and reclamation plan.

(72) "Permanent diversion" means a diversion remaining after surface coal mining and reclamation operations are completed which has been approved for retention by the cabinet and other appropriate Kentucky and federal agencies.

(73) "Permit" means written approval issued by the cabinet to conduct surface coal mining and reclamation operations.

(74) "Permit area" means the area of land and water within boundaries designated in the approved permit application, which shall include, at a minimum, all areas which are or will be affected by surface coal mining and reclamation operations under that permit.

(75) "Permittee" means an operator or a person holding or required by KRS Chapter 350 or 405 KAR Chapters 7 through 24 to hold a permit to conduct surface coal mining and reclamation operations during the permit term and until all reclamation obligations imposed by KRS Chapter 350 and 405 KAR Chapters 7 through 24 are satisfied.

(76) "Person" is defined in KRS 350.010.

(77) "Precipitation event" means a quantity of water resulting from drizzle, rain, snowmelt, sleet, or hail in a specified period of time.

(78) "Previously mined area" means land that was disturbed or affected by coal mining operations conducted prior to August 3, 1977, that has not been reclaimed to the standards of this title, and for which there is no continuing responsibility to reclaim to the standards of this title.

(79) "Prime farmland" means those lands which are defined by the Secretary of Agriculture in 7 CFR 657 and which have been "historically used for cropland" as that phrase is defined above.

(80) "Probable hydrologic consequences" means the projected results of proposed surface coal mining and reclamation operations which may reasonably be expected to change the quantity or quality of the surface and groundwater; the surface or groundwater flow, timing, and pattern; and the stream channel conditions on the permit area and adjacent areas.

(81) "Public building" means any structure that is owned or leased, and principally used by a governmental agency for public business or meetings.

(82) "Public road" means any publicly owned thoroughfare for the passage of vehicles.

(83) "RAM" means Reclamation Advisory Memorandum.

(84) "Reasonably available spoil" means spoil and suitable coal mine waste material generated by the remining operation and other spoil or suitable coal mine waste material located in the permit area that is accessible and available for use and that when rehandled will not cause a hazard to public safety or significant damage to the environment. For this purpose, the permit area shall include all spoil of this nature located in the immediate vicinity of the mining operation.

(85) "Reclamation" is defined in KRS 350.010.

(86) "Recreation land" means land used for public or private leisure-time use, including developed recreation facilities such as parks, camps, and amusement areas, as well as areas for less intensive uses such as hiking, canoeing, and other undeveloped recreational uses.

(87) "Reference area" means a land unit maintained under appropriate management for the purpose of measuring vegetative ground cover, productivity, and plant species diversity that are produced naturally or by crop production methods approved by the cabinet.

(88) "Refuse pile" means a surface deposit of coal mine waste that is not retained by an impounding structure and does not impound water, slurry, or other liquid or semiliquid material.

(89) "Remining" means conducting surface coal mining and reclamation operations which affect previously mined areas.

(90) "Residential land" means tracts employed for single and multiple-family housing, mobile home parks, and other residential lodgings. Also included is land used for support facilities such as vehicle parking, open space, and other facilities which directly relate to the residential use of the land.

(91) "Road" means a surface right-of-way for purposes of travel by land vehicles used in coal exploration or surface coal mining and reclamation operations. A road consists of the entire area within the right-of-way, including the roadbed, shoulders, parking and side area, approaches, structures, ditches, surface, and contiguous appendages necessary for the total structure. The term includes access and haul roads constructed, used, reconstructed, improved, or maintained for use in coal exploration or surface coal mining and reclamation operations, including use by coal hauling vehicles leading to transfer, processing, or storage areas. The term does not include pioneer or construction roadways used for part of the road construction procedure and promptly replaced by a road pursuant to 405 KAR Chapters 16 and 18 located in the identical

right-of-way as the pioneer or construction roadway. The term also excludes any roadway within the immediate mining pit area.

(92) "Safety factor" means the ratio of the available shear strength to the developed shear stress, or the ratio of the sum of the resisting forces to the sum of the loading or driving forces, as determined by accepted engineering practices.

(93) "SCS" means Soil Conservation Service.

(94) "Sedimentation pond" means a primary sediment control structure designed, constructed, and maintained in accordance with 405 KAR 16:090 or 405 KAR 18:090 and including but not limited to a barrier, dam, or excavated depression which slows down water runoff to allow suspended solids to settle out. A sedimentation pond shall not include secondary sedimentation control structures, such as straw dikes, riprap, check dams, mulches, dugouts, and other measures that reduce overland flow velocity, reduce runoff volume, or trap sediment, to the extent that the secondary sedimentation structures drain to a sedimentation pond.

(95) "Slope" means average inclination of a surface, measured from the horizontal, generally expressed as the ratio of a unit of vertical distance to a given number of units of horizontal distance (e.g., 1v:5h). It may also be expressed as a percent or in degrees.

(96) "Slurry mining" means the hydraulic breakdown of subsurface coal with drill-hole equipment, and the eduction of the resulting slurry to the surface for processing.

(97) "SMCRA" means Surface Mining Control and Reclamation Act of 1977 (Public Law 95-87), as amended.

(98) "Soil horizons" means contrasting layers of soil parallel or nearly parallel to the land surface. Soil horizons are differentiated on the basis of field characteristics and laboratory data. The four (4) master soil horizons are:

(a) "A horizon." The uppermost mineral layer, often called the surface soil. It is the part of the soil in which organic matter is most abundant, and leaching of soluble or suspended particles is typically the greatest.

(b) "E horizon." The layer commonly near the surface below an A horizon and above a B horizon. An E horizon is most commonly differentiated from an overlying A horizon by lighter color and generally has measurably less organic matter than the A horizon. An E horizon is most commonly differentiated from an underlying B horizon in the same sequum by color of higher value or lower chroma, by coarser texture, or by a combination of these properties.

(c) "B horizon." The layer that typically is immediately beneath the E horizon and often called the subsoil. This middle layer commonly contains more clay, iron, or aluminum than the A, E, or C horizons.

(d) "C horizon." The deepest layer of soil profile. It consists of loose material or weathered rock that is relatively unaffected by biologic activity.

(99) "Spoil" means overburden and other materials, excluding topsoil, coal mine waste, and mined coal, that are excavated during surface coal mining and reclamation operations.

(100) "Stabilize" means to control movement of soil, spoil piles, or areas of disturbed earth by modifying the geometry of the mass, or by otherwise modifying physical or chemical properties, such as by providing a protective surface coating.

(101) "Steep slope" means any slope of more than twenty (20) degrees.

(102) "Stream or reach of stream with valuable environmental resources" means one that:

(a) Contains, or could reasonably be expected to contain, listed or proposed endangered or threatened species of plants or animals or their critical habitats listed by the Secretary of the Interior under the Endangered Species Act of 1973, as amended (16 USC Sec. 1531 et seq.), or those species or habitats protected by similar state statutes;

(b) Is an intermittent or perennial stream that supports a high level of habitat development and quality as reflected by the integrity of fish or macroinvertebrate populations, as set forth in TRM #20; or

(c) Is an important stream.

(103) "Surety bond" means an indemnity agreement in a sum certain, payable to the cabinet and executed by the permittee, which is supported by the performance guarantee of a corporation licensed to do business as a surety in the Commonwealth of Kentucky.

(104) "Surface blasting operations" means the on-site storage, transportation, and use of explosives in association with coal exploration operations, surface mining activities, and surface disturbances of underground mining activities. The term shall be interpreted broadly and shall encompass activities including, but not limited to, the design of individual blasts, the implementation of blast designs, the initiation of blasts, the monitoring of airblast and ground vibration, and the use of protective measures such as access control and warning and all-clear signals.

(105) "Surface coal mining and reclamation operations" is defined in KRS 350.010.

(106) "Surface coal mining operations" is defined in KRS 350.010.

(107) "Surface mining activities" means those surface coal mining and reclamation operations incident to the extraction of coal from the earth by removing the materials over a coal seam before recovering the coal, by auger coal mining, by extraction of coal from coal refuse piles, or by recovery of coal from slurry ponds.

(108) "Suspended solids" or nonfilterable residue, expressed as milligrams per liter, means organic or inorganic materials carried or held in suspension in water which are retained by a standard glass fiber filter in the procedure outlined by the U.S. EPA's regulations for waste water and analyses (40 CFR 136).

(109) "Temporary diversion" means a diversion of a stream or overland flow which is used during coal exploration or surface coal mining and reclamation operations and not approved by the cabinet to remain after reclamation as part of the approved postmining land use.

(110) "Ton" means 2000 pounds avoirdupois (.90718 metric ton).

(111) "Topsoil" means the A and E soil horizon layers of the four (4) master soil horizons.

(112) "Toxic-forming materials" means earth materials or wastes which, if acted upon by air, water, weathering, or microbiological processes, are likely to produce chemical conditions in soils or water that are detrimental to biota or uses of water.

(113) "Toxic mine drainage" means water that is discharged from active or abandoned mines or

other areas affected by coal exploration or surface coal mining and reclamation operations, which contains a substance that through chemical action is likely to kill, injure, or impair biota commonly present in the area that might be exposed to it.

(114) "Transfer, assignment, or sale of permit rights" means a change in ownership or other effective control over the right to conduct surface coal mining operations under a permit issued by the cabinet.

(115) "TRM" means Technical Reclamation Memorandum.

(116) "Underground development waste" means waste coal, shale, claystone, siltstone, sandstone, limestone, or similar materials that are extracted from underground workings in connection with underground mining activities.

(117) "Underground mining activities" means a combination of:

(a) Surface operations incident to underground extraction of coal or in situ processing, including construction, use, maintenance, and reclamation of roads, aboveground repair areas, storage areas, processing areas, and shipping areas; areas upon which are sited support facilities including hoist and ventilating ducts; areas utilized for the disposal and storage of waste; and areas on which materials incident to underground mining operations are placed; and

(b) Underground operations such as underground construction, operation, and reclamation of shafts, adits, underground support facilities; in situ processing; and underground mining, hauling, storage, and blasting.

(118) "Undeveloped land or no current use or land management" means land that is undeveloped or, if previously developed, land that has been allowed to return naturally to an undeveloped state or has been allowed to return to forest through natural succession.

(119) "U.S. EPA" means United States Environmental Protection Agency.

(120) "Valley fill" means a fill structure consisting of any material other than coal waste and organic material that is placed in a valley where side slopes of the existing valley measured at the steepest point are greater than twenty (20) degrees or the average slope of the profile of the valley from the toe of the fill to the top of the fill is greater than ten (10) degrees.

(121) "Water table" means the upper surface of a zone of saturation, where the body of groundwater is not confined by an overlying impermeable zone.

(122) "Water transmitting zone" means a body of consolidated or unconsolidated rocks which, due to their greater primary or secondary permeability relative to the surrounding rocks, can reasonably be considered to function as a single hydraulic medium for the flow of groundwater.

(123) "Wetland" means land that has a predominance of hydric soils and that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions.

(a) "Hydric soil" means soil that, in its undrained condition, is saturated, flooded, or ponded long enough during a growing season to develop an anaerobic condition that supports the growth and regeneration of hydrophytic vegetation.

(b) "Hydrophytic vegetation" means a plant growing in:

1. Water; or

2. A substrate that is at least periodically deficient in oxygen during a growing season as a result of excessive water content.

FRANK DICKERSON, Commissioner
JOHN F. NICHOLS, JR., Secretary
APPROVED BY AGENCY: November 25, 1991
FILED WITH LRC: November 25, 1991 at 2 p.m.

PUBLIC HEARING: A public hearing on this proposed amendment has been scheduled for 9 a.m. (EST) Thursday, January 30, 1992 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 January 25, 1992. The scheduled hearing will be cancelled if the contact person has not received any written notice of intent to testify by January 25, 1992, 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 amendment 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 amendment but does not wish to testify at the hearing may submit written comments on the proposed amendment at any time before 4:30 p.m. (EST) on January 30, 1992. 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, KY 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact: Jim Villines

(1) Type and number of entities affected: This regulation applies to surface coal mining and reclamation operations. This regulation also affects landowners of mined land, adjacent landowners, and the general public in the coal field regions that may be impacted by mining operations. There are approximately 3800 surface coal mining operations in this state.

(a) Direct and indirect costs or savings to those affected:

1. First year: Presently, one regulation (405 KAR 7:020) near the beginning of the series of regulations (405 KAR Chapters 7-24) relating to surface coal mining operations contains nearly all of the definitions applicable to that series of related regulations. A few definitions are located in individual regulations. However, the

surface coal mining regulations span eight related chapters of Title 405. It is the opinion of the Administrative Regulations Review Subcommittee that KRS Chapter 13A requires that each chapter of a title must contain any necessary definitions of terms used in that chapter; and that this must be accomplished either by placing the definitions in the first section of each regulation that uses the defined terms, or by placing all definitions in a separate definitions regulation at the beginning of the chapter. Therefore, this regulation is being promulgated to define the terms used in 405 KAR Chapter 18. For the most part, there are no substantive changes since these definitions are simply being transferred, with a few minor changes, from 405 KAR 7:020 and other existing regulations to this new regulation. Each term defined in KRS Chapter 350 has had its regulatory definition deleted and a notation inserted that the term is defined in KRS Chapter 350.010. Therefore there are no direct or indirect costs or savings to those affected due to existing definitions being placed in this regulation. There are a few new definitions and amendments to a few of the existing definitions, the most significant of these being "stream or reach of stream with valuable environmental resources" and "important stream". These terms are used in the cabinet's new fish and wildlife protection program embodied in currently proposed 405 KAR 8:030, 8:040, 16:180, and 18:180. These definitions were included in proposed 405 KAR 16:180 and 18:180 when those regulations were filed with LRC on July 15, 1991. The effect of these definitions is to identify those streams which will receive specific protective measures established in the above mentioned proposed regulations. For a full discussion of the impacts of the proposed fish and wildlife protection program, see the Regulatory Impact Analyses filed with the above mentioned proposed regulations. There will be some additional costs to the industry as a result of these new requirements. The definition of "previously mined area" is being amended to comply with a federal court ruling. The definition of "industrial/commercial lands" is being amended to comply with the federal regulations and because OSM has notified the state that the Kentucky definition is deficient. These changes will not have broad impact, but might increase costs on a few operations. There are several other changes that are of less significance that should not impact costs to those affected.

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: No direct costs or savings to the cabinet will result from the definitions in this regulation. However, additional indirect administrative costs to the cabinet will result from having a separate definitions regulation in each chapter rather than having a single definitions regulation for the entire series of related regulations. Because 405 KAR Chapters 7-24 constitute a single regulatory program and contain related subject matter, many defined terms are used in more than one chapter. Thus, when it becomes necessary in the future to add, modify or delete a definition, as many as eight regulations must be amended to make that change. This will increase the time and effort associated with preparing amended regulations and associated documents for the promulgation process. Printing and mailing costs also will increase due to the substantial increase in the number of pages of these regulations.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: See above discussion in (a).

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: This alternative was selected by agreement with the Administrative Regulation Review Subcommittee. The only other alternative available is to place the definitions in the first section of each regulation in which the defined terms are used. That alternative was rejected because it would have been more duplicative and burdensome on the cabinet than the alternative selected.

(5) Identify any statute, administrative regulation, or governmental policy which may be in conflict, overlapping or duplication: None

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. Tiering is not applicable to this proposed administrative regulation because, under the federal and Kentucky surface mining laws and regulations, these requirements must apply equally to all permittees under 405 KAR Chapters 7-24.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 7 CFR Part 657, 30 CFR Parts 700.5, 701.5, 707.5, 730-733, 735, 761.5, 762.5, 773.5, 800.5, 843.5, 917; 30 USC 1253, 1255, 1291.

2. State compliance standards. This regulation defines terms used in 405 KAR Chapter 18. For the most part, these definitions are the same as the existing definitions in 405 KAR 7:020 and other existing regulations, with minor changes, and are being moved to this chapter by agreement with the Administrative Regulation Review Subcommittee to comply with KRS Chapter 13A. There are a few new definitions and amendments to a few of the existing definitions, the most significant of these being "stream or reach of stream with valuable environmental resources" and "important stream". These terms are used in the cabinet's new fish and wildlife protection program embodied in currently proposed 405 KAR 8:030, 8:040, 16:180, and 18:180. These definitions were included in proposed 405 KAR 16:180 and 18:180 when those regulations were filed with LRC on July 15, 1991. The effect of these definitions is to identify those streams which will receive specific protective measures established in the above mentioned proposed regulations. These definitions have been designed specifically for Kentucky. There are several other new and amended definitions as

well.

3. Minimum or uniform standards contained in the federal mandate. The federal regulations provide definitions of terms used in the federal surface mining regulations which, for the most part, are substantially the same or similar to those proposed in the state regulation. The definitions of "stream or reach of stream with valuable environmental resources" and "important stream" are not in the federal regulations. However the federal regulation does require each state to establish the detailed requirements of its fish and wildlife program within the general parameters set forth in the federal regulation, and these definitions are designed to meet that federal mandate.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

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

405 KAR 20:001. Definitions for 405 KAR Chapter 20.

RELATES TO: KRS Chapter 350, 7 CFR Part 657, 30 CFR Parts 700.5, 701.5, 707.5, 730-733, 735, 761.5, 762.5, 773.5, 800.5, 843.5, 917, 30 USC 1253, 1255, 1291

STATUTORY AUTHORITY: KRS Chapter 13A, 350.028, 350.465, 30 CFR Parts 700.5, 701.5, 707.5, 730-733, 735, 761.5, 762.5, 773.5, 800.5, 843.5, 917, 30 USC 1253, 1255, 1291

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations pertaining to surface coal mining and reclamation operations under the permanent regulatory program. This regulation provides for the defining of certain essential terms used in 405 KAR Chapter 20.

Section 1. Definitions. (1) "Acid drainage" means water with a pH of less than six (6.0) and in which total acidity exceeds total alkalinity, discharged from an active, inactive, or abandoned surface coal mine and reclamation operation or from an area affected by surface coal mining and reclamation operations.

(2) "Acid-forming materials" means earth materials that contain sulfide minerals or other materials which, if exposed to air, water, or weathering processes, form acids that may create acid drainage.

(3) "Adjacent area" means land located outside the affected area or permit area, depending on the context in which "adjacent area" is used, where air, surface or groundwater, fish, wildlife, vegetation or other resources protected by KRS Chapter 350 may be adversely impacted by surface coal mining and reclamation operations.

(4) "Affected area" means any land or water area which is used to facilitate, or is physically altered by, surface coal mining and reclamation operations. The affected area includes the disturbed area; any area upon which surface coal mining and reclamation operations are conducted; any adjacent lands the use of which is incidental to surface coal mining and reclamation operations; all areas covered by new or existing roads used to gain access to, or for hauling coal to or from, surface coal mining and reclamation operations, except as provided in this definition; any area covered by surface excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, shipping areas; any areas upon which are sited structures, facilities, or other property or material on the surface resulting from, or incident to, surface coal mining and reclamation operations; and the area located above underground workings associated with underground mining activities, auger mining, or in situ mining. The affected area shall include every road used for the purposes of access to, or for hauling coal to or from, surface coal mining and reclamation operations, unless the road:

(a) Was designated as a public road pursuant to the laws of the jurisdiction in which it is located;

(b) Is maintained with public funds, and constructed in a manner similar to other public roads of the same classification within the jurisdiction; and

(c) There is substantial (more than incidental) public use.

(5) "Agricultural use" means the use of any tract of land for the production of animal or vegetable life. The uses include, but are not limited to, the pasturing, grazing, and watering of livestock, and the cropping, cultivation, and harvesting of plants.

(6) "Applicant" means any person(s) seeking a permit, permit revision, permit amendment, permit renewal, or transfer, assignment, or sale of permit rights from the cabinet to conduct surface coal mining and reclamation operations or approval to conduct coal exploration operations pursuant to KRS Chapter 350 and all applicable regulations.

(7) "Application" means the documents and other information filed with the cabinet seeking issuance of permits; revisions; amendments; renewals; and transfer, assignment or sale of permit rights for surface coal mining and reclamation operations or, if required, seeking approval for coal exploration.

(8) "Approximate original contour" is defined in KRS 350.010.

(9) "Aquifer" means a zone, stratum, or group of strata that can store and transmit water in sufficient quantities for domestic, agricultural, industrial, or other beneficial use.

(10) "Auger mining" means a method of mining coal at a cliff or highwall by drilling holes into an exposed coal seam from the highwall and transporting the coal along an auger bit to the surface and shall also include all other methods of mining in which coal is extracted from beneath the overburden by mechanical devices located at the face of the cliff or highwall and extending laterally into the coal seam, such as extended depth, secondary recovery systems.

(11) "Bond pool" or "Kentucky Bond Pool" means the voluntary alternative bonding program established at KRS 350.700 through 350.755.

(12) "Cabinet" is defined in KRS 350.010.

(13) "CFR" means Code of Federal Regulations.

(14) "Coal" means combustible carbonaceous rock, classified as anthracite, bituminous, subbituminous, or lignite by ASTM Standard D 388-77.

(15) "Coal exploration" means the field gathering of:

(a) Surface or subsurface geologic, physical, or chemical data by mapping, trenching, drilling, geophysical, or other techniques necessary to determine the quality and quantity of overburden and coal of an area; or

(b) Environmental data to establish the conditions of an area before beginning surface coal mining and reclamation operations under the requirements of 405 KAR Chapters 7 through 24 if the activity may cause any disturbance of the land surface or may cause any appreciable effect upon land, air, water, or other environmental resources.

(16) "Coal mine waste" means coal processing waste and underground development waste.

(17) "Coal processing plant" means a facility where coal is subjected to chemical or physical processing or cleaning, concentrating, crushing, sizing, screening, or other processing or preparation including all associated support facilities including but not limited to: loading facilities; storage and stockpile facilities; sheds, shops, and other buildings; water treatment and water storage facilities; settling basins and impoundments; and coal processing and other waste disposal areas.

(18) "Coal processing waste" means materials which are separated from the product coal during the cleaning, concentrating, or other processing or preparation of coal.

(19) "Collateral bond" means an indemnity agreement in a sum certain payable to the cabinet executed by the permittee and which is supported by the deposit with the cabinet of cash, negotiable certificates of deposit, or an irrevocable letter of credit of any bank organized and authorized to transact business in the United States.

(20) "Compaction" means increasing the density of a material by reducing the voids between the particles by mechanical effort.

(21) "Cropland" means land used for the production of adapted crops for harvest, alone or in a rotation with grasses and legumes, and includes row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar specialty crops. Land used for facilities in support of cropland farming operations which is adjacent to or an integral part of these operations is also included for purposes of land use categories.

(22) "Day" means calendar day unless otherwise specified to be a working day.

(23) "Department" means the Department for Surface Mining Reclamation and Enforcement.

(24) "Disturbed area" means an area where vegetation, topsoil, or overburden is removed or upon which topsoil, spoil, coal processing waste, underground development waste, or noncoal waste is placed by surface coal mining operations. Those areas are classified as "disturbed" until reclamation is complete and the performance bond or other assurance of performance required by 405 KAR Chapter 10 is released.

(25) "Diversion" means a channel, embankment, or other manmade structure constructed to divert water from one (1) area to another.

(26) "Downslope" means the land surface below the projected outcrop of the lowest coalbed being mined along each highwall.

(27) "Embankment" means a manmade deposit of material that is raised above the natural surface of the land and used to contain, divert, or store water; to support roads or railways; or for other similar purposes.

(28) "Ephemeral stream" means a stream which flows only in direct response to precipitation in the immediate watershed or in response to the melting of a cover of snow and ice, and which has a channel bottom that is always above the local water table.

(29) "Excess spoil" means spoil disposed of in a location other than the coal extraction area, except that spoil material used to achieve the approximate original contour shall not be considered excess spoil.

(30) "Groundwater" means subsurface water that fills available openings in rock or soil materials to the extent that they are considered water saturated.

(31) "Head-of-hollow fill" means a fill structure consisting of any material, other than coal processing waste and organic material, placed in the uppermost reaches of a hollow near the approximate elevation of the ridgeline, where there is no significant natural drainage area above the fill, and where the side slopes of the existing hollow measured at the steepest point are greater than twenty (20) degrees or the average slope of the profile of the hollow from the toe of the fill to the top of the fill is greater than ten (10) degrees.

(32) "Highwall" means the face of exposed overburden and coal in an open cut of a surface mining activity or for entry to underground mining activities.

(33) "Historically used for cropland."

(a) "Historically used for cropland" means that lands have been used for cropland for any five (5) years or more out of the ten (10) years immediately preceding:

1. The application; or

2. The acquisition of the land for the purpose of conducting surface coal mining and reclamation operations.

(b) Lands meeting either paragraph (a)1 or 2 of this subsection shall be considered "historically used for cropland."

(c) In addition to the lands covered by paragraph (a) of this subsection, other lands shall be considered "historically used for cropland" as described below:

1. Lands that would likely have been used as cropland for any five (5) out of the last ten (10) years immediately preceding the acquisition or the application but for some fact of ownership or control of the land unrelated to the productivity of the land; and

2. Lands that the cabinet determines, on the basis of additional cropland history of the surrounding lands and the lands under consideration, are clearly cropland but fall outside the specific five (5) years in ten (10) criterion.

(d) Acquisition includes purchase, lease, or option of the land for the purpose of conducting or allowing through resale, lease or option, the conduct of surface coal mining and reclamation operations.

(34) "Hydrologic balance" means the relationship between the quality and quantity of water inflow to, water outflow from, and water storage in a hydrologic unit such as a drainage

basin, aquifer, soil zone, lake, or reservoir. It encompasses the dynamic relationship between precipitation, runoff, evaporation, and changes in ground and surface water storage.

(35) "Impoundment" means a closed basin, naturally formed or artificially built, which is dammed or excavated for the retention of water, sediment, or waste.

(36) "Industrial/commercial lands" means lands used for:

(a) Extraction or transformation of materials for fabrication of products, wholesaling of products, or long-term storage of products, and heavy and light manufacturing facilities. Land used for facilities in support of these operations which is adjacent to or an integral part of that operation is also included.

(b) Retail or trade of goods or services, including hotels, motels, stores, restaurants, and other commercial establishments. Land used for facilities in support of commercial operations which is adjacent to or an integral part of these operations is also included.

(37) "In situ processes" means activities conducted on the surface or underground in connection with in-place distillation, retorting, leaching, or other chemical or physical processing of coal. The term includes, but is not limited to, in situ gasification, in situ leaching, slurry mining, solution mining, borehole mining, and fluid recovery mining.

(38) "Intermittent stream" means:

(a) A stream or reach of stream that drains a watershed of one (1) square mile or more but does not flow continuously during the calendar year; or

(b) A stream or reach of a stream that is below the local water table for at least some part of the year, and obtains its flow from both surface runoff and groundwater discharge.

(39) "KAR" means Kentucky administrative regulations.

(40) "KRS" means Kentucky Revised Statutes.

(41) "Land use" means specific functions, uses, or management-related activities of an area, and may be identified in combination when joint or seasonal uses occur and may include land used for support facilities that are an integral part of the use. In some instances, a specific use can be identified without active management.

(42) "Monitoring" means the collection of environmental data by either continuous or periodic sampling methods.

(43) "Mulch" means vegetation residues or other suitable materials that aid in soil stabilization and soil moisture conservation, thus providing micro-climatic conditions suitable for germination and growth.

(44) "Operations" is defined in KRS 350.010.

(45) "Operator" is defined in KRS 350.010.

(46) "OSM" means Office of Surface Mining Reclamation and Enforcement, United States Department of the Interior.

(47) "Outslope" means the face of the spoil or embankment sloping downward from the highest elevation to the toe.

(48) "Overburden" is defined in KRS 350.010.

(49) "Perennial stream" means a stream or that part of a stream that flows continuously during all of the calendar year as a result of groundwater discharge or surface runoff. The term does not include "intermittent stream" or "ephemeral stream."

(50) "Performance bond" means a surety bond, a collateral bond, or a combination thereof, or bonds filed pursuant to the provisions of the Kentucky Bond Pool Program (405 KAR 10:200, KRS 350.595, and KRS 350.700 through 350.755), by which a permittee assures faithful performance of all the requirements of KRS Chapter 350, 405 KAR Chapters 7 through 24, and the requirements of the permit and reclamation plan.

(51) "Permit" means written approval issued by the cabinet to conduct surface coal mining and reclamation operations.

(52) "Permit area" means the area of land and water within boundaries designated in the approved permit application, which shall include, at a minimum, all areas which are or will be affected by surface coal mining and reclamation operations under that permit.

(53) "Permittee" means an operator or a person holding or required by KRS Chapter 350 or 405 KAR Chapters 7 through 24 to hold a permit to conduct surface coal mining and reclamation operations during the permit term and until all reclamation obligations imposed by KRS Chapter 350 and 405 KAR Chapters 7 through 24 are satisfied.

(54) "Person" is defined in KRS 350.010.

(55) "Precipitation event" means a quantity of water resulting from drizzle, rain, snowmelt, sleet, or hail in a specified period of time.

(56) "Prime farmland" means those lands which are defined by the Secretary of Agriculture in 7 CFR 657 and which have been "historically used for cropland" as that phrase is defined above.

(57) "Public road" means any publicly owned thoroughfare for the passage of vehicles.

(58) "RAM" means Reclamation Advisory Memorandum.

(59) "Reclamation" is defined in KRS 350.010.

(60) "Recreation land" means land used for public or private leisure-time use, including developed recreation facilities such as parks, camps, and amusement areas, as well as areas for less intensive uses such as hiking, canoeing, and other undeveloped recreational uses.

(61) "Residential land" means tracts employed for single and multiple-family housing, mobile home parks, and other residential lodgings. Also included is land used for support facilities such as vehicle parking, open space, and other facilities which directly relate to the residential use of the land.

(62) "Road" means a surface right-of-way for purposes of travel by land vehicles used in coal exploration or surface coal mining and reclamation operations. A road consists of the entire area within the right-of-way, including the roadbed, shoulders, parking and side area, approaches, structures, ditches, surface, and contiguous appendages necessary for the total structure. The term includes access and haul roads constructed, used, reconstructed, improved, or maintained for use in coal exploration or surface coal mining and reclamation operations, including use by coal hauling vehicles leading to transfer, processing, or storage areas. The term does not include pioneer or construction roadways used for part of the road construction procedure and promptly replaced by a road pursuant to 405 KAR Chapters 16 and 18 located in the identical right-of-way as the pioneer or construction roadway. The term also excludes any roadway within the immediate mining pit area.

(63) "Safety factor" means the ratio of the available shear strength to the developed shear

stress, or the ratio of the sum of the resisting forces to the sum of the loading or driving forces, as determined by accepted engineering practices.

(64) "SCS" means Soil Conservation Service.

(65) "Sedimentation pond" means a primary sediment control structure designed, constructed, and maintained in accordance with 405 KAR 16:090 or 405 KAR 18:090 and including but not limited to a barrier, dam, or excavated depression which slows down water runoff to allow suspended solids to settle out. A sedimentation pond shall not include secondary sedimentation control structures, such as straw dikes, riprap, check dams, mulches, dugouts, and other measures that reduce overland flow velocity, reduce runoff volume, or trap sediment, to the extent that the secondary sedimentation structures drain to a sedimentation pond.

(66) "Slope" means average inclination of a surface, measured from the horizontal, generally expressed as the ratio of a unit of vertical distance to a given number of units of horizontal distance (e.g., 1v:5h). It may also be expressed as a percent or in degrees.

(67) "Slurry mining" means the hydraulic breakdown of subsurface coal with drill-hole equipment, and the eduction of the resulting slurry to the surface for processing.

(68) "Soil horizons" means contrasting layers of soil parallel or nearly parallel to the land surface. Soil horizons are differentiated on the basis of field characteristics and laboratory data. The four (4) master soil horizons are:

(a) "A horizon." The uppermost mineral layer, often called the surface soil. It is the part of the soil in which organic matter is most abundant, and leaching of soluble or suspended particles is typically the greatest.

(b) "E horizon." The layer commonly near the surface below an A horizon and above a B horizon. An E horizon is most commonly differentiated from an overlying A horizon by lighter color and generally has measurably less organic matter than the A horizon. An E horizon is most commonly differentiated from an underlying B horizon in the same sequum by color of higher value or lower chroma, by coarser texture, or by a combination of these properties.

(c) "B horizon." The layer that typically is immediately beneath the E horizon and often called the subsoil. This middle layer commonly contains more clay, iron, or aluminum than the A, E, or C horizons.

(d) "C horizon." The deepest layer of soil profile. It consists of loose material or weathered rock that is relatively unaffected by biologic activity.

(69) "Soil survey" means a field and other investigation, resulting in a map showing the geographic distribution of different kinds of soils and an accompanying report that describes, classifies, and interprets the soils for use. Soil surveys shall meet the standards of the National Cooperative Soil Survey.

(70) "Spoil" means overburden and other materials, excluding topsoil, coal mine waste, and mined coal, that are excavated during surface coal mining and reclamation operations.

(71) "Steep slope" means any slope of more than twenty (20) degrees.

(72) "Substantially disturb" means, for purposes of coal exploration, to significantly impact land or water resources by blasting; by removal of vegetation, topsoil, or overburden; by construction of roads or other access routes; by placement of excavated earth or waste material on the natural land surface; or by other activities, or to remove more than twenty-five (25) tons of coal.

(73) "Surety bond" means an indemnity agreement in a sum certain, payable to the cabinet and executed by the permittee, which is supported by the performance guarantee of a corporation licensed to do business as a surety in the Commonwealth of Kentucky.

(74) "Surface coal mining and reclamation operations" is defined in KRS 350.010.

(75) "Surface coal mining operations" is defined in KRS 350.010.

(76) "Suspended solids" or nonfilterable residue, expressed as milligrams per liter, means organic or inorganic materials carried or held in suspension in water which are retained by a standard glass fiber filter in the procedure outlined by the U.S. EPA's regulations for waste water and analyses (40 CFR 136).

(77) "Ton" means 2000 pounds avoirdupois (.90718 metric ton).

(78) "Topsoil" means the A and E soil horizon layers of the four (4) master soil horizons.

(79) "Toxic-forming materials" means earth materials or wastes which, if acted upon by air, water, weathering, or microbiological processes, are likely to produce chemical conditions in soils or water that are detrimental to biota or uses of water.

(80) "Toxic mine drainage" means water that is discharged from active or abandoned mines or other areas affected by coal exploration or surface coal mining and reclamation operations, which contains a substance that through chemical action is likely to kill, injure, or impair biota commonly present in the area that might be exposed to it.

(81) "Transfer, assignment, or sale of permit rights" means a change in ownership or other effective control over the right to conduct surface coal mining operations under a permit issued by the cabinet.

(82) "Underground development waste" means waste coal, shale, claystone, siltstone, sandstone, limestone, or similar materials that are extracted from underground workings in connection with underground mining activities.

(83) "Underground mining activities" means a combination of:

(a) Surface operations incident to underground extraction of coal or in situ processing, including construction, use, maintenance, and reclamation of roads, aboveground repair areas, storage areas, processing areas, and shipping areas; areas upon which are sited support facilities including hoist and ventilating ducts; areas utilized for the disposal and storage of waste; and areas on which materials incident to underground mining operations are placed; and

(b) Underground operations such as underground construction, operation, and reclamation of shafts, adits, underground support facilities; in situ processing; and underground mining, hauling, storage, and blasting.

(84) "U.S. EPA" means United States Environmental Protection Agency.

(85) "Water table" means the upper surface of a zone of saturation, where the body of groundwater is not confined by an overlying impermeable zone.

FRANK DICKERSON, Commissioner
JOHN F. NICHOLS, JR., Secretary
APPROVED BY AGENCY: November 25, 1991
FILED WITH LRC: November 25, 1991 2 p.m.

PUBLIC HEARING: A public hearing on this proposed amendment has been scheduled for 9 a.m. (EST) Thursday, January 30, 1992 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 January 25, 1992. The scheduled hearing will be cancelled if the contact person has not received any written notice of intent to testify by January 25, 1992, 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 amendment 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 amendment but does not wish to testify at the hearing may submit written comments on the proposed amendment at any time before 4:30 p.m. (EST) on January 30, 1992. 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, KY 40601.

REGULATORY IMPACT ANALYSIS

(1) Type and number of entities affected: This regulation applies to surface coal mining and reclamation operations and coal exploration operations. This regulation also affects landowners of mined land, adjacent landowners, and the general public in the coal field regions that may be impacted by mining operations. There are approximately 3800 surface coal mining operations and approximately 500 coal exploration operations in this state.

(a) Direct and indirect costs or savings to those affected:

1. First year: Presently, one regulation (405 KAR 7:020) near the beginning of the series of regulations (405 KAR Chapters 7-24) relating to surface coal mining operations contains nearly all of the definitions applicable to that series of related regulations. A few definitions are located in individual regulations. However, the surface coal mining regulations span eight related chapters of Title 405. It is the opinion of the Administrative Regulation Review Subcommittee that KRS Chapter 13A requires that each chapter of a title must contain any necessary definitions of terms used in that chapter; and that this must be accomplished either by placing the definitions in the first section of each regulation that uses the defined terms, or by placing all definitions in a separate definitions regulation at the beginning of the chapter. Therefore, this regulation is being promulgated to define the terms used in 405 KAR Chapter 20. For the most part, there are no substantive changes since these definitions are simply being transferred, with a few minor changes, from 405 KAR 7:020 to this new regulation. Each term defined in KRS Chapter 350 has had its regulatory definition deleted and a notation inserted that the term is defined in KRS Chapter 350.010. Therefore there are no direct or indirect costs or savings to those affected due to existing definitions being placed in this regulation. There is one new definition and there are amendments to a few of the existing definitions, the most significant of these being "industrial/commercial lands". The definition of "industrial/commercial lands" is being amended to comply with the federal regulations and because OSM has notified the state that the Kentucky definition is deficient. These changes will not have broad impact, but might increase costs on a few operations.

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: No direct costs or savings to the cabinet will result from the definitions in this regulation. However, additional indirect administrative costs to the cabinet will result from having a separate definitions regulation in each chapter rather than having a single definitions regulation for the entire series of related regulations. Because 405 KAR Chapters 7-24 constitute a single regulatory program and contain related subject matter, many defined terms are used in more than one chapter. Thus, when it becomes necessary in the future to add, modify or delete a definition, as many as eight regulations must be amended to make that change. This will increase the time and effort associated with preparing amended regulations and associated documents for the promulgation process. Printing and mailing costs also will increase due to the substantial increase in the number of pages of these regulations.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: See above discussion in (a).

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: This alternative was selected by agreement with the Administrative Regulation Review Subcommittee. The only other alternative available is to place the definitions in the first section of each regulation in which the defined terms are used. That alternative was rejected because it would have been more duplicative and burdensome on the cabinet than the alternative selected.

(5) Identify any statute, administrative regulation, or governmental policy which may be in conflict, overlapping or duplication: None

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to

harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. Tiering is not applicable to this proposed administrative regulation because, under the federal and Kentucky surface mining laws and regulations, these requirements must apply equally to all permittees under 405 KAR Chapters 7-24.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 7 CFR Part 657, 30 CFR Parts 700.5, 701.5, 707.5, 730-733, 735, 761.5, 762.5, 773.5, 800.5, 843.5, 917; 30 USC 1253, 1255, 1291.

2. State compliance standards. This regulation defines terms used in 405 KAR Chapter 20. For the most part, these definitions are the same as the existing definitions in 405 KAR 7:020, with minor changes, and are being moved to this chapter by agreement with the Administrative Regulation Review Subcommittee to comply with KRS Chapter 13A. The definition of "industrial/commercial lands" is being amended to comply with the federal regulations.

3. Minimum or uniform standards contained in the federal mandate. The federal regulations provide definitions of terms used in the federal surface mining regulations which are substantially the same or similar to those proposed in the state regulation.

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.

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

405 KAR 24:001. Definitions for 405 KAR Chapter 24.

RELATES TO: KRS Chapter 350, 30 CFR Parts 700.5, 701.5, 707.5, 730-733, 735, 761.5, 762.5, 773.5, 800.5, 843.5, 917, 30 USC 1253, 1255, 1291

STATUTORY AUTHORITY: KRS Chapter 13A, 350.028, 350.465, 30 CFR Parts 700.5, 701.5, 707.5, 730-733, 735, 761.5, 762.5, 773.5, 800.5, 843.5, 917, 30 USC 1253, 1255, 1291

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations pertaining to surface coal mining and reclamation operations under the permanent regulatory program. This regulation provides for the defining of certain essential terms used in 405 KAR Chapter 24.

Section 1. Definitions. (1) "Affected area" means any land or water area which is used to facilitate, or is physically altered by, surface coal mining and reclamation operations. The affected area includes the disturbed area; any area upon which surface coal mining and reclamation operations are conducted; any adjacent lands the use of which is incidental to surface coal mining and reclamation operations; all areas covered by new or existing roads used to gain access to, or for hauling coal to or from, surface coal mining and reclamation operations, except as provided in this definition; any area covered by surface excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, shipping areas; any areas upon which are sited structures, facilities, or other property or material on the surface resulting from, or incident to, surface coal mining and reclamation operations; and the area located above underground workings associated with underground mining activities, auger mining, or in situ mining. The affected area shall include every road used for the purposes of access to, or for hauling coal to or from, surface coal mining and reclamation operations, unless the road:

(a) Was designated as a public road pursuant to the laws of the jurisdiction in which it is located;

(b) Is maintained with public funds, and constructed in a manner similar to other public roads of the same classification within the jurisdiction; and

(c) There is substantial (more than incidental) public use.

(2) "Applicant" means any person(s) seeking a permit, permit revision, permit amendment, permit renewal, or transfer, assignment, or sale of permit rights from the cabinet to conduct surface coal mining and reclamation operations or approval to conduct coal exploration operations pursuant to KRS Chapter 350 and all applicable regulations.

(3) "Application" means the documents and other information filed with the cabinet seeking issuance of permits; revisions; amendments; renewals; and transfer, assignment or sale of permit rights for surface coal mining and reclamation operations or, if required, seeking approval for coal exploration.

(4) "Aquifer" means a zone, stratum, or group of strata that can store and transmit water in sufficient quantities for domestic, agricultural, industrial, or other beneficial use.

(5) "Area", as used in 405 KAR Chapter 24, means a geographic unit in which the criteria alleged in the petition pursuant to 405 KAR 24:020, Sections 3 and 4 and 405 KAR 24:030, Section 8 occur throughout and form a significant feature.

(6) "Auger mining" means a method of mining coal at a cliff or highwall by drilling holes into an exposed coal seam from the highwall and transporting the coal along an auger bit to the surface and shall also include all other methods of mining in which coal is extracted from beneath the overburden by mechanical devices located at the face of the cliff or highwall and extending laterally into the coal seam, such as extended depth, secondary recovery systems.

(7) "Cabinet" is defined in KRS 350.010.

(8) "Cemetery" means any area where human bodies are interred.

(9) "CFR" means Code of Federal Regulations.

(10) "Coal" means combustible carbonaceous rock, classified as anthracite, bituminous, subbituminous, or lignite by ASTM Standard D 388-77.

(11) "Coal exploration" means the field

gathering of:

(a) Surface or subsurface geologic, physical, or chemical data by mapping, trenching, drilling, geophysical, or other techniques necessary to determine the quality and quantity of overburden and coal of an area; or

(b) Environmental data to establish the conditions of an area before beginning surface coal mining and reclamation operations under the requirements of 405 KAR Chapters 7 through 24 if the activity may cause any disturbance of the land surface or may cause any appreciable effect upon land, air, water, or other environmental resources.

(12) "Coal mine waste" means coal processing waste and underground development waste.

(13) "Coal processing waste" means materials which are separated from the product coal during the cleaning, concentrating, or other processing or preparation of coal.

(14) "Community or institutional building" means any structure, other than a public building or an occupied dwelling, which is used primarily for meetings, gatherings, or functions of local civic organizations or other community groups; functions as an educational, cultural, historic, religious, scientific, correctional, mental health, or physical health care facility; or is used for public services, including, but not limited to, water supply, power generation, or sewage treatment.

(15) "Complete and accurate application" means an application for permit approval, or approval for coal exploration if required, which the cabinet determines to contain all information required under, and necessary to comply with, KRS Chapter 350 and 405 KAR Chapters 7 through 24, in order to make decisions concerning its administrative and technical acceptability and whether a permit or exploration approval may be issued.

(16) "Day" means calendar day unless otherwise specified to be a working day.

(17) "Disturbed area" means an area where vegetation, topsoil, or overburden is removed or upon which topsoil, spoil, coal processing waste, underground development waste, or noncoal waste is placed by surface coal mining operations. Those areas are classified as "disturbed" until reclamation is complete and the performance bond or other assurance of performance required by 405 KAR Chapter 10 is released.

(18) "Federal lands" means any lands, including mineral interests, owned by the United States, without regard to how the United States acquired ownership of the lands or which agency manages the lands. It does not include Indian lands.

(19) "Fragile lands" means areas containing natural, ecologic, scientific, or aesthetic resources that could be significantly damaged by surface coal mining operations. Examples of fragile lands include uncommon geologic formations, paleontological sites, national natural landmarks, valuable habitats for fish or wildlife, areas where mining may result in flooding, critical habitats for endangered or threatened species of animals or plants, wetlands, environmental corridors containing a concentration of ecologic and aesthetic features, state-designated nature preserves and wild rivers, and areas of recreational value due to high environmental quality.

(20) "Groundwater" means subsurface water that fills available openings in rock or soil materials to the extent that they are considered water saturated.

(21) "Growing season" means the period during a one (1) year cycle, from the last killing frost in the spring to the first killing frost in the fall, in which climatic conditions are favorable for plant growth. In Kentucky, this period normally extends from mid-April to mid-October.

(22) "Highwall" means the face of exposed overburden and coal in an open cut of a surface mining activity or for entry to underground mining activities.

(23) "Historic lands" means areas containing historic, cultural, or scientific resources. Examples of historic lands include properties listed on or eligible for listing on a state or national register of historic places, national historic landmarks, archaeological sites, properties having religious or cultural significance to native Americans or religious groups, and properties for which historic designation is pending.

(24) "Impoundment" means a closed basin, naturally formed or artificially built, which is dammed or excavated for the retention of water, sediment, or waste.

(25) "In situ processes" means activities conducted on the surface or underground in connection with in-place distillation, retorting, leaching, or other chemical or physical processing of coal. The term includes, but is not limited to, in situ gasification, in situ leaching, slurry mining, solution mining, borehole mining, and fluid recovery mining.

(26) "KAR" means Kentucky administrative regulations.

(27) "KRS" means Kentucky Revised Statutes.

(28) "Natural hazard lands" means geographic areas in which natural conditions exist that pose or, as a result of surface coal mining operations, may pose a threat to the health, safety, or welfare of people, property, or the environment, including, but not limited to, areas subject to landslides, cave-ins, subsidence, substantial erosion, unstable geology, or frequent flooding.

(29) "Occupied dwelling" means any building that is currently being used on a regular or temporary basis for human habitation.

(30) "Operations" is defined in KRS 350.010.

(31) "Operator" is defined in KRS 350.010.

(32) "Overburden" is defined in KRS 350.010.

(33) "Permit" means written approval issued by the cabinet to conduct surface coal mining and reclamation operations.

(34) "Person" is defined in KRS 350.010.

(35) "Person having an interest which is or may be adversely affected" or "person with a valid legal interest" shall include any person:

(a) Who uses any resource of economic, recreational, aesthetic, or environmental value that may be adversely affected by coal exploration or surface coal mining and reclamation operations, or by any related action of the cabinet; or

(b) Whose property is or may be adversely affected by coal exploration or surface coal mining and reclamation operations, or by any related action of the cabinet.

(36) "Petitioner" means a person who submits a petition under 405 KAR Chapter 24 to designate a specific area as unsuitable for all or certain types of surface coal mining and reclamation

operations, or who submits a petition under 405 KAR Chapter 24 to terminate such a designation.

(37) "Public building" means any structure that is owned or leased, and principally used by a governmental agency for public business or meetings.

(38) "Publicly-owned park" means a public park that is owned by a federal, state, or local governmental entity.

(39) "Public park" means an area dedicated or designated by any federal, state, or local agency primarily for public recreational use, despite whether the use is limited to certain times or days. It includes any land leased, reserved, or held open to the public because of that use.

(40) "Public road" means any publicly owned thoroughfare for the passage of vehicles.

(41) "RAM" means Reclamation Advisory Memorandum.

(42) "Reclamation" is defined in KRS 350.010.

(43) "Renewable resource lands" means geographic areas which contribute significantly to the long-range productivity of water supplies or of food or fiber products, these lands to include aquifers and aquifer recharge areas.

(44) "Road" means a surface right-of-way for purposes of travel by land vehicles used in coal exploration or surface coal mining and reclamation operations. A road consists of the entire area within the right-of-way, including the roadbed, shoulders, parking and side area, approaches, structures, ditches, surface, and contiguous appendages necessary for the total structure. The term includes access and haul roads constructed, used, reconstructed, improved, or maintained for use in coal exploration or surface coal mining and reclamation operations, including use by coal hauling vehicles leading to transfer, processing, or storage areas. The term does not include pioneer or construction roadways used for part of the road construction procedure and promptly replaced by a road pursuant to 405 KAR Chapters 16 and 18 located in the identical right-of-way as the pioneer or construction roadway. The term also excludes any roadway within the immediate mining pit area.

(45) "Secretary" is defined in KRS 350.010.

(46) "Slurry mining" means the hydraulic breakdown of subsurface coal with drill-hole equipment, and the eduction of the resulting slurry to the surface for processing.

(47) "SMCRA" means Surface Mining Control and Reclamation Act of 1977 (Public Law 95-87), as amended.

(48) "Soil horizons" means contrasting layers of soil parallel or nearly parallel to the land surface. Soil horizons are differentiated on the basis of field characteristics and laboratory data. The four (4) master soil horizons are:

(a) "A horizon." The uppermost mineral layer, often called the surface soil. It is the part of the soil in which organic matter is most abundant, and leaching of soluble or suspended particles is typically the greatest.

(b) "E horizon." The layer commonly near the surface below an A horizon and above a B horizon. An E horizon is most commonly differentiated from an overlying A horizon by lighter color and generally has measurably less organic matter than the A horizon. An E horizon is most commonly differentiated from an underlying B horizon in the same sequum by color of higher value or lower chroma, by coarser texture, or by a combination of these properties.

(c) "B horizon." The layer that typically is immediately beneath the E horizon and often called the subsoil. This middle layer commonly contains more clay, iron, or aluminum than the A, E, or C horizons.

(d) "C horizon." The deepest layer of soil profile. It consists of loose material or weathered rock that is relatively unaffected by biologic activity.

(49) "Spoil" means overburden and other materials, excluding topsoil, coal mine waste, and mined coal, that are excavated during surface coal mining and reclamation operations.

(50) "Substantial legal and financial commitments" means significant investments, that have been made on the basis of a long-term coal contract, consisting of actual expenditures of substantial monies or execution of valid and binding contracts involving substantial monies for such things as power plants; railroads; coal handling, preparation, extraction, and storage facilities; and other capital-intensive activities such as:

1. Improvement or modification of coal lands within, for access to, or in support of surface coal mining and reclamation operations in the petitioned area;

2. Acquisition of capital equipment for use in, for access to, or for use in support of surface coal mining and reclamation operations in the petitioned area; and

3. Exploration, mapping, surveying, and geological work, as well as expenditures of engineering and legal fees, associated with the acquisition of the property or preparation of an application to conduct surface coal mining and reclamation operations in the petitioned area.

(b) The costs of acquiring the coal in place or the right to mine such coal are not sufficient to constitute a substantial legal and financial commitment in the absence of other investments as described in paragraph (a) of this subsection.

(51) "Surface coal mining and reclamation operations" is defined in KRS 350.010.

(52) "Surface coal mining operations" is defined in KRS 350.010.

(53) "Topsoil" means the A and E soil horizon layers of the four (4) master soil horizons.

(54) "Transfer, assignment, or sale of permit rights" means a change in ownership or other effective control over the right to conduct surface coal mining operations under a permit issued by the cabinet.

(55) "Underground development waste" means waste coal, shale, claystone, siltstone, sandstone, limestone, or similar materials that are extracted from underground workings in connection with underground mining activities.

(56) "Underground mining activities" means a combination of:

(a) Surface operations incident to underground extraction of coal or in situ processing, including construction, use, maintenance, and reclamation of roads, aboveground repair areas, storage areas, processing areas, and shipping areas; areas upon which are sited support facilities including hoist and ventilating ducts; areas utilized for the disposal and storage of waste; and areas on which materials incident to underground mining operations are placed; and

(b) Underground operations such as underground construction, operation, and reclamation of

shafts, adits, underground support facilities; in situ processing; and underground mining, hauling, storage, and blasting.

(57) "Valid existing rights" means:

(a) Except for haul roads, property rights in existence on August 3, 1977, that were created by a legally binding conveyance, lease, contract or other instrument which authorizes the applicant to produce coal and the person proposing to conduct a surface coal mining operation on the lands either:

1. Had been validly issued or had made a good faith effort to obtain, on or before August 3, 1977, all state and federal permits necessary to conduct surface coal mining operations on those lands, application for the permits being deemed to constitute good faith efforts to obtain the permits; or

2. Can demonstrate to the cabinet that the coal is both needed for, and immediately adjacent to, an ongoing surface coal mining operation for which all permits were obtained prior to August 3, 1977.

(b) For haul roads:

1. A recorded right-of-way, recorded easement, or a permit for coal haul road recorded as of August 3, 1977; or

2. Any other road in existence as of August 3, 1977.

(c) Valid existing rights does not mean the mere expectation of a right to conduct surface coal mining operations or the right to conduct underground coal mining.

(58) "Wetland" means land that has a predominance of hydric soils and that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions.

(a) "Hydric soil" means soil that, in its undrained condition, is saturated, flooded, or ponded long enough during a growing season to develop an anaerobic condition that supports the growth and regeneration of hydrophytic vegetation.

(b) "Hydrophytic vegetation" means a plant growing in:

1. Water; or

2. A substrate that is at least periodically deficient in oxygen during a growing season as a result of excessive water content.

FRANK DICKERSON, Commissioner
JOHN F. NICHOLS, JR., Secretary

APPROVED BY AGENCY: November 25, 1991

FILED WITH LRC: November 25, 1991 at 2 p.m.

PUBLIC HEARING: A public hearing on this proposed amendment has been scheduled for 9 a.m. (EST) Thursday, January 30, 1992 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 January 25, 1992. The scheduled hearing will be cancelled if the contact person has not received any written notice of intent to testify by January 25, 1992, 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 amendment 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 amendment but does not wish to testify at the hearing may submit written comments on the proposed amendment at any time before 4:30 p.m. (EST) on January 30, 1992. 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, KY 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact: Jim Villines

(1) Type and number of entities affected: This regulation applies to surface coal mining and reclamation operations and coal exploration operations. This regulation also affects landowners of mined land, adjacent landowners, and the general public in the coal field regions that may be impacted by mining operations. There are approximately 3800 surface coal mining operations and approximately 500 coal exploration operations in this state.

(a) Direct and indirect costs or savings to those affected:

1. First year: Presently, one regulation (405 KAR 7:020) near the beginning of the series of regulations (405 KAR Chapters 7-24) relating to surface coal mining operations contains nearly all of the definitions applicable to that series of related regulations. A few definitions are located in individual regulations. However, the surface coal mining regulations span eight related chapters of Title 405. It is the opinion of the Administrative Regulations Review Subcommittee that KRS Chapter 13A requires that each chapter of a title must contain any necessary definitions of terms used in that chapter; and that this must be accomplished either by placing the definitions in the first section of each regulation that uses the defined terms, or by placing all definitions in a separate definitions regulation at the beginning of the chapter. Therefore, this regulation is being promulgated to define the terms used in 405 KAR Chapter 24. There are no substantive changes since these definitions are simply being transferred, with a few minor changes, from 405 KAR 7:020 and other existing regulations to this new regulation. Each term defined in KRS Chapter 350 has had its regulatory definition deleted and a notation inserted that the term is defined in KRS Chapter 350.010. Therefore there are no direct or indirect costs or savings to those affected due to existing definitions being placed in this regulation. There are two new definitions ("growing season" and "RAM") but these definitions will not impact costs to those affected by the regulation.

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: No direct costs or savings to the cabinet will result from the definitions in this regulation. However, additional indirect administrative costs to the cabinet will result from having a separate definitions regulation in each chapter rather than having a single definitions regulation for the entire series of related regulations. Because 405 KAR Chapters 7-24 constitute a single regulatory program and contain related subject matter, many defined terms are used in more than one chapter. Thus, when it becomes necessary in the future to add, modify or delete a definition, as many as eight regulations must be amended to make that change. This will increase the time and effort associated with preparing amended regulations and associated documents for the promulgation process. Printing and mailing costs also will increase due to the substantial increase in the number of pages of these regulations.
2. Continuing costs or savings: Same as first year.
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: See above discussion in (a).
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: This alternative was selected by agreement with the Administrative Regulation Review Subcommittee. The only other alternative available is to place the definitions in the first section of each regulation in which the defined terms are used. That alternative was rejected because it would have been more duplicative and burdensome on the cabinet than the alternative selected.
(5) Identify any statute, administrative regulation, or governmental policy which may be in conflict, overlapping or duplication: None
(a) Necessity of proposed regulation if in conflict: Not applicable.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.
(6) Any additional information or comments: None
TIERING: Was tiering applied? No. Tiering is not applicable to this proposed administrative regulation because, under the federal and Kentucky surface mining laws and regulations, these requirements must apply equally to all permittees under 405 KAR Chapters 7-24.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 7 CFR Part 657, 30 CFR Parts 700.5, 701.5, 707.5, 730-733, 735, 761.5, 762.5, 773.5, 800.5, 843.5, 917; 30 USC 1253, 1255, 1291.
2. State compliance standards. This regulation defines terms used in 405 KAR Chapter 24. For the most part, these definitions are the same as the existing definitions in 405 KAR 7:020 and other existing regulations, with minor changes, and are being moved to this chapter by agreement with the Administrative Regulation Review Subcommittee to comply with KRS Chapter 13A. Two new terms have been added, but they are minor in nature.
3. Minimum or uniform standards contained in the federal mandate. The federal regulations provide definitions of terms used in the federal surface mining regulations which are substantially the same or similar to those proposed in the state regulation.
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.

TRANSPORTATION CABINET
Department of Vehicle Regulation

601 KAR 1:031. Procedure when no protest to notice of hearing is filed.

RELATES TO: KRS Chapter 281
STATUTORY AUTHORITY: KRS 281.801
NECESSITY AND FUNCTION: KRS 281.801 allows affidavits to be filed in lieu of holding a formal hearing on an application when no protests on the application are received within the time prescribed by 601 KAR 1:030. This administrative regulation sets forth the procedures to be followed by both the applicant and the Transportation Cabinet when affidavits are to be filed which present the testimony of the applicant and the applicant's witnesses.

Section 1. If an application for motor carrier authority or a change to motor carrier authority has been set for hearing by the Transportation Cabinet and no protest is filed in accordance with 601 KAR 1:030, the cabinet may cancel the hearing. In this case the cabinet shall by order of the hearings clerk cancel the hearing and require that the applicant submit evidence by affidavit showing that there is a need for the service and that it is fit, willing and able to perform this service.

Section 2. The order of the hearings clerk shall set the date no sooner than thirty (30) days from the date of the order that the affidavits shall be filed with the Office of General Counsel. If the applicant fails to file the affidavits within the thirty (30) days or fails to show good cause why the time should be extended, he shall be deemed in default and the application may be dismissed by the Commissioner of the Department of Vehicle Regulation.

Section 3. Style of Affidavit. The supporting statements filed by and on behalf of the applicant shall collectively contain at least the following information:
(1) Name and address of the motor carrier who has filed the application for authority;
(2) Statement of character and reputation of the applicant and a brief history of the applicant's prior work history, including any experience in providing transportation services;
(3) Description of the specific commodity or passengers to be transported;
(4) Points or areas to, from, or between which the commodities or passengers are to be transported. An estimate of the volume of traffic that will be involved and the frequency

of this traffic. If service is needed to or from a territory or area rather than a specific point, a description of the territory or area and evidence of a need to justify the territorial grant of authority is required;

(5) A statement of how the transportation service, if any, is now obtained and how it was obtained in the past; and

(6) A recital of the consequences if this transportation service is not made available.

Section 4. Upon receipt of the affidavits the hearing examiner shall make a report and recommended order which shall contain findings of fact and conclusions of law together with recommended grant or denial or partial grant or denial of authority, rates, fares or changes of time schedules, when necessary. Copies of the report and recommended order shall be served upon each of the parties to the matter heard.

Section 5. After the report and recommended order is filed the matter shall proceed as set forth in 601 KAR 1:030 and KRS 281.625.

JEROME L. LENTZ, Acting Commissioner
MILO D. BRYANT, Secretary
APPROVED BY AGENCY: December 5, 1991
FILED WITH LRC: December 13, 1991 at 9 a.m.
PUBLIC HEARING: A public comment hearing will be held on this administrative regulation on January 24, 1992 at 11 a.m., local prevailing time in the Fourth Floor Hearing Room of the State Office Building located at the corner of High and Holmes Streets, Frankfort, Kentucky 40622. Any person who intends to attend this hearing must in writing by January 19, 1992 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 January 19, 1992. Send written notification of intent to attend the public hearing or written comments on the administrative regulation to: Sandra G. Pullen, Executive's Staff Advisor, Transportation Cabinet, 10th Floor State Office Building, Frankfort, Kentucky 40622.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sandra G. Pullen
(1) Type and number of entities affected: All applicants for intrastate motor carrier authority.
(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: Sets public standards for the information which must be filed when no protests are filed to a notice of application for motor carrier authority.
(2) Effects on the promulgating administrative body: Instead of verbally telling each applicant what must be done if an application is proceeding under the provisions of KRS 281.801, the requirements will now uniformly be available to all.
(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: The do-nothing alternative was rejected because of the requirements of KRS Chapter 13A.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? Yes. The entire regulation is a tiering (i.e., lessening) of the requirements of 601 KAR 1:030 under certain circumstances.

PUBLIC PROTECTION AND REGULATION CABINET
Kentucky State Racing Commission

810 KAR 1:023. Health and welfare fund.

RELATES TO: KRS 230.374
STATUTORY AUTHORITY: KRS Chapter 13A
NECESSITY AND FUNCTION: To regulate and establish who composes the Board of the Kentucky State Racing Health and Welfare Fund, Inc., as created but not defined by KRS 230.374.

Section 1. The Board of Directors of the Kentucky Racing Health and Welfare Fund, Inc., shall consist of four (4) members selected as follows: the President of the Kentucky division of the Horsemen's Benevolent and Protective Association and the Vice-president of the Kentucky division of the Horsemen's Benevolent and Protective Association shall by virtue of their election to those offices serve as members of the board of directors for a period the same as their terms of office with the Kentucky division of the Kentucky Horsemen's Benevolent and Protective Association. One (1) member shall be appointed by the Governor; and one (1) member appointed by the Chairman of the Kentucky State Racing Commission. The term of each appointment shall be one (1) year or until their respective successors are selected and qualified.

LYLE G. ROBEY, Chairman
APPROVED BY AGENCY: December 12, 1991
FILED WITH LRC: December 12, 1991 at noon
PUBLIC HEARING: A public hearing will be held on January 21, 1992 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: N/A
(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: N/A
(6) Any additional information or comments:
TIERING: Was tiering applied? No. N/A.

BOARD OF FAMILY HEALTH CARE PROVIDERS

902 KAR 22:010. Kentucky Board of Family Health Care Providers.

RELATES TO: KRS 216.900 through 216.925
STATUTORY AUTHORITY: KRS 216.920
NECESSITY AND FUNCTION: KRS Chapter 216 mandates that the Kentucky Board of Family Health Care Providers promulgate regulations necessary to implement their duties and responsibilities. The regulation responds to provisions of KRS 216.920 which requires board approval of treatment protocols, drug formularies and quality assurance programs before an applicant can receive a network license and begin full operation.

Section 1. Approval of Protocols. (1) An applicant for a licensed network shall submit for approval to the Board of Family Health Care Providers at time of application their twenty (20) protocols to be used by the midlevel health care practitioners or may use twenty (20) protocols that the board has developed.
(2) Protocols submitted to the board shall be designed for use by the midlevel health care practitioner and shall include items as issued in KRS 216.910(2).
(3) Network protocols to be used by the midlevel health care practitioner shall be designed to ensure a basic treatment plan for maintenance of identified chronic conditions.
(4) Approval for protocols will be based on the following:
(a) The conditions for which protocols are established shall be chronic.
(b) Chronic conditions are those conditions that have a prolonged course that do not resolve spontaneously, and for which a complete cure is rarely achieved even with long-term maintenance.
(c) The protocol shall contain clear and concise instructions of procedures necessary for assessment, maintenance, treatment of a chronic condition diagnosed by the staff M.D. in the network; to include but not limited to: definition, patient assessment, review of relevant lab findings, medication management, requirements for physician consultation and with strong emphasis on health education.
(d) The protocol shall be written in a manner that prevents the need for a diagnostic decision by the midlevel health care practitioner.
(e) The protocol shall contain a list of drugs from the approved drug formulary that the midlevel health care practitioner may reorder for each condition.
(f) Board approval of the protocols for each licensed network will limit the certified midlevel health care practitioner to only those submitted and approved or prescribed by the board.
(g) After initial protocol approval, the licensed network shall submit any changes or additions to the board for approval.

Section 2. Drug Formulary. (1) The network formulary will contain at a minimum, a list of the names of the pharmaceuticals approved for the use by the network and will include information regarding dosage, unit dispensing size, and contraindications.
(2) The network will clearly designate within the formulary, pharmaceuticals which can be reordered by the midlevel health care practitioner. The pharmaceuticals will be included in the treatment diagnosis protocols with clearly stated instructions of the midlevel health care practitioner's duties, responsibilities and limitations.
(3) The network will develop and provide an addendum to the network formulary which will include all pharmaceuticals with complete formulary information, which will be reordered, by the midlevel health care practitioner. This formulary will be correlated with the protocols handbook to be provided to each midlevel health care practitioner.
(4) After initial drug formulary approval, the licensed network shall submit any changes or additions to the board for approval.

Section 3. Quality Assurance. (1) The quality assurance program shall include specific mechanisms for reviewing and evaluating patient care stipulated by the twenty (20) chronic condition protocols which have been approved by the board for the use of the network and the midlevel health care practitioner. The mechanisms will be clearly designated to the protocols and clearly defined in the program.
(2) The Kentucky Board of Family Health Care Providers shall review for approval those parts of the networks quality assurance program that pertain to implementation of the protocols to be utilized by the midlevel health care practitioner.
(3) After initial quality assurance program approval, the licensed network shall submit any changes or additions to the board for approval.

Section 4. Process. (1) The Cabinet for Human Resources, Division of Licensing and Regulations shall inform the network applicant that their twenty (20) treatment protocols, the quality

assurance program and drug formulary shall be submitted to the Kentucky Board of Family Health Care Providers for review and approval prior to issuance of a license to operate a network.

(2) The network applicant shall submit the twenty (20) treatment protocols, quality assurance program and drug formulary to: Kentucky Board of Family Health Care Providers, Cabinet for Human Resources, Department for Health Services, Division of Vital Records and Health Development, 275 East Main Street, Frankfort, Kentucky 40621.

(3) Upon receipt of the twenty (20) protocols, quality assurance program and drug formulary, a committee of the Kentucky Board of Family Health Care Providers shall review and make recommendation for approval/disapproval to the full board. If the recommendation of the committee is for disapproval, the committee shall define the deficiencies causing the recommended disapproval and allow ten (10) days for revision and resubmittal to the committee.

(4) The board shall take action at their quarterly meeting by approving or disapproving the applicants treatment protocols, drug formulary and quality assurance programs based on the recommendation of the review committee. The Department for Health Services shall document the actions of the board and forward a copy of the documentation to the Division of Licensing and Regulations.

KAREN A. MAIN, Chairman

APPROVED BY AGENCY: November 15, 1991

FILED WITH LRC: December 6, 1991 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be scheduled for January 21, 1992, at 9 a.m. in the Vital Statistics Conference Room, 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 January 16, 1992 of their desire to appear and testify at the hearing: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Danise Newton

(1) Type and number of entities affected: Unknown – estimated 24.

(a) Direct and indirect costs or savings to those affected: Unknown – startup cost and savings due to new classification.

1. First year: Unknown – estimate greater costs than savings.

2. Continuing costs or savings: Unknown – estimate greater savings than cost.

3. Additional factors increasing or decreasing costs (note any effects upon competition): Costs may be decreased since new position classification can provide services with a lower labor cost component should not have effect on competition.

(b) Reporting and paperwork requirements: Will increase due to required approvals, procedures and reports.

(2) Effects on the promulgating administrative body: New program: board, administrative support, oversight and records.

(a) Direct and indirect costs or savings: Operating, equipment and personnel.

1. First year: Operating $20,000, equipment $5,000, personnel $20,000.

2. Continuing costs or savings: $15,000 operating reduction of extensive startup cost, no equipment, personnel increments and inflation only.

3. Additional factors increasing or decreasing costs: Number of entities and extent of board activity required.

(b) Reporting and paperwork requirements: An unknown increase.

(3) Assessment of anticipated effect on state and local revenues: No revenues are anticipated other than licensure fees.

(4) Assessment of alternative methods; reasons why alternatives were rejected: SB 239 directed promulgation.

(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: Networks are the only providers which require some approvals by the Board of Family Health Care Practitioners prior to licensure.

TIERING: Was tiering applied? No. Tiering not applied since requirements apply to all entities equally.

KENTUCKY BOARD OF FAMILY HEALTH CARE PROVIDERS

902 KAR 22:030. Midlevel health care practitioner.

RELATES TO: KRS 216.900 through 216.925

STATUTORY AUTHORITY: KRS 216.920, 216.925

NECESSITY AND FUNCTION: KRS Chapter 216 mandates that the Kentucky Board of Family Health Care Providers promulgate regulations necessary to implement their duties and responsibilities. The regulation responds to provisions of KRS 216.920 which requires the Kentucky Board of Family Health Care Providers to certify and recertify midlevel health care practitioners; develop and administer qualifying examinations for midlevel health care practitioners; identify continuing education requirements for midlevel health care practitioners.

Section 1. Application for Certification. (1) The application form as shown in these regulations for the general practice of midlevel health care practitioners (MLPs) shall be completed in its entirety by all applicants.

(2) The application forms shall be obtained through the Kentucky Board of Family Health Care Providers, c/o Division of Vital Records and Health Development, Department for Health Services, 275 East Main Street, Frankfort, Kentucky 40621.

(3) The application shall be executed and sworn before a notary and returned to the Kentucky Board of Family Health Care Providers with a postmark of at least sixty (60) days prior to the scheduled examination with the fee of fifty (50) dollars.

(4) The Kentucky Board of Family Health Care Providers may reject an application for the following reasons:

(a) Applicant has been convicted of a

misdemeanor involving moral turpitude or a felony;
(b) Applicant has had a health care profession license or certificate denied or revoked in any state or territory;
(c) Applicant has an addiction to alcohol or any other chemical substances;
(d) Applicant has misrepresented any facts on the application;
(e) Applicant has failed to provide additional information requested by the Kentucky Board of Family Health Care Providers;
(f) Applicant has not properly completed or sworn to the information to meet all the requirements pursuant to KRS Chapter 216.
(5) The Kentucky Board of Family Health Care Providers shall notify the candidate of acceptance or rejection of the application and/or date, time, place of the examination at least thirty (30) days prior to the examination.

Section 2. Approved Qualifying Examinations. (1) The examination for certification as a midlevel health care practitioner shall consist of a written portion and a clinical/skills practicum portion.
(2) The qualifying examination for certification as a midlevel health care practitioner shall consist of the following components as approved by the Kentucky Board of Family Health Care Providers:
(a) The written portion of the examination shall consist of items based on medical treatment protocols developed and approved by the Kentucky Board of Family Health Care Providers.
(b) The clinical practicum portion of the examination shall test the applicant's skills and shall be based on the medical treatment protocols developed and/or approved by the Kentucky Board of Family Health Care Providers.
(c) A score of seventy (70) percent shall be achieved on the written portion of the qualifying examination and a score of 100 percent shall be achieved on the clinical/skills portion of the examination for certification as a midlevel health care practitioner.
(3) The board shall recognize the national or state qualifying examinations for certification or licensure of advanced registered nurse practitioners, physician assistants and registered nurses as the qualifying examination for the certified midlevel health care practitioner.

Section 3. Qualifying Examination Administration. (1) Examination sites and examination frequency shall be designated by the Kentucky Board of Family Health Care Providers and published annually.
(2) There shall be no limit on the number of times a candidate can take the examination for certification.
(3) The candidate shall notify the Kentucky Board of Family Health Care Providers if a new test date is desired.

Section 4. Certification of Midlevel Health Care Practitioners. (1) To be certified by the Kentucky Board of Family Health Care Providers as a midlevel health care practitioner, a person shall:
(a) Be a health care professional who, by license or certification directly deals with physical or psychological illness of a patient;
(b) Submit a completed application with the required fee;
(c) Be of good character and reputation;
(d) Meet the requirement for application pursuant to KRS 216.925;
(e) Have passed an examination approved by the Kentucky Board of Family Health Care Providers.
(2) The certified midlevel health care practitioner shall practice only in licensed networks following the guidelines pursuant to KRS 216.925.
(3) Certification shall begin on or before July 1, 1992, and certification shall be renewed every five (5) years thereafter.

Section 5. Recertification of Midlevel Health Care Practitioners. (1) The application form as shown in these regulations for the general practice of midlevel health care practitioners (MLPs) shall be completed in its entirety by all applicants.
(2) The application forms shall be obtained through the Kentucky Board of Family Health Care Providers, c/o Division of Vital Records and Health Development, Department for Health Services, 275 East Main Street, Frankfort, Kentucky 40621.
(3) The application shall be executed and sworn before a notary and returned to the Kentucky Board of Family Health Care Providers with a postmark of at least sixty (60) days prior to the end of the licensure period with the fee of fifty (50) dollars.
(4) The Kentucky Board of Family Health Care Providers may reject an application for the following reasons:
(a) Applicant has been convicted of a misdemeanor involving moral turpitude or a felony;
(b) Applicant has had a health care profession license or certificate denied or revoked in any state or territory;
(c) Applicant has an addiction to alcohol or any other chemical substances;
(d) Applicant has misrepresented any facts on the application;
(e) Applicant has failed to provide additional information requested by the Kentucky Board of Family Health Care Providers;
(f) Applicant has not properly completed or sworn to the information to meet all the requirements pursuant to KRS Chapter 216;
(g) Applicant has failed to complete mandatory education requirements.
(5) Certification shall be renewed at least every five (5) years thereafter according to procedures established by the Kentucky Board of Family Health Care Providers. In conjunction with the renewal of his/her certification, the midlevel health care practitioner shall provide evidence of having completed the required ten (10) medical education hours annually.
(6) The Kentucky Board of Family Health Care Providers shall notify the candidate of acceptance or rejection of the application and/or date, time, place of the examination at least thirty (30) days prior to the examination.

Section 6. Mandatory Continuing Education Requirements. (1) Any human immunodeficiency virus education courses shall be in accordance with 902 KAR 2:160, Human immunodeficiency virus education continuing education for professionals.
(2) Courses shall utilize organized learning experiences through personal professional

presentations or educational programs meeting the criteria for AMA Category 1 or the Kentucky Board of Nursing requirements.

(3) Other courses shall be reviewed for approval by a committee of the Kentucky Board of Family Health Care Providers in accordance with the following:

(a) The potential provider of continuing education requirements for the midlevel health care practitioner shall request an application for approval as a provider and the board shall assign the potential provider of continuing education a permanent, nontransferable number. The provider of continuing education number shall be used to identify all communications, offering announcements, records, and reports.

(b) Applications for approval as a provider of continuing education may be submitted at any time during the year.

(c) If the potential provider of continuing education meets the board's standards and criteria, approval shall be granted.

(4) At the time of recertification the certified midlevel health care practitioner shall submit to the Kentucky Board of Family Health Care Providers in the form of certificates, examinations, signed forms, etc., proof of completion of ten (10) approved medical education hours per year to the following address: Kentucky Board of Family Health Care Providers, c/o Division of Vital Records and Health Development, Department for Health Services, 275 East Main Street, Frankfort, Kentucky 40621.

Examination Date _____ Application No. _____

APPLICATIONS MUST BE TYPED OR FILLED OUT IN INK

APPLICATION FOR CERTIFICATION

KENTUCKY BOARD OF FAMILY HEALTH CARE PROVIDERS FOR CERTIFICATION TO PRACTICE

Commonwealth of Kentucky

Frankfort, Kentucky 40621

AN EQUAL OPPORTUNITY EMPLOYER M/F/H

CHECK APPROPRIATE BOX

- ☐ Applicant for Examination
- ☐ Certified or licensed PA, ARNP, RN applicant for certification
- ☐ Recertification

To the Kentucky Board of Family Health Care Providers:

I hereby apply for permission to take an examination at the next scheduled examination to demonstrate my qualifications to practice as a midlevel health care practitioner in the Commonwealth of Kentucky. I enclose herewith the required fee of fifty ($50) dollars (certified check or money order) and furnish below the information to which my affidavit is added at the end.

Social Security No. _____ Home Phone No. _____ Work Phone No. _____

☐ Mr.
☐ Ms. _____
Last Name First Name Middle Name Maiden Name (if any)

Address: _____
Street, R.F.D., or Box No. City State Zip Code

Date of Birth: _____
Month Day Year

PREVIOUS EDUCATION

EDUCATION AND TRAINING: Please circle highest grade completed. **College transcripts are required.**
Grade School 1 2 3 4 5 6 7 8 High School 9 10 11 12 College 1 2 3 4 Graduate School 1 2 3 4
Have you passed a G.E.D. Test? Yes ☐ No ☐ If yes attach a copy of the scores or the G.E.D. certificate

School	Name and Address of School	Dates Attended From	Dates Attended To	Date of Graduation	Number of Hours Completed	Number of Hours Now Carrying	Fields of Study Major	Fields of Study Minor	Degree, Diploma, or Certificate Earned
High School				mo/yr					Diploma: Yes _____ No _____
Graduate College or University		mo/yr	mo/yr	mo/yr	*	*			Degree:
Graduate College or University		mo/yr	mo/yr	mo/yr	*	*			Degree:
Vocational, Business, Technical		mo/yr	mo/yr	Clock hours weekly:	Clock hours Completed:			Must provide copy of certificate	Certificate Earned:
Apprenticeship	Type:	mo/yr	mo/yr	Length:	Journeyman: yes _____ no _____				Must provide copy of certificate

* Please indicate if quarter hours

PREVIOUS EXPERIENCE

LICENSES OR CERTIFICATES; Date, number and sources of any previous licenses to practice in any health field in any state or territory.

Name of Trade or Profession	Original Lic. Issue Date	Current Lic. Expiration Date	Name and Address of Licensing Agency
License:			
License:			
License:			

EMPLOYMENT HISTORY: Begin with your present or most recent job and list fully and accurately the details of each job you have held. Include Volunteer work. If you moved to a different position within the same organization so that your duties changed, then describe that as a separate job. Resumes must follow the format shown below. PLEASE NOTE IF YOU WORKED UNDER A DIFFERENT NAME. *(Attach additional sheets if necessary).*

Employed: From: Mo. Day Yr. _____ To: Mo. Day Yr. _____

Title of Position _____

Reason for leaving _____

Name of Employer _____

Address: _____ Street

_____ City State Zip

Name and title of your immediate supervisor _____

_____

A description of jobs **MUST** be given:

Employed: From: Mo. Day Yr. _____ To: Mo. Day Yr. _____

Title of Position _____

Reason for leaving _____

Name of Employer _____

Address: _____ Street

_____ City State Zip

Name and title of your immediate supervisor _____

_____

A description of jobs **MUST** be given:

Employed: From: Mo. Day Yr. _____ To: Mo. Day Yr. _____

Title of Position _____

Reason for leaving _____

Name of Employer _____

Address: _____ Street

_____ City State Zip

Name and title of your immediate supervisor _____

_____

A description of jobs **MUST** be given:

If you have ever been examined and refused a license as a health care professional or if you have ever had a health care professional license canceled or revoked, give full particulars.

_____

_____

_____

I hereby submit a photograph of myself taken within the past six (6) months. Further, I swear that the statements herein contained are strictly true in every respect; that I have never been convicted of a felony or a misdemeanor involving moral turpitude; that I am not addicted to alcohol or other chemicals; that I have read and understand this affidavit; and that if this petition is granted and certification is subsequently issued to me, I will comply with the laws governing the practice of midlevel health care practitioner in the Commonwealth of Kentucky and do my utmost to uphold and maintain professionalism in the health care field.

_____
(Signature of Applicant)
Signed and sworn to before me this _____ day of _____, 19___.

_____
(Official designating officer administering oath)

On this _____ day of _____, 19____, personally appeared before me, referred to in the foregoing application for admission to an examination to demonstrate his qualifications to practice as a midlevel health care provider in the Commonwealth of Kentucky. I hereby certify that the accompanying photograph is that of the person making this application for examination for certification to practice as a midlevel health care provider.

Signature_____
Official Title_____

AFFIDAVIT

State of_____
County of_____

(Attach photograph in space provided on form.)

KAREN A. MAIN, Chairman
APPROVED BY AGENCY: November 15, 1991
FILED WITH LRC: December 6, 1991 at 9 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be scheduled for January 21, 1992, at 9 a.m. in the Vital Statistics Conference Room, 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 January 16, 1992 of their desire to appear and testify at the hearing: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Danise Newton
(1) Type and number of entities affected: Unknown – estimated 24.
(a) Direct and indirect costs or savings to those affected: Unknown – startup cost and savings due to new classification.
1. First year: Unknown – estimate greater costs than savings.
2. Continuing costs or savings: Unknown – estimate greater savings than cost.
3. Additional factors increasing or decreasing costs (note any effects upon competition): Costs may be decreased since new position classification can provide services with a lower labor cost component should not have effect on competition.
(b) Reporting and paperwork requirements: Will increase due to required approvals, procedures and reports.
(2) Effects on the promulgating administrative body: New program: board, administrative support, oversight and records.
(a) Direct and indirect costs or savings: Operating, equipment and personnel.
1. First year: Operating $20,000, equipment $5,000, personnel $20,000.
2. Continuing costs or savings: $15,000 operating reduction of extensive startup cost, no equipment, personnel increments and inflation only.
3. Additional factors increasing or decreasing costs: Number of entities and extent of board activity required.
(b) Reporting and paperwork requirements: An unknown increase.
(3) Assessment of anticipated effect on state and local revenues: No revenues are anticipated other than licensure fees.
(4) Assessment of alternative methods; reasons why alternatives were rejected: SB 239 directed promulgation.
(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: Networks are the only providers which require some approvals by the Board of Family Health Care Practitioners prior to licensure.
TIERING: Was tiering applied? No. Tiering not applied since requirements apply to all entities equally.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of the December 6 and 9, 1991 Meeting

The December meeting of the Administrative Regulation Review Subcommittee was held on Friday, December 6, 1991 at 10 a.m. in Room 327 of the Capitol and on Monday, December 9, 1991 at 11 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 November 6 and 7, 1991 meeting were approved.

Present were:

Members: December 6, 1991 – Representative Tom Kerr, Chairman; Senators Gene Huff and Bill Quinlan; Representatives Woody Allen, Jim Bruce and James Yates; December 9, 1991 – Representative Tom Kerr, Chairman; Senators Gene Huff, Pat McCuiston and Bill Quinlan; Representatives Woody Allen, Jim Bruce and James Yates.

Guests: Eric Friedlander, Terry Wescott, David Klee, Russell C. Bledsoe, Guy F. Delius, Dudley J. Conner, David Nichols, John Gray, Wes Combs, Jules Delambre, Ryan Halloran, Ralph Von Derau, Garry W. Vevill, Dale Marcum, Sarah Wilding, Jayne Arnold, Anita Moore, Ked Fitzpatrick, Margaret Pennington, Virginia K. Smith, Brooke Thomas, Joyce Young, J.R. Nash, Joel Griffith, Pat Russell, Jeanne Southworth, Dianna Gaetz, Gail Lanham, Mike Robinson, Gerald L. Gilpin, Barbara Coleman, Donald D. Nodler, Julie Keightley, John A. Volpe, Vicki D. Jeffs, Janice Kline, Mark Cornett, Tom Johnson, John M. Sammons, David Crane, Michael Cheek, Cabinet for Human Resources; Nancy Brinly, Board of Physical Therapy; Judity G. Walden, Department for Housing, Buildings and Construction; Larry L. Amburgey, Kentucky Public Service Commission; Edwin Scott Smith, Rebecca Goodman, Phyllis Bruning, Claude Rhorer, Public Service Commission; Kevin Noland, Terry Vance, Kentucky Department of Education; William M. Sawyer, Sandra G. Pullen, Transportation; Lori Poole, Tom Campbell, Jack Damron, Corrections; Jim Villines, Dave Rosenbaum, Department for Surface Mining; Lauren Schaaf, Ron Pritchert, Fish and Wildlife Resources; Bernadette Sutherland, Nathan Goldman, Kentucky Board of Nursing; Warren Nash, Mary P. Cammack, Donald R. Speer, Finance and Administration Cabinet; H. Gene Taylor, Peggy Satterly, Gene Stinchcomb, Department of Local Government; Danny Watkins, Auditory of Public Accounts; Howard N. Bennett, Kentucky Paramedic Association; Bill Caylor, Kentucky Coal Association; Tom Fitzgerald; Kentucky Resources Council; Sherman C. Huckenbury, Yellow Cab Ambulance; Ken Knipper, Kentucky Firefighting Association; Richard Bartlett, Kentucky Ambulance Provider's Association; Marie Cull, Dan Walton, David Vance, KAHCF; Sharon E. Davis, L. Charles Davis, Lexington Fire Department & Kentucky EMT Instructor's Association; James Ritchey, Anderson County EMS; Randy Fathbruckner, Med. CTR EMS; Vickie Scales; Auburn Ambulance Service; James M. Manakee, Manakee Prof. Medical Service, Inc.; Henry Wilson, Jefferson County Health Department; Kathleen Ferriell, Margaret C. Belcher, Kentucky Nurses Association; Lois K. Hess, Esq., Wyatt, Tarrant & Combs; Jason Roberts, Daviess County Attorney's Office; Jim Byrum, KEA.

LRC Staff: Joe Hood, Greg Karambellas, Susan Wunderlich, Donna Pierce, Peggy Jones, Susan Eastman, Patrice Carroll.

The Subcommittee determined that the following administrative regulations, as amended, do not comply with KRS Chapter 13A:

Natural Resources and Environmental Protection Cabinet: Department for Surface Mining Reclamation and Enforcement: Performance Standards for Surface Mining Activities

NOTE: Because the amendments presented at this meeting contained the latest edition date of material incorporated by reference, the Regulations Compiler was instructed to correct the edition dates in the amendments presented at the November meeting to conform to the December amendments.

The Subcommittee's November report to LRC contains a detailed discussion of issues raised by these administrative regulations. Reference should be made to that November report for a detailed explanation of issues raised, and of the issues resolved by amendments made at the December meeting.

The following two administrative regulations were amended to correct statutory citations in the RELATES TO and STATUTORY AUTHORITY lines; to delete definitional cross-references to other administrative regulations; and to incorporate Cabinet manual TRM #20, dated December 6, 1991.

In the discussion of the following two administrative regulations, Tom Fitzgerald, Kentucky Resources Council, reiterated objections he had raised at the November meeting relating to the inadequate protection of wildlife resources, the definition and protection of significant streams, buffer zones, and valuable streams; and on the failure of these administrative regulations to comply with federal law and regulations. Based upon discussions at both the November and December meeting, Representative Bruce made a motion that these administrative regulations did not comply with statutory authority. The Subcommittee approved the motion. Senator Huff voted no.

405 KAR 16:180 (Protection of fish, wildlife, and related environmental values.) At its November meeting, the Subcommittee had objected to the lack of specificity in requirements relating to protected plant and animal species. The Cabinet had proposed to include an endangered species list published by the Kentucky State Nature Preserves Commission. After this list was examined at this meeting, industry representatives and environmental organization representatives stated that this list was too inclusive and would require protection of unendangered and unthreatened species, or species that were not special. It was pointed out that neither these representatives, Subcommittee members, or Subcommittee staff had adequate time to review the nature of the list. It was agreed by all parties that this list not be incorporated.

Performance Standards for Underground Mining Activities

405 KAR 18:180 (Protection of fish, wildlife, and related environmental values.)

The Subcommittee determined that the following administrative regulations do not comply with KRS Chapter 13A:

Transportation Cabinet: Department of Vehicle Regulation: Division of Motor Carriers

601 KAR 1:116 (Restricted taxicab certificate.) James Manakee, Manakee Professional Transfer of Sonora, Kentucky, appeared before the Subcommittee to speak against this regulation. He objected to the Department changing the rules for the operation of his transportation service after having been given a license and spending a large sum of money to provide this service. He stated that he is offering a valuable service to citizens of the Commonwealth for a charge that is much less than it would be if he had to also obtain a certificate of need from the Cabinet for Human Resources. The basic issue is whether a cab service can be operated and equipped with a mobile bed. Mr. Manakee stated that he transferred, for example, customers who had undergone dialysis and, on the return trip home, benefitted from the ability to lie down. Sandy Pullen, representing the Transportation Cabinet, agreed that there is a problem and that there is a statutory overlap with the Cabinet for Human Resources (the Transportation Cabinet licenses taxicabs and has the authority to license any pay-for-haul highway transportation, and the Cabinet for Human Resources licenses health care ground transportation services). Ms. Pullen also stated that there is a tremendous enforcement problem and that the Transportation Cabinet is working in conjunction with the Cabinet for Human Resources to clarify the licensing and enforcement procedures. Eric Friedlander, of the Cabinet for Human Resources, was present and stated that his Cabinet had worked with Transportation and is promulgating a regulation to license health care ground transportation services in conjunction with Transportation's regulation.

Several questions were raised as to the specifics of what could be done and what could not be done with a restricted taxicab certificate. Chairman Kerr asked if a customer could ride in a taxicab while having in his possession his own oxygen supply. He also pointed out that the regulation prohibited a taxicab from having any medical equipment without defining the term "medical equipment".

After further discussion, Representative Bruce moved to find the regulation deficient on the grounds that it does not meet legislative intent. The Subcommittee approved the motion.

The Subcommittee determined that the following administrative regulations, as amended, complied with KRS Chapter 13A:

Auditor of Public Accounts: Audits

With the assistance of Subcommittee staff, the administrative body repealed an existing administrative regulation that did not conform to KRS Chapter 13A and other applicable statutes, and wrote the three following new administrative regulations in order to comply with KRS Chapter 13A and other applicable statutes. At the Subcommittee meeting, amendments relating to cross-references were approved.

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.)

Department for Local Government: Uniform Financial Information Report

109 KAR 13:010 (Uniform financial information report.) This administrative regulation was amended to correct citation of statutes, to conform to the drafting requirements of KRS 13A.222 relating to the expression of mandatory requirements, and to correct the format in order to make requirements clearer.

Finance and Administration Cabinet: State Owned Buildings and Grounds

200 KAR 3:045 (Monthly meal charges at mansions.) This administrative regulation was amended to conform to the drafting requirements of KRS 13A.222 relating to the expression of conditions, and to correct the format in order to make requirements clearer.

Purchasing

200 KAR 5:050 (Central purchasing for political subdivisions.) This administrative regulation was amended to conform to the drafting requirements of KRS 13A.222 relating to the expression of conditions and the use of modifiers, and to correct the format in order to make requirements clearer.

200 KAR 5:306 (Competitive sealed bidding.) It was pointed out to the administrative body that the phrase "but shall not be limited to" does not comply with the requirements of KRS Chapter 13A that all conditions and requirements appear within an administrative regulation. This administrative regulation was amended to delete Section 1 because it repeated or summarized statutory language, to renumber sections; and, in Section 8(2), to delete "but shall not be limited to", and to insert that rejection may be made for cause that is documented in writing pursuant to a finding.

Personnel

200 KAR 12:020 (Unemployment insurance payments.) Section 1 of this administrative regulation was amended to delete the word "such" in order to comply with the drafting requirements of KRS 13A.222.

Natural Resources and Environmental Protection Cabinet: Department for Surface Mining Reclamation and Enforcement: Permits

NOTE: Because the amendments presented at this meeting contained the latest edition date of material incorporated by reference, the Regulations Compiler was instructed to correct the amendments presented at the November meeting to conform to the correct edition date. The Subcommittee's November report to LRC contains a detailed discussion of issues raised by these administrative regulations. Reference should be made to that November report for a detailed explanation of issues raised, and of the issues resolved by amendments made at the December meeting.

Chairman Kerr noted that agency attorneys were not present. He stated that the Cabinet should involve their attorneys in Subcommittee meetings and that they should attend Subcommittee meetings in order to answer legal questions that were beyond the competence of agency personnel who appeared before the Subcommittee. Chairman Kerr informed agency personnel, industry and environmental organization representatives that they should be prepared for full discussion of the issues raised by these administrative regulations and present their concerns to the Subcommittee. He stated that he did not

appreciate comments made that objections would be made, and issues discussed, at the meeting of other legislative subcommittees. Chairman Kerr added that the Subcommittee had jurisdiction over these subject matters, and expected a full discussion at its meetings. It was pointed out that Subcommittee members and staff, as well as industry representatives and other individuals, had not been informed in sufficient time of the contents of amendments or material incorporated by reference; that individuals did not meet with Subcommittee staff in sufficient time to present material and suggested amendments; and that much of the confusion or misunderstanding was due to the lack of information, failure to meet with staff, and the absence of specificity and documentation of issues raised, and a clear statement of the positions of various parties.

405 KAR 8:030 (Surface coal mining permits.) This administrative regulation was amended to correct statutory citations in the RELATES TO and STATUTORY AUTHORITY lines; to delete definitional cross-references to other administrative regulations; to conform to the requirements in KRS 13A.222(4)(d),(e) relating to definitions; to delete restrictions on the copying of federal material, whether or not it was copyrighted; to incorporate the 1987 Corps of Engineers "Wetlands Delineation Manual", with modifications contained in the Corps "Public Notice" and "Regulatory Guidance Letter 90-7", U.S. Department of the Interior Plant Species List, and U.S. Department of Agriculture Hydric Soils List. A Congressional appropriation act mandated use of the 1987, rather than the 1989, manual.

At its November meeting, the Subcommittee had objected to the lack of specificity in requirements relating to protected plant and animal species. The Cabinet had proposed to include an endangered species list published by the Kentucky State Nature Preserves Commission. Industry representatives, and environmental organization representatives, stated that this list was too inclusive and would require protection of unendangered, unthreatened, or species that were not special. It was pointed out that neither these representatives, Subcommittee members, or Subcommittee staff had adequate time to review the nature of the list. It was agreed by all parties that this list not be incorporated.

405 KAR 8:040 (Underground coal mining permits.) This administrative regulation was amended to correct statutory citations in the RELATES TO and STATUTORY AUTHORITY lines; to delete definitional cross-references to other administrative regulations; to conform to the requirements in KRS 13A.222(4)(d),(e) relating to definitions; to incorporate the 1987 Corps of Engineers "Wetlands Delineation Manual", with modifications contained in the Corps "Public Notice" and "Regulatory Guidance Letter 90-7", U.S. Department of the Interior Plant Species List, and U.S. Department of Agriculture Hydric Soils List. A Congressional appropriation act mandated use of the 1987, rather than the 1989, manual. This administrative regulation was also amended to incorporate Cabinet manual, TRM #20, dated December 6, 1991.

405 KAR 16:200 (Revegetation.) This administrative regulation was amended to incorporate by reference Cabinet manual TRM #20, dated December 6, 1991, and the Kentucky Department of Agriculture Statistics for 1989-1990 and 1990-1991. Mr. Fitzgerald reiterated the objections he made at the November meeting to the methodology employed, and to the adoption of the approach followed by the federal government and the State of Tennessee. It was pointed out that the program adopted in Tennessee was not mandatory in Kentucky and did not establish a nationwide federal standard; that the agency could, subject to federal agency review, exercise its discretion in adopting a similar program under its authority to implement the state program.

Performance Standards for Underground Mining Activities

405 KAR 18:200 (Revegetation.) This administrative regulation was amended to incorporate by reference Cabinet manuals TRM #19, dated June 28, 1991, and #20, dated December 6, 1991.

Corrections Cabinet: Office of the Secretary

The agency, in response to staff comments, requested amendments to the following three regulations to conform to the drafting requirements of KRS Chapter 13A.

501 KAR 6:050 (Luther Luckett Correctional Complex.)

501 KAR 6:130 (Western Kentucky Correctional Complex.) The reference to multimedia first aid in WKCC 13-00-01 was amended to include the Red Cross course.

501 KAR 6:150 (Eastern Kentucky Correctional Complex.)

Education and Humanities Cabinet: Department of Education: Office of Learning Programs Development: Health and Physical Education Programs

704 KAR 4:020 (Comprehensive school health.) This regulation was amended to specify a date for the School Medical Examination form.

Public Protection and Regulation Cabinet: Department of Housing, Buildings and Construction: Kentucky Building Code

815 KAR 7:070 (Requirements for certification of Kentucky Building Code inspectors.) This regulation was amended in several instances to comply to the drafting requirements of KRS Chapter 13A.

Cabinet for Human Resources: Department for Social Services: Administration

900 KAR 1:060 (Protection of human subjects.) Section 1(5) and (6) were amended to comply with the requirements relating to definitions in KRS 13A.222(4)(d),(e). Sections 10 and 11 were amended to comply with the requirements for incorporation by reference in KRS 13A.224, 13A.2251, 13A.2255.

Department for Health Services: Maternal and Child Health

902 KAR 4:090 (Lead poisoning prevention.) This administrative regulation was amended to conform to the requirements of KRS 13A.222 relating to the expression of mandatory requirements and definitions, to specify requirements and conditions, to delete language stating that other conditions that had not been specified could be imposed, and to correct the format in order to make requirements clearer.

Sanitation

902 KAR 10:010 (Public restrooms.) Section 1 of this administrative regulation was deleted. KRS 13A.222(4)(e) provides that the first

section of a regulation shall be the definitions section, if definitions are used. This section contained a "popular name" citation of the regulation. KRS Chapter 13A does not permit a popular name citation. Identification of the subject matter of an administrative regulation, under KRS Chapter 13A, is contained in the title.

902 KAR 10:110 (Issuance of onsite sewage disposal system permits.) Section 1(8) was amended to include all items defined in this paragraph.

Emergency Medical Technicians

902 KAR 13:010 (Definitions.) Section 1 was amended to place definitions in alphabetical order.

902 KAR 13:070 (Instructors and trainers.) This administrative regulation was amended to conform to the requirements of KRS 13A.222 relating to the expression of prohibitions and conditions, and to correct the format in order to make requirements clearer.

902 KAR 13:090 (Disciplinary actions.) This administrative regulation was amended to correct the format in order to make requirements clearer. Language relating to the conduct of hearings, and to the findings of fact and conclusions of law, was amended to provide that the hearing officer shall make the findings and conclusions, and submit them to the Cabinet for final decision. This amendment had been proposed, because the administrative regulation was unclear as to the roles of the hearing officer and the Cabinet. Upon discussion of this amendment, Cabinet personnel stated that they would have preferred an alternative approach. Cabinet personnel were notified that the amendment was required in order to clarify existing language. The Subcommittee agreed to reconsider a different approach after Subcommittee staff and Cabinet personnel met on additional amendments for future filing.

902 KAR 13:110 (EMT-first responder training, examination, and certification.) This administrative regulation was amended to conform to the requirements of KRS 13A.222 relating to the expression of prohibitions, exceptions and conditions; to correct the format in order to make requirements clearer; to comply with the requirements relating to the citation of edition dates of material incorporated by reference; and to specify the forms that were incorporated.

Aging Services

The following six administrative regulations were amended to conform to the drafting requirements of KRS 13A.222 relating to the expression of conditions, exceptions, mandatory requirements, and the use of modifiers; and to correct the format in order to make requirements clearer.

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.)

905 KAR 8:190 (Nutrition program for the elderly.)

905 KAR 8:200 (Senior community service employment program.)

905 KAR 8:220 (General administration, programs for the elderly.)

The Subcommittee determined that the following regulations complied with KRS Chapter 13A:

Finance and Administration Cabinet: Purchasing

200 KAR 5:076 (Small and small minority business set asides.)

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 5:307 (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 (Purchase of goods, supplies, equipment, materials and printing with minimum recycled content.)

Property

200 KAR 6:011 (Repeal of Finance and Administration Cabinet regulations.)

200 KAR 6:015 (Real property inventories.)

200 KAR 6:040 (Flood plain management.)

Engineering

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

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 (Hunting seasons for migratory birds.)

Natural Resources and Environmental Protection Cabinet: Department for Surface Mining Reclamation and Enforcement: Special Performance Standards

405 KAR 20:010 (Coal exploration.)

Public Protection and Regulation Cabinet: Public Service Commission: Utilities

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

Cabinet for Human Resources

Cabinet personnel were notified by the Subcommittee that many of the Cabinet's administrative regulations contained errors relating to the expression of mandatory requirements and other drafting requirements of KRS Chapter 13A; and, that because of the number of regulations before the Subcommittee and the shortage of staff, there was insufficient time to notify agency personnel of the errors or to prepare amendments for the Cabinet. The Interim Joint Committee to which these regulations will be referred will be notified, and agency personnel may prepare amendments for adoption at its meeting. If the Interim Joint Committee does not meet, Subcommittee staff will inform agency personnel of necessary amendments in the future. It was pointed out that the errors did not violate the substantive requirements of other applicable statutes, and that failure to correct the grammatical or format errors was not due to agency inaction. A number of initial reviews

stated that copies of material incorporated by reference had not been filed. The Regulations Compiler noted that the material had been filed, but that some staff appeared unaware that they were required to request the material from her office. In every case in which the initial review stated that copies of the material had not been filed, the Subcommittee determined that this material had been filed and that the administrative regulations were not deficient on that ground.

Department for Social Services: Administration

900 KAR 1:040 (Guardianship responsibilities.)

Department for Health Services: Sanitation

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

Emergency Medical Technicians

902 KAR 13:040 (Exemptions.) It was pointed out to agency personnel that this administrative regulation should not have been promulgated. It contains exemptions to the certification requirements for EMTs. Certification requirements are found in 902 KAR 13:050. The proper procedure would have been to repeal this administrative regulation and to amend 902 KAR 13:050 to include exemptions to certification requirements. Agency personnel agreed to meet with Subcommittee staff and to file the necessary amendment and repeal.

902 KAR 13:101 (Repeal of 902 KAR 13:100.)

Health Services and Facilities

902 KAR 20:006 (Certificate of need process.) Agency personnel stated that they were aware that this administrative regulation had been found deficient, but were unclear as to the basis for the finding of deficiency. Agency personnel stated that they were willing to meet with Subcommittee staff to prepare amendments to comply with the Subcommittee's objections, and would be willing to defer this administrative regulation. Agency personnel were notified that the emergency administrative regulation would expire before the next Subcommittee meeting. Therefore, it was agreed not to defer this administrative regulation. Agency personnel and the Subcommittee agreed that the agency and Subcommittee staff should meet to determine if this administrative regulation could be amended to comply with the Subcommittee's objections.

902 KAR 20:200 (Tuberculosis testing in long-term 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.)

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 (Therapeutic systems below one (1) MeV.)

902 KAR 100:137 (Therapeutic 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 (Refugee assistance.)

Department for Social Services: Division of Family Services: Child Welfare

905 KAR 1:010 (Application for permission to place or receive child.) Chairman Kerr asked for the source of the $150 application fee to place or receive a child for adoption. Agency personnel stated that this was a statutory requirement enacted during the last session. Chairman Kerr acknowledged that the statement of the fee in this administrative regulation would repeat provisions of a statute and should not be in an administrative regulation, and could be deleted by a future amendment. He questioned staff concerning the length of time the evaluation relating to placement of the child for adoption took. Agency personnel stated that there was a statutory 60 day limit, but that it was difficult, in some cases, to meet that

limit. Questions were raised concerning allegations that a higher fee for quicker placement was charged. Agency personnel stated they were unaware of such a practice, would investigate, and would report to the Chairman. Questions were raised as to the placement of children with prospective adoptive parents prior to the completion of the evaluation. It was stated that, on some occasions, this did occur. Chairman Kerr raised questions as to the effect of signing the contract to placement, and whether it was considered to be a consent to adoption. Agency personnel stated that an application was a proposal, and not a guarantee, that placement will be made; that consent to adoption could not occur prior to five days after birth. Representative Allen asked whether there was reimbursement to the adoptive parents. Agency personnel stated that financial assistance was available for "special needs", and "hard-to-place" children, which included older children and children with physical or emotional handicaps; that this generally involved maintenance and medical expenses. Senator Huff raised questions concerning the evaluation and study of the prospective home, and the documentation involved in such an evaluation.

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 (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.)

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 (Postaudit 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 1:038 (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 1:180 (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 (Eligibility requirements for the hospital indigent care assurance program (HICAP).)

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 (Nonresidential day care centers.)
908 KAR 1:250 (Educational information centers.)
908 KAR 1:260 (Communication centers.)
908 KAR 1:300 (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.")

The following regulations were deferred upon agreement by the promulgating agency and the Subcommittee:

General Government Cabinet: Board of Examiners and Registration of Landscape Architects.

201 KAR 10:080 (Continuing education.)

Cabinet for Human Resources: Department for Health Services: Emergency Medical Technicians

902 KAR 13:020 (Applicant's requirements; priority for training.)

Health Services and Facilities

902 KAR 20:117 (Health care ground transportation services.) Objections had been raised to this administrative regulation

relating to the training of personnel; training in hazardous materials; the requirement to provide transportation to the nearest appropriate medical facility; the effect on hospitals; staffing requirements relating to EMTs, paramedics, and nurses; and to various other requirements. Representatives of various ambulance providers and firefighters associations, the Nursing Board, nurses, EMTs, and others requested to comment on this administrative regulation. Because of the great number of administrative regulations and the lack of opportunity of Subcommittee members and staff to review the issues and comments before the meeting, members of the Subcommittee suggested that the agency defer this regulation, that agency personnel and interested parties meet with each other and certain designated LRC staff and, when prepared, meet with Subcommittee staff in order to recommend amendments resolving the issues for presentation at next month's meeting.

The Subcommittee had no objections to emergency regulations which had been filed.

OTHER BUSINESS:

Education and Humanities Cabinet: Office of Chief State School Officer: Education Innovation Incentive Committee

702 KAR 7:065 (Designation of agent to manage high school interscholastic athletics.) At its November meeting, the Subcommittee approved a motion finding this administrative regulation deficient in that private and parochial schools had not been adequately recognized and had been treated differently than other schools. Prior to the December meeting, information had been submitted, establishing that private and parochial schools were not being treated differently than other schools. Based upon this information, the Subcommittee approved a motion by Representative Bruce that this administrative regulation complied with statutory authority and the finding of deficiency is removed. The Regulations Compiler was instructed to notify LRC that this regulation is not deficient and will not be subject to expiration.

Cabinet for Human Resources: Department for Social Insurance: Public Assistance

904 KAR 2:020 (Child support.) James Roberts, representing the Daviess County Attorney's Office, stated that the Cabinet system for the collection and disbursement of nonwelfare child support payments had caused lengthy delays in payment of the monies to the client. In some cases, a three-month delay had resulted. He stated that if the Cabinet would return to a local level administration, and agreed with the proposal submitted by his office, these delays would not occur. He added that as much as $320,000 was in an escrow account held by the Cabinet. Subcommittee members asked questions relating to processing and other related administrative fees. Cabinet personnel stated that federal law and regulations required the procedure established by the Cabinet. It was pointed out that federal regulation did not specify the system established by the Cabinet in this administrative regulation; that it did require that certain accounting and administrative procedures be followed, but permitted the Cabinet to allow local governmental agencies to implement the collection and payment of child support funds. Chairman Kerr asked for an explanation of the procedures followed in Kenton County, in counties in which a domestic relations office existed, and with regard to court orders for child support. Mr. Roberts explained the income wage assignment, assets searched, and seizure of assets utilized by Daviess County attorney to enforce collection of child support payments. Upon motion by Representative Bruce, the Subcommittee agreed to allow the parties sufficient time to correct problems in the administration of the collection and distribution of child support payments, and to reconsider this administrative regulation in the future if requested by the parties involved.

The Subcommittee adjourned at 12:20 p.m. until January 3, 1991 at 2 p.m. in Room 327 of the Capitol

OTHER COMMITTEE REPORTS

COMPILER'S NOTE: In accordance with KRS 13A.290(9), the following reports were forwarded to the Legislative Research Commission by the appropriate jurisdictional committees and are hereby printed in the Administrative Register. The administrative regulations listed in each report became effective upon adjournment of the committee meeting at which they were considered.

INTERIM JOINT COMMITTEE ON BUSINESS ORGANIZATIONS AND PROFESSIONS
Meeting of November 22, 1991

The Interim Joint Committee on Business Organizations and Professions met on Friday, November 22, 1991, and considered administrative regulations referred by LRC.

The committee approved as presented 201 KAR 23:070 promulgated by the Board of Social Workers.

The committee took no action as a whole on four regulations of the Board of Real Estate Appraisers, (201 KAR 30:100, 110, 120, and 130) as these regulations were found deficient by the Administrative Regulation Review Subcommittee. The committee did, however, approve an amendment to 201 KAR 30:120 presented at the meeting by representatives of the board. The amendment consisted of deleting section one in its entirety and replacing it with new sections 1, 2, 3, and 4 (copy attached).

The board representatives were advised that the amendment did not address the deficiencies noted and therefore would not affect the nonconforming status of the regulation.

The Committee adjourned at 11:30 a.m.

INTERIM JOINT COMMITTEE ON EDUCATION
Meeting of November 14, 1991

The Interim Joint Committee on Education met on November 14, 1991, and submits this report:

The Committee agenda listed the two following regulations for informational purposes only and no action was taken for the following reasons:

11 KAR 8:030 - (Teacher Scholarships). In July, 1991 the Education Committee reviewed this regulation and expressed its displeasure that the regulation allowed loans to be forgiven for service in private schools even though KRS 164.770 states that loans will be forgiven for service in public schools. The agency amended the regulation and it was published as required by KRS 13A.320.

KRS 13A.320 states that after an administrative regulation is amended "Nothing in this chapter shall be construed to require its resubmission or refiling or other action." However, the Administrative Regulation Review Subcommittee requested the agency to change the amendment which had been made at the request of the Education Committee and the agency complied. The regulation was then returned to the Education Committee in its original form. Since the Education Committee had already made its wishes known, and it did not seem likely that a second action would be respected any more than the first action was, no action was taken.

702 KAR 7:065 - (Designation of agent to manage high school interscholastic athletics). The Administrative Regulations Review Subcommittee attached a letter which will necessitate legislative review during the 1992 session of the General Assembly.

The committee adjourned at 3:45 p.m., November 14, 1991.

INTERIM JOINT COMMITTEE ON AGRICULTURE AND NATURAL RESOURCES
Meeting of November 26, 1991

The Interim Joint Committee on Agriculture and Natural Resources met November 26, 1991, and submits this report:

The committee determined that Department of Agriculture administrative regulation 302 KAR 45:010 complies with KRS Chapter 13A.

The committee adopted a motion to supersede the committee's previous action objecting to Department of Fish and Wildlife Resources administrative regulation 301 KAR 1:085 and determined that 301 KAR 1:085 complies with KRS Chapter 13A. The committee determined that Department of Fish and Wildlife Resources administrative regulation 301 KAR 2:140 complies with KRS Chapter 13A.

The committee determined that the following Division of Water administrative regulations comply with KRS Chapter 13A:

401 KAR 8:010	401 KAR 8:150
401 KAR 8:020	401 KAR 8:200
401 KAR 8:070	

The committee deferred administrative regulations 405 KAR 7:015 and 405 KAR 7:020 upon the request of the Department for Surface Mining Reclamation and Enforcement.

The committee adopted the following amendments to administrative regulation 405 KAR 7:080 with the concurrence of the Department for Surface Mining Reclamation and Enforcement: Section 6, delete "1989" after "October" and insert "1991"; and replace the document incorporated by reference, "Kentucky Small Operator Application for Assistance" dated October 1989, with a revised document dated October 1991. The committee determined that administrative regulation 405 KAR 7:080, as amended, complies with KRS Chapter 13A.

The committee adopted the following amendments to 405 KAR 16:210 with the concurrence of the Department for Surface Mining Reclamation and Enforcement: Section 2, subsection (5), delete "(a)" and delete "; and" after "including hay production" and insert a "."; and in Section 2, subsection (5), delete paragraph (b) in its entirety. The committee determined that

administrative regulation 405 KAR 16:210, as amended, complies with KRS Chapter 13A.

The committee adopted the following amendments to 405 KAR 18:220 with the concurrence of the Department for Surface Mining Reclamation and Enforcement: Section 2, subsection (5), delete "(a)" and delete "; and" after "including hay production" and insert a "."; and in Section 2, subsection (5), delete paragraph "b" in its entirety. The committee determined that administrative regulation 405 KAR 18:220, as amended, complies with KRS Chapter 13A.

The committee determined that the following Department for Surface Mining Reclamation and Enforcement administrative regulations comply with KRS Chapter 13A:

405 KAR 7:030	405 KAR 10:200
405 KAR 7:035	405 KAR 16:190
405 KAR 8:020	405 KAR 18:190

The meeting adjourned at 11:20 a.m., November 26, 1991.

INTERIM JOINT COMMITTEE ON HEALTH AND WELFARE
Meeting of November 25, 1991

The Interim Joint Committee on Health and Welfare met on Monday, November 25, 1991, and submits this report.

The Committee approved a motion to find **902 KAR 20:072** deficient because the regulation did not define "on call" status for RNs; its negative impact on rural health clinics; its impact on quality of patient care; and because the regulation did not address allowing waivers for ambulatory facilities which could not meet staffing requirements.

The Committee approved the following regulations: 900 KAR 1:007, 902 KAR 20:066, 902 KAR 20:270, 902 KAR 55:060, 904 KAR 2:016 & E, and 904 KAR 2:360 & E.

CUMULATIVE SUPPLEMENT

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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	
Withdrawn		11-27-91
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		
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902 KAR 55:075	3606	(See 18 Ky.R.)
905 KAR 1:180		
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905 KAR 1:320	3608	(See 18 Ky.R.)
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905 KAR 5:070	3618	8-22-91

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105 KAR 1:215E	979	8-21-91
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109 KAR 13:010E	1288	10-4-91
200 KAR 5:330E	980	8-30-91
301 KAR 2:044E	619	8-9-91
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301 KAR 2:220E	1288	10-15-91
405 KAR 7:001E	2108	11-27-91
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702 KAR 1:001E	259	7-11-91
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704 KAR 3:006E	260	7-11-91
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904 KAR 2:016E	1298	9-24-91
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907 KAR 1:004E	629	7-23-91
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