Administrative Register of Kentucky

LEGISLATIVE RESEARCH COMMISSION
FRANKFORT, KENTUCKY

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SATURDAY, FEBRUARY 1, 1992



Administrative Regulation Review Subcommittee, Jan. Agenda 2517
Regulation Review Procedure 2519

Emergency Regulations Now In Effect:
Fish and Wildlife 2520

As Amended:
Military Affairs 2522
Board of Landscape Architects 2524
Education 2526
Registration of Election Finance 2527
Housing, Buildings and Construction 2529
Human Resources 2535

Amended After Hearing:
Natural Resources, Environmental Protection Cabinet - Surface Mining 2542
Public Service Commission 2554
Human Resources 2565

Proposed Amendments Received through January 15, 1992:
Real Estate Commission 2592
Fish and Wildlife 2593
Natural Resources, Environmental Protection Cabinet - Air Quality 2599
Corrections 2688
Transportation 2691
Education 2704
Labor Cabinet 2708
Housing, Buildings and Construction 2717
Human Resources 2728

Proposed Regulations Received Through January 15, 1992:
Pharmacy Board 2734
Natural Resources, Environmental Protection - Air Quality 2734
Transportation 2753
Education 2754
Labor Cabinet 2758
Housing, Buildings and Construction 2758

Jan. Minutes of the Administrative Regulation Review Subcommittee 2760
Other Committee Reports 2764

CUMULATIVE SUPPLEMENT
Locator Index - Effective Dates H2
KRS Index H14
Subject Index H25

MEETING NOTICE: The next meeting of the Administrative Regulation Review Subcommittee is **tentatively** scheduled on February 3, 1992. See **tentative** agenda on pages 2517-2519 in this Administrative Register.

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

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

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ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
TENTATIVE AGENDA - FEBRUARY 3, 1992 .
1 p.m., Room 327, State Capitol

CRIME VICTIMS COMPENSATION BOARD

Claims and Awards

107 KAR 1:025. Attorneys fees prohibited. (Deferred from January)

107 KAR 1:050. Prorating awards. (Deferred from January) (Found deficient by Interim Joint Committee on State Government during Quadrennial Review)

BOARD OF CLAIMS

Practice and Procedure

108 KAR 1:030. Filing claims, original signature of claimant required. (Deferred from January)

GENERAL GOVERNMENT CABINET

Board of Pharmacy

201 KAR 2:061. Procedures followed by the Kentucky Board of Pharmacy in the investigation and hearing of complaints.

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

Board of Registration for Professional Engineers and Land Surveyors

201 KAR 18:131. Disciplinary and grievance hearing procedures.

TOURISM CABINET
Department of Fish and Wildlife Resources

Fish

301 KAR 1:085 & E. Mussel shell harvesting.

DEPARTMENT OF AGRICULTURE

Livestock Sanitation

302 KAR 20:230. Fee basis schedule. (Deferred from January)

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

General Provisions

405 KAR 7:001 & E. Definitions for 405 KAR Chapter 7.

405 KAR 7:021 & E. Repeal of 405 KAR 7:020.

Permits

405 KAR 8:001 & E. Definitions for 405 KAR Chapter 8.

405 KAR 8:010 & E. General provisions for permits. (Amended After Hearing)

Bond and Insurance Requirements

405 KAR 10:001 & E. Definitions for 405 KAR Chapter 10.

Inspection and Enforcement

405 KAR 12:001 & E. Definitions for 405 KAR Chapter 12.

Performance Standards for Surface Mining Activities

405 KAR 16:001 & E. Definitions for 405 KAR Chapter 16.

Performance Standards for Underground Mining Activities

405 KAR 18:001 & E. Definitions for 405 KAR Chapter 18.

Special Performance Standards

405 KAR 20:001 & E. Definitions for 405 KAR Chapter 20.

Areas Unsuitable for Mining

405 KAR 24:001 & E. Definitions for 405 KAR Chapter 24.

CORRECTIONS CABINET

Policies and Procedures

501 KAR 6:020. Corrections policies and procedures.

501 KAR 6:150. Eastern Kentucky Correctional Complex. (Deferred from January meeting)

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Vehicle Licensing

Motor Vehicle Tax

601 KAR 9:135. Apportioned registration.

Department of Highways

Traffic

603 KAR 5:066. Weight limits for trucks.

603 KAR 5:070. Motor vehicle dimension limits.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of District Support Services

Facilities Management

702 KAR 4:050 & E. Building sites; inspection, approval.

UNIVERSITY OF LOUISVILLE

Board of Trustees (Found deficient by Interim Joint Committee on Education during Quadrennial Review)
740 KAR 1:010. Acquisition and disbursement of funds, accounting system and reports.
740 KAR 1:020. Annual audit.
740 KAR 1:030. Purchasing; inventories; sales of surplus property; bidding procedures.
740 KAR 1:040. Disposal of property proceeds; title.
740 KAR 1:050. Management of capital construction projects.
740 KAR 1:060. Contracting for capital construction projects.
740 KAR 1:080. Affiliated corporations.
740 KAR 1:090. Fund for excellence.
740 KAR 1:100. Issuance of bonds.

PUBLIC PROTECTION AND REGULATION CABINET

Department of Insurance

Health Insurance Contracts
806 KAR 17:066 & E. Medicare supplement insurance policies.

Public Service Commission

Utilities
807 KAR 5:006. General rules. (Repeals 807 KAR 5:008.) (Amended After Hearing)
807 KAR 5:066. Water. (Not Amended After Hearing)

Kentucky State Racing Commission

Thoroughbred Racing
810 KAR 1:011. Pari-mutuel wagering. (Deferred from January)
810 KAR 1:023. Health and Welfare Fund.

Department of Housing, Buildings and Construction

Elevator Safety
815 KAR 4:010. Elevators, dumbwaiters, escalators and moving walks standards.
Kentucky Building Code
815 KAR 7:025. Kentucky Building code.

CABINET FOR HUMAN RESOURCES

Department for Health Services

CABINET FOR HUMAN RESOURCES

Office of Inspector General

Long-Term Care
900 KAR 2:050 & E. Transfer and discharge rights. (Amended After Hearing) (Deferred from January)
900 KAR 2:060 & E. Hearings concerning transfer and discharge rights. (Amended After Hearing) (Deferred from January)

Department for Health Services

Maternal and Child Health
902 KAR 4:010. Lay-midwifery. (Not Amended After Hearing) (Deferred from January)
902 KAR 4:070. Handicapped children's services. (Not Amended After Hearing)
Emergency Medical Technicians
902 KAR 13:020. Applicant's requirements; priority for training. (Deferred from December and January)

Health Services and Facilities
902 KAR 20:016. Hospitals operation and services. (Amended After Hearing)

Board of Family Health Care Providers

Protocols, Formulary, and Quality Assurance
902 KAR 22:010 & E. Kentucky Board of Family Health Care Providers.
902 KAR 22:030 & E. Midlevel health care practitioner.

Department for Social Insurance

Public Assistance
904 KAR 2:015 & E. Supplemental programs for the aged, blind, and disabled.
904 KAR 2:116 & E. Low income home energy assistance program. (Not Amended After Hearing)

Food Stamp Program
904 KAR 3:025. Technical requirements.

Department for Social Services

Aging Services
905 KAR 8:090. Personal care assistance services. (Amended After Hearing)
905 KAR 8:210. Kentucky long-term care ombudsman program. (Repeals 905 KAR 8:070.) (Amended After Hearing)

Office of Inspector General

Office of Inspector General
906 KAR 1:100. Nurse aide registry, and hearing procedures. (Amended After Hearing)

Department for Medicaid Services

Medicaid Services
907 KAR 1:140 & E. Alternative home and community based services for the mentally retarded (AIS/MR). (Amended After Hearing)
907 KAR 1:150 & E. Payments for alternative home and community based services for the mentally retarded. (Amended After Hearing)

Department for Mental Health and Mental Retardation

Substance Abuse

908 KAR 1:310 & E. Administrative procedures for DUI facilities and programs. (Amended After Hearing)

ADMINISTRATIVE REGULATION REVIEW PROCEDURE

Filing and Publication

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

Public Hearing

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

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

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

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

Review Procedure

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

EMERGENCY ADMINISTRATIVE REGULATIONS NOW IN EFFECT

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

STATEMENT OF EMERGENCY
301 KAR 1:085

The significant increases in the harvest of mussels by brail over the past several years have created a number of adverse biological and social impacts. The department, through a resolution conflict process, is presently attempting to find equitable solutions to these problems. Capping the sale of musseling licenses and limiting the waters open to brailing will contain these conflicts and prevent their growth and proliferation until such time that appropriate solutions can be effected. Because a number of nearby states have recently closed their musseling seasons, there is the potential for an influx of out-of-state mussel fishermen in 1992. Without the regulation taking immediate effect, there would be a two (2) month window that would allow these additional musselers to purchase licenses. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. This ordinary administrative regulation was filed with the Regulations Compiler on December 12, 1991.

BRERETON JONES, Governor
DON R. McCORMICK, Commissioner

TOURISM CABINET
Department of Fish and Wildlife Resources

301 KAR 1:085E. 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
EFFECTIVE: January 3, 1992
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: January 3, 1992 at 10 a.m.

REGULATIONS AS AMENDED BY PROMULGATING AGENCY AND REVIEWING SUBCOMMITTEE

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

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 Received by AC__ Received by State___
Final Award 09/15 Initial & Date Initial & Date

AUTHORIZED APPLICANT (INFORMATION)
Emergency Planning Committee

_____
County Name County Code-3 digit no.

_____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

Date_____
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 authorized to apply for and manage the grant. The AUTHORIZED APPLICANT shall provide the name _____ and phone number _____ of the designated contact person. The AUTHORIZED APPLICANT shall provide the name _____ and address _____ of the bank where the check shall be deposited.

Emergency Planning Committee

_____
County Name County Code-3 digit no.

_____
Street Address

_____
City, Zip

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 PL 99-499/Title III, KRS Chapter 39.800 to 39.990 and subsequent regulations.

_____
Name, Title and Date
DES/SARA-303

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

ATTACHMENTS

Detailed budget sheet for each budget category you request.
Documentation for preceding 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 CARRYOVER MONIES	_____	_____
ADJUSTED GRANT AWARD	_____	_____

*Contracts for personal services and equipment shall be in conformance with state laws and regulations.
DES/SARA-303

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.

FINANCE AND ADMINISTRATION CABINET
Board of Examiners and Registration of Landscape Architects
(As Amended)

201 KAR 10:080. Continuing education.

RELATES TO: KRS 323A.210
STATUTORY AUTHORITY: KRS 323A.210(2)(a), (b)
NECESSITY AND FUNCTION: KRS 323A.210(2)(a) empowers the board to adopt **administrative** ~~[such rules and]~~ regulations as are necessary to establish a program of continuing education for registrants under this chapter. This proposed **administrative** regulation is intended to establish those ~~[rules and]~~ regulations.

Section 1. General Statement. Each in-state and out-of-state registrant shall be required to meet the continuing education requirements of these **administrative** regulations for professional development as a condition for registration renewal. Continuing education obtained by a registrant **shall** ~~[should]~~ maintain, improve or expand skills and knowledge obtained prior to initial licensure or to develop new and relevant skills and knowledge.

Section 2. Definitions. (1) Contact (clock) hour - not less than fifty (50) minutes of instructions.

(2) Sponsor - an individual, organization, association institution, or other entity which provides an educational activity for the purpose of fulfilling the continuing education requirements of these guidelines.

(3) Annual - a twelve (12) month period beginning July 1 of a given year and extending to June 30 of the following year.

(4) Board - the legal state entity having jurisdiction to register, licensee or institute legal proceedings against a license for the practice of landscape architecture and as defined in KRS Chapter 323A.

(5) UNE - Uniform National Exam.

(6) Committee - the Professional Development Review Committee.

(7) Continuing education unit (CEU) - ten (10) contact hours of participation in an organized continuing education experience under responsible sponsorship, capable direction and qualified instruction as approved by the "Council on the Continuing Education Unit".

Section 3. Professional Development Education Requirements. To demonstrate that a licensed landscape architect

maintains an acceptable level of competency, a licensee **shall** ~~[must]~~ meet the continuing education requirements as prescribed by the board for each year of registration. The requirements **shall** ~~[must]~~ be obtained and documented to the board prior to the time of licensure renewal. The following are the continuing education requirements as prescribed by the board:

(1) Eight (8) contact hours of continuing education **shall** ~~[must]~~ be obtained between November 1990 and June 30, 1992.

(2) Ten (10) contact hours of continuing education **shall** ~~[must]~~ be obtained between July 1, 1992 and June 30, 1993.

(3) Twelve (12) contact hours of continuing education **shall** ~~[must]~~ be obtained between July 1,1993 and June 30, 1994.

(4) Fifteen (15) contact hours of continuing education **shall** ~~[must]~~ be obtained between July 1, 1994 and June 30, 1995.

(5) A total of fifteen (15) continuing education hours **shall** ~~[must]~~ be obtained by each licensed landscape architect each year after 1995. Continuing education hours may be carried over for a maximum of one (1) year to apply to the subsequent year's requirements.

Section 4. Professional Development Committee. (1) The board shall form a Professional Development Review committee and provide guidelines for its operation. The committee shall be composed of five (5) registered professional landscape architects. At least one (1) board member shall be a member of the Professional Development Review committee.

(2) Members shall be appointed by the board and serve a term of office for two (2) years.

(3) Members shall be appointed in staggered terms with three (3) members being appointed in one (1) year and two (2) members being appointed the following year.

(4) The board shall appoint a chairman and a secretary at the first meeting of every calendar year to serve a one (1) year period.

(5) The secretary shall keep minutes of the meeting to document all transactions of the committee and shall submit a report to the Board.

(6) The committee shall meet at least once per quarter of a year or when called to order by the chairman.

(7) Duties of the committee shall be to review and approve all sponsors and programs as being relevant to the practice of landscape architecture. Further, the committee shall establish the methods for documentation needed to fulfill continuing education credits for licensing.

Section 5. Approval of Educational Programs. (1) The sponsor or attendee shall submit to the committee documents or other materials for evaluation. The committee shall approve those activities which will further the competence of a licensee and determine the number of contact hours allowed.

(2) The conversion to contact hours from other units is as follows:

(a) One (1) continuing education unit (CEU) - ten (10) contact hours.

(b) One (1) university quarter hour of credit - thirty (30) contact hours.

(c) One (1) university semester hour of credit - forty-five (45) contact hours.

Section 6. Professional Development Requirement. Continuing education activities which satisfy the professional development requirement shall include, but not be limited to, college and university courses, activities which awarded continuing education units (CEU's) and those portions of technical meetings, seminars, or other courses which are related to landscape architectural practice or management as approved by the Professional Development Review Committee. Landscape architects teaching a continuing education program shall be given contact hours equal to the time spent teaching the program. Continuing education contact hours less than one (1) hour **shall** ~~[will]~~ not be counted as credit towards the annual continuing education requirements. Although, partial hours in increments of one-half (1/2) of an hour above one (1) hour **shall** ~~[will]~~ be acceptable. In addition, travel and self-directed study are acceptable with prior approval of the Professional Development Review Committee and the board.

Section 7. Certificate of Completion. A sponsor shall provide each participant, within thirty (30) days after completion, a certificate of completion form as provided by the committee. The form shall state the participant's full name, and the number of contact hours authorized by the committee for that sponsor's program. If a sponsor does not provide a certificate of completion, the participant **shall** ~~[must]~~ obtain an affidavit for their attendance from the board and the affidavit **shall** ~~[must]~~ be properly completed so that credit for participation can be obtained. The certificate of completion or affidavit of completion **shall** ~~[must]~~ be filed with the board in order to obtain the continuing education credit. Failure by a registrant to submit a truthful and accurate affidavit may result in revocation of a registrant's license. The board will maintain all records of continuing education.

Section 8. Reciprocity. Continuing education reciprocity may be granted from a registrant's resident state.

(1) If a registrant does not reside in the state, and is registered in another state having continuing education requirement equal to, or more stringent to these requirements, and the registrant meets all other requirements of that state or district to maintain registration. The state shall certify to the board that their continuing education requirements are equal to or more stringent and shall certify that the registrant has met their requirements for the current renewal period.

(2) **If** ~~[Should]~~ the required number of contact hours required for continuing education of a registrant's resident state be less that those required by the board, contact hours obtained in the registrant's resident state may be credited against the contact hours required by the board.

Section 9. Exempt Registrant. A registrant may make a formal request in writing to the board that he may be granted exempt status. The board shall respond in writing sixty (60) days after the receipt to the registrant's request. An individual on said status shall be exempt from the requirements of this section during this period. The registrant shall not be allowed to use the title, "landscape architect," or to practice landscape architecture in the state during this time. The board shall update and make available for public inspection a list naming all exempt registrants. A registrant, if on exempt status for five (5) or more years, shall be classified as lapsed, and his license will be suspended and the board may proceed with a hearing for revocation or suspension of a registrant's license.

Section 10. Reinstatement to Active Registration. A registrant who wishes to reinstate a registration may be required as determined by the board to satisfy one (1) of the following requirements:

(1) Complete all the continuing education requirements multiplied by the number of years of exempt status.

(2) Complete the Uniform National Examination within one (1) year immediately prior to application for reinstatement.

Section 11. Exemption. A registrant may be exempt from the professional development educational requirements for one (1) of the following reasons:

(1) New registrants by way of UNE shall be exempt for their first renewal period.

(2) If a registrant is employed as a landscape architect and is employed or assigned to duty outside the United States for a period of time exceeding 120 consecutive days in a calendar year, he shall be exempt from the fifteen (15) contact

hours required during that renewal period.

(3) Due to physical disability, illnesses, hardships, or other extenuating circumstances as reviewed and approved by the board. The board may request supporting documentation.

Section 12. Disciplinary Action. Failure of a registrant to satisfy the continuing education requirement for registration renewal may be cause to deny license renewal for the licensee.

Section 13. Noncompliance. A registrant who does not satisfy the continuing education requirement for registration renewal shall be suspended, and the registrant so notified following the renewal date. The registrant **shall** [~~must~~] comply with the continuing education requirements of the prior year within six (6) months following the renewal date or the board may proceed with a hearing for revocation of a registrant's license. The contact hours needed to fulfill the prior annual period requirement shall not be included in computing the subsequent renewal period.

MARK E. HORMAN, Board President
APPROVED BY AGENCY: August 6, 1991
FILED WITH LRC: October 14, 1991 at 9 a.m.

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

707 KAR 1:040. Tuition and support programs for deaf-blind children.

RELATES TO: KRS 167.210, 167.220, **34 CFR 300.400-403, 300.551** [~~to 167.240~~]
STATUTORY AUTHORITY: KRS 156.070, 156.160, 167.240
NECESSITY AND FUNCTION: KRS 167.210 provides a definition for deaf-blind students; KRS 167.220 authorizes the Department of Education to expend funds to send deaf-blind students to schools which provide qualified education programs for these students. **34 CFR 300.400-300.403 outlines state education agency responsibilities when students with disabilities are placed in private schools by public agencies for special education purposes. 34 CFR 300.551 outlines the responsibility of the state education agency to maintain a continuim of alternative placements for students with disabilities.** KRS 167.240 authorizes the department to promulgate [~~rules and~~] regulations as deemed necessary to carry out the purposes of KRS 167.210 to 167.240. [~~To repromulgate State Board of Education regulations for programs for deaf-blind children.~~]

Section 1. Definitions. (1) The definition of "deaf-blind children" is found in KRS 167.210.

(2) "Tuition" means a fee for instruction at a formal institution of learning as described in KRS 167.220.

(3) "Support" means those services described in KRS 167.220 which are required for the student to benefit from his[~~/her~~] educational program.

(4) "Other professional personnel" means those persons necessary to assist in making decisions regarding appropriate education programs and services for deaf-blind students. This term may include, but is not limited to:

(a) Experts in the area of deaf-blindness;

(b) Evaluation personnel; and

(c) Local education agency personnel who have worked specifically with the child.

Section 2. [~~1.~~] The tuition and support program for deaf-blind children shall be operated pursuant to KRS 167.210 to 167.240, inclusive, and the criteria listed below:

[~~(1) Definition. As used in KRS 167.210 to 167.240, unless the context otherwise requires, "deaf-blind children" includes any child whose combination of handicaps of deafness and blindness prevents him/her from profiting satisfactorily from public educational programs provided for the blind child or the deaf child.~~]

(1) [~~(2)~~] Evaluation. Before placement for deaf-blind children in a facility, school or institution providing a qualified program of education for deaf-blind [~~such~~] children can be considered, appropriate evaluations of the child shall be made by qualified personnel and a copy of the evaluation report forwarded to the Office of Special Instructional Services [~~Education for Exceptional Children~~].

(a) The Kentucky State Department of Education is authorized to expend available funds for the purpose of providing evaluation and diagnostic services for deaf-blind children. [~~Such~~] Funds are administered through the Office of Special Instructional Services [~~Education for Exceptional Children~~].

(b) Arrangements for evaluations shall be made by contacting the Office of Special Instructional Services [~~Education for Exceptional Children~~].

[~~(3) Educational placement.~~]

[~~(a) If results of the evaluation indicate that the child should be enrolled in an educational facility for deaf-blind children, application shall be made to an appropriate school.~~]

[~~(b) A statement that the child has been, or will be accepted by the school, must be submitted to the Office of Education for Exceptional Children. This bureau in cooperation with the child's parents and other professional personnel shall have the final responsibility for determining if the selected school is appropriate to the special educational needs of the child.~~]

(2) [~~(4)~~] Eligibility. The eligibility of the child for placement in a special educational facility, school or institution for deaf-blind children is based upon the following criteria:

(a) The child has both a vision and hearing loss so severe that he/she cannot make educational progress in existing public schools or state residential programs for the deaf or for the blind.

(b) All efforts have been exhausted for provision of educational programs for the child in state residential or [~~a~~] public school programs for the deaf or for the blind.

(c) All efforts have been exhausted for placement of the child in existing state-supported programs offering special adaptations of standard educational programs and practices.

[~~(d) The parents have followed through on the recommendation made by medical, psychological, and/or educational evaluations.~~]

(3) Educational placement. If a local school district's admissions and release committee determines through appropriate committee procedures as set out in 707 KAR 1:051, that the child meets the eligibility criteria set forth in KRS 167.210 and subsection (2) of this section, the admissions and release committee shall reflect the [~~such~~] decision in writing. The decision of the local admissions and release committee and all information which the committee used to make such a determination shall be forwarded to the Office of Special Instructional Services. The Office of Special Instructional Services shall make application to an appropriate school. Upon receipt of a statement that the child has been, or will be accepted by the school, representatives of this office in cooperation with the child's parents and other professional personnel shall have the final responsibility for determining if the selected school is appropriate to the special educational needs of the child.

(4) [~~(5)~~] Transportation. Funds will be provided by the Department of Education for the transportation of the deaf-blind child and one (1) parent or guardian to and from school at the beginning and end of the academic year, at the beginning and end of Christmas holidays, and at other times during the year when the school is closed and when all

students are required to leave campus. If it is necessary for more than one (1) person to accompany the child, requests shall be submitted to the Office of Special Instructional Services [~~Education for Exceptional Children~~].

(5) [~~(6)~~] Selection. The selection of children to receive aid through this program will be made on the basis of a review of all applications and on the availability of state funds. The Office of Special Instructional Services [~~Education for Exceptional Children~~] shall made this selection.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the State Board for Elementary and Secondary Education, as required by KRS 156.070(4).

THOMAS C. BOYSEN, Commissioner

JOSEPH W. KELLY, Chairman
APPROVED BY AGENCY: November 7, 1991
FILED WITH LRC: November 14, 1991 at 11 a.m.

PUBLIC PROTECTION & REGULATION CABINET
Registry of Election Finance
(As Amended)

801 KAR 2:010. Processing complaints; hearings.

RELATES TO: KRS [~~Chapter~~] 121.**140**
STATUTORY AUTHORITY: KRS 121.120
NECESSITY AND FUNCTION: KRS 121.120(3) provides for the registry to adopt rules and regulations to implement [~~effectuate~~] the purposes and provisions of the Act. The rules of practice and procedure before the registry are designed to inform the citizens of the Commonwealth of the steps to be followed in the processing of complaints by investigation or public hearing.

Section 1. Definitions. When used in this regulation:
(1) "Act" means the Kentucky Campaign Finance Regulation, KRS Chapter 121.
[~~(2) "registry" means the Kentucky Registry of Election Finance.~~]
[~~(3) "Election" means any primary, regular or special election to fill vacancies.~~]
(2) [~~(4)~~] "Complainant" means any person [~~registered voter~~] who files a complaint with the registry, as required by KRS 121.140.
(3) [~~(5)~~] "Executive Director" means [~~shall be~~] the person appointed by the registry under provisions of [~~and referred to in~~] KRS 121.120(1).
(4) [~~(6)~~] "Chairman" means [~~shall mean~~] the duly elected [~~appointed~~] Chairman of the Kentucky Registry of Election Finance.
(5) [~~(7)~~] "Hearing officer" means [~~shall mean~~] the person designated by the chairman, with concurrence of the registry, to conduct a hearing, or the registry.
(6) [~~(8)~~] "Investigator" means [~~shall mean~~] a member of the staff of the registry designated by the executive director to investigate the allegations of a [~~any~~] complaint, or to investigate any matter arising out of KRS Chapter 121.

Section 2. Complaint. (1) Who may file:
(a) Any person [~~registered voter~~] claiming the commission of a violation under this Act may [~~make, sign, and~~] file with the registry a written, sworn complaint. Assistance in drafting and filing a [~~such~~] complaint shall be made available to any complainant at the registry's office.
(b) The chairman may[~~, in a like manner, make, sign, and~~] file [~~such~~] a complaint.
(2) Complaint form. The complaint shall be in writing. The complaint must be signed and sworn before a Notary Public or other person duly authorized by law to administer oaths and take acknowledgments. Notarial service shall be furnished without charge by the registry.
(3) Contents.
(a) A complaint shall contain the following:
1. The full name and address of the complainant.
2. The name and address, if known, of the person, persons, or organization against whom the complaint is made.
3. A short [~~and~~] plain statement of the facts showing that a violation of the Act has occurred.
(b) A complaint should include [~~contain~~] the following:
1. The date or dates and time of the alleged violation. [~~; and~~] If the alleged violation is of a continuing nature, the dates between which the [~~said~~] violation is [~~(s) are~~] alleged to have occurred.
2. A statement as to any other action, civil or criminal, instituted by the complainant in any other forum based on [~~upon~~] the same facts as are alleged in the complaint, together with a statement as to the status or disposition of the [~~such~~] other action.
(4) Time of filing. A complaint alleging a violation shall [~~may~~] be filed within four (4) [~~two (2)~~] years after the alleged violation occurs. If the alleged practice is of a continuing nature, the date of the occurrence of the [~~said~~] practice shall be deemed to be any date subsequent to the commencement of the practice up to and including the date on which the practice has [~~shall have~~] ceased, or the date on which the complaint is [~~shall have been~~] filed [~~if the practice is still continuing~~].
(5) Place of filing. A complaint shall be filed with the registry at its office.
(6) Manner of filing. The complaint may be filed by [a] personal delivery or by mailing [~~of same~~] to the registry's office. [~~A complaint may be delivered to the executive director or to a member of the registry staff.~~]
(a) Not later than five (5) days after the registry receives a sworn complaint, or after it decides to investigate on its own initiative, it shall give notice of the investigation to the person complained against. The person complained against shall be given five (5) days from receipt of notice of the investigation in which to respond to the complaint of alleged violations. Not later than five (5) days after receipt of a response from the person complained against, the registry shall:
(b) Acknowledge receipt of the complaint to the complainant, where appropriate;
(b) Acknowledge receipt of the response from the person complained against; and
(d) Notify, in writing, the person who made the complaint and the person complained against of what action, if any, the registry has taken or plans to take on the complaint together with the reasons for such action or nonaction. If the registry does not decide within five (5) days of receipt of the response what action to take, it shall notify the person who made the complaint of the reasons for the delay and shall subsequently give him the appropriate notification.
(7) Amendment of complaint. The registry may permit the [~~or the hearing officer shall have the power reasonably and fairly to grant~~] amendment of a complaint.
(a) The power to amend a complaint may be exercised by the executive director [~~registry staff~~] with the consent of the complainant.
(b) The complainant's power to amend a [~~the~~] complaint may be exercised prior to the issuance of a notice of hearing as a matter of right, and after notice of hearing at the discretion of the executive director, the registry concurring.
(c) If the complaint is amended after the notice of hearing has been issued, postponement of the hearing date may be granted to the respondent [~~upon a request to the registry. In no event shall such hearing date be more than ten (10) days later than the original hearing date~~].
(8) Withdrawal of complaint. Upon the written request of the complainant, stating the reasons for the [~~such~~] request, a complaint, or any part [~~thereof~~], may be withdrawn only with [~~on~~] written consent of the registry. [~~as hereinafter set forth:~~]

(a) If the request for withdrawal is made before the case has been set [noted] for hearing, the written consent of the executive director shall be obtained.

(b) If the request for withdrawal is made after the case [date] has been set [noted] for hearing, the written consent of the chairman shall be obtained.

(c) [In either case, such] Withdrawal may be ordered without prejudice to the rights of the complainant or to the registry to reinstate [reinstitute].

(9) Dismissal of complaint. If the executive director [shall] determines from the face of the complaint or after an investigation that the complaint does not state reasonable grounds to believe a violation of the Act [KRS Chapter 121] has occurred, he[/she] shall recommend to the chairman [registry] that the complaint [same] be dismissed and notify the parties in writing [by mail] of that [such] determination and of the complainant's right to appeal to the registry for reconsideration [of such recommendation].

Section 3. General Investigations. The registry, in its discretion, may conduct such general investigations into the problems of the Kentucky campaign finance regulation as it deems necessary or desirable. Fairness demands that investigations be initiated only on credible allegations which are sufficiently specific to be capable of corroboration through investigation. [Investigation; Production of Evidence; Confidentiality.]

(1) Investigation. After the filing of a complaint, the executive director may initiate [direct] an investigation [as the chief investigator. The investigator shall make a prompt and thorough investigation of the allegations of the complaint].

(2) Production of evidence.

(a) An investigator may at any reasonable time, request access to premises, records, and documents relevant to the complaint.

(b) If the [such] request for access is denied, the registry may issue a subpoena duces tecum requiring the production of the [such] documents.

(c) If a person or entity [, persons or organization] fails to permit access, examination[, photographing,] or copying, the registry may apply to a circuit court for an order requiring that access be granted [the permitting of same].

(d) The results of the investigation shall be evaluated by the executive director and counsel for the registry. The executive director and counsel shall recommend in writing to the chairman that there be a finding of probable cause and that a date for hearing be set or there be a finding of no probable cause and the complaint be dismissed.

(e) A finding of probable cause or a finding of no probable cause shall be made by the chairman or a member of the registry designated by the chairman to make a finding. Upon a finding of probable cause, a formal statement of the probable cause finding together with a statement of the specific statutory violations alleged to have occurred, shall be served on the respondent together with a notice of hearing. Upon a finding of no probable cause, an order dismissing the complaint shall be served on all parties.

(3) Confidentiality. All matters relating to the investigation of a complaint shall be kept confidential pending a determination [by the registry] that there appears to be probable cause to believe that a violation has occurred. Upon a finding of probable cause, the results of the investigation shall be furnished to the complainant and the person complained against. [, at which time the matter shall be scheduled for a hearing.]

Section 4. Hearing Ordered; Notice. (1) When hearings ordered.

(a) After a finding of probable cause to believe that a violation of the Act [KRS Chapter 121] has occurred, the executive director shall schedule the complaint for a hearing [results of the investigation shall be reported to the executive director, who shall report same to the chairman with recommendation on the scheduling of a hearing].

(b) The chairman may [thereupon] appoint a [presiding] hearing officer or may hear the complaint before the registry [and shall set a time for the holding of a hearing].

(2) Notice of hearing.

(a) The notice of hearing shall state the date, time and place of [said] hearing. The notice [and] shall be served on all parties not less than thirty (30) [at least ten (10)] days prior to hearing date.

(b) If a party is represented by an attorney, a copy of the notice of hearing and complaint, as [the same may have been] amended, shall be furnished to the [said] attorney.

(3) Place of hearing. The place of [any] hearing shall be at the office of the registry, or any [such] other place which [as] may be designated by the chairman. [It. The registry shall give consideration to any requests for a change of hearing location made by a complainant or a respondent.]

Section 5. Hearings. (1) Appearances. The complainant shall personally appear [personally] at the hearing, with or without counsel, and give [submit] testimony. The respondent may appear at the hearing with or without counsel and may examine and cross-examine witnesses and may give [present] evidence. The complainant, [and] the legal counsel for the registry, or any other person, at [and in] the discretion of the registry or hearing officer, [any other person] may intervene, examine and cross-examine witnesses and give [present] evidence. Failure of the complainant to appear may [shall] be grounds for dismissal.

(2) Who may [shall] conduct. Hearings may be conducted before a hearing officer appointed by the chairman or before the registry, as the chairman may elect.

(3) Powers and duties of the chairman or [/] hearing officer. The chairman or [/] hearing officer shall have full authority to control the procedure of a hearing, to admit or exclude testimony or other evidence, and to rule upon all motions and objections. The chairman or [/] hearing officer shall make full inquiry into all the facts in issue and shall obtain a full and complete record of all facts necessary for a fair determination of the issues. The chairman or [/]hearing officer may call and examine witnesses, direct the production of papers or documents, and introduce that evidence [the same] into the record of the proceedings. If the proceeding is before the registry, all matters requiring a decision shall be made by a vote of the members of the registry with the chairman casting the deciding vote in case of a tie.

(4) Procedure.

(a) The case in support of the complaint may be presented before the registry or before a [/] hearing officer by the legal counsel for the registry, [-] the complainant or his counsel [may also present any evidence in support of the complaint].

(b) Evidence may be admitted if it is of the type commonly relied upon by reasonably prudent men in the conduct of their affairs. [However,] Irrelevant, immaterial, scandalous, or unduly repetitious evidence shall be excluded, and the rules of privilege shall be given effect.

(c) All testimony shall be given under oath or affirmation, and a [the] record of the proceedings shall be made and kept.

(d) Two (2) or more proceedings [under this Act] may be joined by the registry in its discretion.

(5) Stipulations. The parties may file a stipulation as to the facts. [in which event] The stipulation [same] shall be numbered and used at the hearing. The [Such] stipulation shall not preclude the offering of additional evidence by any party.

(6) Continuation and adjournments. The chairman or [/] hearing officer may continue a hearing from day to day or adjourn it to a later date or to a different place by announcement [thereof] at the hearing, or by appropriate notice to all parties.

(7) Motions and objections. Motions made during a hearing and objections with respect to the conduct of a hearing, including objections to the introduction of evidence,

may [shall] be stated either in writing or orally and shall be included in the record of the proceedings [hearings].

(8) Oral arguments and briefs. The chairman or [/] hearing officer may permit the parties, their attorneys, or the members of the registry staff presenting the case in support of the complaint, to argue orally and to file briefs within the [such] time limits that [as] the chairman or [/]hearing officer may determine.

(9) Improper conduct. The chairman or [/] hearing officer may exclude from the hearing room or from further participation in the proceeding any person who engages in improper conduct.

(10) Public hearings. All registry hearings shall be open to the public unless the respondent requests that the hearing be closed [a closed hearing].

(11) Written transcript of the record. The written transcript of the record shall consist of the notice of the hearing, the sworn complaint, as [the same may have been] amended, the transcript of the testimony taken at the hearing[s], the exhibits and depositions offered in evidence, written applications, briefs, orders, motions, and oral arguments if directed by the hearing officer, stipulations, the findings of fact, conclusions of law, and the final findings or actions taken by the registry.

Section 6. Discovery. (1) Subpoenas.

(a) Issuance of subpoena. Whenever it is deemed necessary to compel the attendance of witnesses or the production for examination of any books, [payrolls, personnel] records, correspondence, documents, papers, or any other evidence relating to any matter under investigation or in question before the registry, the executive director may issue a subpoena or subpoena duces tecum and [thereby] compel the [such] attendance of witnesses or production for examination of books, papers, and records or other documents.

(b) Issuance of subpoena at instance of party. The executive director, or [in his/her absence,] the chairman may issue a [such] subpoena or subpoena duces tecum, [as may be required,] at the instance of any party to a hearing or other proceeding[s]. The issuance of a [such] subpoena or subpoena duces tecum at the instance of a party shall depend upon [a] showing [of the] necessity [thereof].

(c) Fees. Where a subpoena or subpoena duces tecum is applied for and issued at the instance of a [any] party to a hearing or other proceeding, the cost of service, witness and mileage fees[, if any,] shall be borne by the party at whose instance it has been requested and issued unless otherwise ordered by the registry. Where a subpoena or subpoena duces tecum is issued at the instance of the executive director, the cost of [such] service, witness and mileage fees[, if any,] shall be borne by the registry.

(2) Depositions and interrogatories.

(a) Depositions of witnesses, or [including] any party, may be taken as prescribed by the Kentucky Rules of Civil Procedure.

(b) Interrogatories. The registry may, at any time after a complaint is filed, require any party or witness to answer interrogatories. The procedure for interrogatories shall conform to the Kentucky Rules of Civil Procedure.

(3) Refusal to make discovery. If a person fails to permit access, fails to comply with a subpoena, refuses to have his deposition taken, refuses to comply with a subpoena duces tecum, refuses to answer interrogatories or otherwise refuses to make discovery, the registry may request an order of a circuit court requiring [said] discovery.

Section 7. Orders. (1) Contents of finding. A finding of the registry issued after a hearing shall set forth the findings of fact and conclusions of law [of the hearing officer], and the registry's final decision. At [, and in] the discretion of the registry, an opinion containing the reasons for the [said] decision, [which] may be issued in lieu of specific findings and conclusions.

(2) Issuance of orders.

(a) If upon all the evidence it appears that a respondent has engaged in a **willful** [knowing] [any willful] violation, the registry shall state its findings of fact and conclusions of law. The finding of a [knowing] violation may [, and based thereon cause same to] be delivered to the Attorney General [or to the appropriate Commonwealth's Attorney] for further action at the discretion of the registry.

(b) If upon all the evidence, the registry [shall] finds that a respondent has not engaged in a violation, it shall state the findings of fact and conclusions of law and [shall] dismiss the complaint.

(3) Filing. All findings issued by the registry after a hearing shall be filed in the registry's office.

Section 8. Reopening of Proceedings. Who may open. After a hearing and the issuance of a final order, the registry may, upon its own motion or upon application of any party or intervening party, for good cause shown, or whenever justice [so] requires, reopen any closed proceeding upon notice to all the parties and intervenors, and may take the [such] action [as] it [shall] deems necessary.

Section 9. Certification. The chairman, or the executive director, is authorized [and empowered] to certify all documents or records which are a part of the files and records of the registry.

Section 10. Construction of Rules and Pleadings. (1) These [rules and] regulations shall be liberally construed to effect[uate] the purposes [and provisions] of the Act [KRS Chapter 121] and the policies of the Kentucky Registry of Election Finance.

(2) All pleadings shall be liberally construed with a view to effect justice, and the registry and hearing officer will, at every stage of any proceeding, disregard errors or defects in the pleadings or proceedings which do not substantially affect the [substantial] rights of the parties.

[Section 11. General Investigations. The registry, in its discretion, may conduct such general investigations into the problems of the Kentucky Campaign Finance Regulation as it deems necessary or desirable. Fairness demands that investigations be initiated only on credible allegations which are sufficiently specific to be capable of corroboration through investigation. Mere suspicion, rumor or innuendo are not sufficient grounds on which an investigation may be justified.]

R. WAYNE STRATTON, Chairman
THEODORE C. COLLEY, Secretary
APPROVED BY AGENCY: October 27, 1991
FILED WITH LRC: November 5, 1991 at 10 a.m.

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

815 KAR 25:010. Mobile homes.

RELATES TO: KRS 227.550 through 227.660, 227.990, 42 USC 5401

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) **This regulation is** [~~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 **incorporated** [~~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 **incorporated** [~~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 **incorporated** [~~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.

_____ BY _____
Date Person Authorized to Certify These Units

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
(As Amended)

902 KAR 20:117. Emergency health care ground transportation services.

RELATES TO: KRS 216B.010 to 216B.130, 216B.990(1), (2)

STATUTORY AUTHORITY: KRS **216B.042** [~~211.950, 216B.040, 216B.105~~]

NECESSITY AND FUNCTION: KRS 216B.040 and 216B.105 mandate that the Cabinet for Human Resources regulate health facilities and health services in Kentucky. This regulation provides for the minimum licensing requirements for **emergency** ground health care transportation services.

Section 1. Definitions. (1) "Advanced life support (ALS) emergency care and ambulance transportation" means the provision of services that meet the minimal essential requirements as established by the cabinet for basic life support services by personnel trained in skills necessary for an advanced life support service. The minimum requirements established by the cabinet for the provision of advanced life support services are described in Section **11** [~~12~~] of this regulation.

(2) "Ambulance" means a vehicle as defined in KRS 211.950(1) utilized for providing individuals with basic, advanced or specialized levels of emergency medical care. This unit may be used to provide emergency transportation or nonemergency runs for any individual who is sick, injured or otherwise incapacitated.

(3) "Ambulance service" means a provider as defined in KRS 211.950(2) and is licensed by the cabinet to supply basic, advanced or specialized levels of emergency medical care and emergency transportation, or nonemergency, convalescent runs.

(4) "Back-up ambulance" means a ground ambulance as defined in Section 5(3) of this regulation, and is licensed by the cabinet to provide emergency care and transportation when one (1) of the licensed primary ambulances is not in service, or on rare occasions when all of the primary ambulances are on runs and extreme circumstances dictate its use.

(5) "Basic life support emergency care and ambulance transportation" means health care and transportation provided on an emergency or scheduled basis to persons who are sick, injured, or otherwise incapacitated, and may require immediate stabilization and continued medical response and intervention during ground transit or upon arrival at the patient's destination to safeguard the patient's life or physical well being. The minimum requirements established by the cabinet for the provision of basic life support services are described in Section 1 through Section 8 of this regulation.

(6) "CPR" means cardiopulmonary resuscitation as conforming to the basic rescuer course of the American Heart Association or the basic life support for the professional rescuer course of the American Red Cross, either of which as a minimum shall include one (1) or two (2) person CPR; airway obstruction and airway adjuncts for adults, children and infants.

(7) "Dispatch center" means the location where incoming calls are initially received requesting an ambulance, and where contact is made with the ambulance for direction to the patient scene.

(8) "Emergency medical technician (EMT)" means a person certified pursuant to 902 KAR 13:010 through 902 KAR 13:100.

(9) "Emergency medical technicial-first responder" means a person certified pursuant to 902 KAR 13:110.

(10) "Paramedic (EMT-P)" means a person certified pursuant to 201 KAR 9:101 through 201 KAR 9:136.

(11) "Employee" means any ambulance service personnel who may be either paid or volunteer, full-time or part-time provider staff.

(12) "Interfacility" means emergency or **nonemergency** [~~NEHT~~] health care provided to a patient during ambulance transportation between two (2) **health care facilities** [~~hospitals or between a hospital and an extended care nursing facility, or vice versa~~].

(13) "Licensing agency" means the Division of Licensing and Regulation.

(14) "Nonconforming ambulance service" means an ambulance service that was licensed and incorporated into the emergency medical services system as nonconforming to laws and regulations governing ambulance services. The minimum requirements established by the cabinet for a nonconforming ambulance service, until it is able to meet the full criteria of an ambulance service, are described in Section 10 of this regulation.

[~~(15) "Nonemergency health transportation (NEHT)" means convalescent health care transportation provided on a prearranged basis to individuals whose impaired health condition requires stretcher transportation or medical supervision or equipment but does not indicate a need for emergency medical treatment during transit or upon arrival at the final destination.~~

~~(16) "Nonemergency health transportation (NEHT) service" is the entity exclusively licensed by the cabinet to provide only NEHT services. The minimum requirements established by the cabinet for the provision of services exclusive to nonemergency health transportation are described in Section 11 of this regulation.~~

~~(17) "Nonemergency health transportation (NEHT) vehicle" means a vehicle licensed by the cabinet to be used exclusively for nonemergency health transportation. The minimum requirements established by the cabinet for a NEHT vehicle are described in Section 11 of this regulation.~~]

(15) [~~(18)~~] "Prehospital" means emergency health care provided to a patient before and during ambulance transportation to a hospital.

(16) [~~(19)~~] "Primary ambulance" means a ground ambulance as defined in Section 5(3) of this regulation, and is licensed by the cabinet to be utilized by an ambulance service for the provision of emergency care and transportation or for the provision of nonemergency runs.

(17) [~~(20)~~] "Response time" means the time from which a call is received at the dispatch center, until an ambulance arrives at the patient scene.

(18) [~~(21)~~] "Sharps" means a portion of or the whole unit of medical supplies used in treatment procedures, that may puncture the skin (e.g., used needles, glass ampules, etc.)

(19) [~~(22)~~] "Specialized emergency care and ambulance transportation" means the services that meet the minimal essential requirements as established by the cabinet for the provision of emergency health care and transportation that may be unavailable to the general public and that has either specialized or limited functions which may require exceptional consideration of equipment or personnel requirements or hours of operation. The minimum requirements established by the cabinet for the provision of specialized emergency care services are described in Section 9 of this regulation.

Section 2. Scope of Operation and Services. This regulation covers health care transportation as provided to an individual in a vehicle specially designed or modified for the purpose of providing health care whereby the individual is afforded supervision or treatment by medically trained personnel who staff the vehicle, and the vehicle is equipped with medical equipment for use by the trained staff as appropriate.

Section 3. Licensing Requirements. The following licensing requirements shall apply to all ambulance [~~and nonemergency health transportation (NEHT)~~] services:

(1) No person shall provide, advertise, or profess to engage in the provision of basic, advanced life support specialized or nonconforming emergency medical care and transportation[~~, nor nonemergency health transportation~~] that originates in the Commonwealth of Kentucky without having first obtained a license from the cabinet. The following situations shall be exempt from the provisions of this regulation:

(a) First aid or transportation provided in accordance with KRS 216B.020(3) [~~(2)~~] (f);

(b) Any vehicle serving as an ambulance during a major catastrophe;

(c) Any ambulance operated by the United States government; and

(d) Any ambulance from an out-of-state ambulance service making a run originating in Kentucky for the purpose of returning a patient to his out-of-state residence.

(2) The ambulance service shall comply with all local, state, and federal statutes and regulations.

(3) The license shall be displayed in a prominent place at the service base station. The following information shall be included on the license:

(a) Identity and location of the base station and the number and location of substations, if any, to be operated by the licensee;

(b) Designation of the geographic area to be served by the licensee, allowing for a maximum of thirty (30) minutes initial response time for ninety-five (95) percent of the population within the service area for all emergency calls. This does not preclude the service, in unusual circumstances, from providing mutual aid, disaster assistance, nonemergency health transportation or scheduled patient transfers outside the geographic service area;

(c) Designation of the levels of care which the service is authorized to provide (e.g., basic, advanced, specialized, [~~nonemergency,~~] etc.); and

(d) Designation of the number of primary and back-up ambulances to be operated by the service. [~~If nonemergency runs are provided in other than the primary and back-up ambulances, the number of NEHT exclusive vehicles shall be designated separately on the license.~~]

(4) Upon application for initial licensing or renewal of the license, the applicant or licensee shall specify the number of ambulances [~~or NEHT vehicles~~] to be operated and as a minimum provide the licensing agency with the ambulance [~~or NEHT vehicle~~] serial and license tag numbers.

(5) The licensee shall notify the licensing agency of any change in the number, type or use of the ambulances [~~or NEHT vehicles~~] to be operated and the licensee shall meet the following requirements:

(a) No ambulance [~~or NEHT vehicle~~] shall be operated until after the licensing agency has been notified and has verified that it meets requirements as applicable. If the ambulance [~~or NEHT vehicle~~] represents an expansion of service (e.g., an increase in the number of primary ambulances [~~or NEHT vehicles~~]), the licensing agency shall verify that a certificate of need has been granted prior to the inspection; and

(b) The licensing agency shall be notified on the next licensing agency business day, following disposition of any prior approved ambulance [~~or NEHT vehicle~~] operated by the service (i.e., discontinued from service, change in use by the same ownership, or sale to another identified licensed ambulance [~~or NEHT~~] service).

(6) The licensing agency procedures shall not preclude the service from utilizing a replacement ambulance [~~or NEHT vehicle~~] on a temporary basis when a previously approved primary or back-up ambulance, [~~or NEHT vehicle~~] is out of service for maintenance. The following requirements shall apply:

(a) The licensing agency shall be immediately notified (or on the next working day) by phone of the ambulance service's need to operate a temporary replacement unit. Within five (5) days the ambulance service shall send the licensure agency written notice of the make, model, license number, and vehicle identification number and assurances that the temporary unit will be staffed and equipped in accordance with federal GSA specifications and this regulation;

(b) If the service plans to utilize the replacement for more than thirty (30) days, the service shall notify the licensing agency of the anticipated length of time the replacement will be in use; and

(c) The licensing agency shall be notified when the replaced unit is back in service.

(7) The cabinet shall maintain identifying records on all ambulances [~~and NEHT exclusive vehicles~~] according to established procedures.

Section 4. Management Requirements. All ambulance services shall:

(1) Establish lines of authority to include the designation of an administrator, and a designee who shall serve when necessary in the absence of the administrator, responsible for assuring compliance with all regulations during the daily operation of the service.

(2) Maintain adequate records and reports at the service base station to be made available for review as deemed necessary by the cabinet. Services shall:

(a) Complete the Kentucky emergency medical service ambulance run report form according to the guidelines established by the cabinet. They shall be maintained in a manner of confidentiality and safekeeping for a minimum of five (5) years from the **date on which the service was rendered** [~~last date of service~~], or in the case of a minor, until five (5) years **after the minor reaches** [~~beyond the age of majority (i.e., majority is)~~] eighteen (18) years of age. The form shall be completed for all runs that originate in Kentucky. The original, or a microfilm or similar copy procedure, may be utilized to meet the records retention requirement. A second copy stays with the patient record at the receiving facility. A third copy[~~, or required data elements as approved by the cabinet,~~] shall be forwarded to the cabinet in accordance with [~~established~~] procedures and submission dates **established in 902 KAR 20:008**.

(b) Maintain personnel files on each ambulance driver and attendant for a minimum of five (5) years, or longer if specified in local government archives approved schedules, following termination or retirement from employment; or five (5) years following the demise of the employee. Individual ambulance driver and attendant personnel files shall, as a minimum, contain evidence of training, experience, current credentials and health records to include:

1. A written statement from a physician that the employee is capable of performing assigned job duties; and

2. Maintenance of records for all known illnesses, accidents, physical or psychological impairments that may affect performance on duty. This shall include[~~:~~

~~a.~~] follow-up activities relating to known exposure to communicable diseases or hazardous materials[~~; and~~

~~b. Hepatitis B vaccination in accordance with OSHA regulation 29 CFR 1910.1030~~].

(3) Maintain and follow written administrative, personnel, medical and other operational policies and procedures, that are reviewed on an annual basis by the ambulance service in order to assess their effectiveness. The policies and procedures shall be developed to include at least the following areas:

(a) Organizational structure, staffing and allocation of [~~or~~] responsibility and accountability;

(b) Ambulance service mutual aid agreements, and agreements with other providers;

(c) Personnel performance guidelines; and

(d) A plan to assure that an in-service program is provided

for its staff. The program shall include the following:

1. Evidence of in-service training for staff regarding the handling of infectious waste in accordance with the Centers for Diseases Control guidelines;

2. A plan for response to and the protection and decontamination of the patient, ambulance, equipment and its staff if [~~when~~] called upon to transport a patient exposed to hazardous chemicals;

3. A plan for assessing all other staff in-service **training** needs, with a coordinated development of methods to meet those needs; and

4. The maintenance of written records to support in-service **training** conducted by the licensee.

(e) A plan for quality assessment of patient care and evaluation of staff performance related to patient care.

(f) Policies and procedures concerning patient destination and ambulance response and transport limitations.

Section 5. Operating Requirements. (1) Each ambulance service shall provide emergency care and transportation on a twenty-four (24) hour, seven (7) days a week basis. This provision may be met through an adequate call system or by written mutual aid agreement with another licensed ambulance service.

(2) When a licensed emergency ambulance service also makes nonemergency convalescent runs, a minimum of one (1) ambulance shall be held in reserve by the licensee to respond to emergency calls within the licensee's geographic service area. The licensee may enter into a written mutual aid agreement with another licensed ambulance service as a means to meet this requirement when the licensee's only remaining ambulance is called upon for an emergency response within or outside its geographic service area.

(3) Ambulance design and maintenance.

(a) Following the effective date of these regulations, each primary and back-up ground ambulance used in the provision of ambulance services shall be designed to provide adequately for the medical care and transportation of patients, and shall comply fully with ambulance design criteria contained in **"Federal Specifications for Ambulances" (hereinafter,** GSA federal specifications) in effect at the time the ambulance is manufactured, except for color and provider identification. Ambulances shall comply with KRS 189.910 through 189.950 regarding the use of lights and siren.

(b) Following the effective date of these regulations, for newly purchased ambulances the ambulance service provider shall require that a certification decal or sticker be supplied by the manufacturer, indicating that the ambulance met GSA federal specifications on the date it was manufactured. The certification decal shall be located on a permanent surface, such as in the ambulance oxygen tank compartment, or as later identified in any GSA federal specification revisions. For units that are later modified, the ambulance service provider shall require that the conversation company supply a letter to verify that the modification meets or exceeds the GSA federal specification requirements, except for color or provider identification, as incorporated in the GSA federal specifications on the ambulance original date of manufacture.

(c) In addition to the GSA federal specifications, the following additional state licensing requirements shall be maintained:

1. The heating system shall maintain a temperature of not less than sixty-five (65) degrees Fahrenheit in the driver and patient compartments in winter weather conditions;

2. The air conditioning system shall maintain a temperature of not more than eighty-five (85) degrees Fahrenheit in the driver and patient compartments in summer weather conditions; and

3. The name of the ambulance service provider shall appear on the exterior surface of the ambulance.

(d) A preventive maintenance program for each ambulance and its equipment shall be developed and implemented for the purpose of keeping them in optimum working order to protect the health and safety of the patient and ambulance personnel. Documentation shall be maintained to support evidence of periodic inspections or calibrations as required for maintenance and operation of the ambulance and its equipment.

(e) The interior of the ambulance and its equipment shall be cleaned after each use, unless precluded by emergency conditions.

(f) "Federal Specifications for Ambulances", KKK-A-1822 C (January, 1990), General Services Administration, Federal Supply Service, Washington, D.C. 20406, is incorporated by reference. This document may be inspected, obtained or copied at the Office of the Inspector General, Division of Licensing and Regulation, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621, 7:30 a.m. to 5 p.m., Monday through Friday.

(4) Communications. A communications system shall be developed, coordinated and maintained by each ambulance and nonemergency health transportation service. The communication system shall meet the following requirements:

(a) All ambulances shall be equipped with two (2) way radio communications equipment, capable under normal conditions of contacting the ambulance dispatch center and the receiving hospital;

(b) A portable communication device, on the ambulance radio frequency, shall be provided for personnel when away from the ambulance;

(c) The ambulance service shall have an acceptable plan to assure that all calls are routinely answered, and runs dispatched in an expedient manner in accordance with subsection (1) of this section; and

(d) Each ambulance service shall provide orientation to all drivers and attendants related to communication protocols that have been established by the ambulance service.

(5)**(a) Except as provided in this subsection, a patient shall be transported to the hospital:**

1. Of his choice; or

2. Chosen by the patient's physician.

(b) Subject to the jurisdictional limitations of the ambulance service, if a patient or his physician is unable to make the choice, the patient shall be transported to the nearest hospital that has the ability to care for his medical condition.

(c) Ambulance service personnel may transport a patient to a hospital other than the hospital chosen by the patient or his doctor, if it is determined that it is necessary in order to save the patient's life.

(d) Kentucky emergency medical service ambulance run report forms shall require ambulance service personnel to state the name and city of the hospital to which patient was transported, and to check the appropriate item listed in this paragraph.

1. Patient requested hospital;

2. Patient's doctor requested hospital;

3. Medical necessity. [~~Each emergency ambulance service shall provide transportation to the nearest appropriate medical facility. For any run where the patient is not transported to the nearest facility, the ambulance service shall document that run to explain why another facility was more appropriate.~~]

Section 6. Basic Life Support Personnel. (1) Number of personnel.

(a) Each ambulance service shall be staffed to provide, as a minimum, **two (2) attendants** [~~one (1) driver and one (1) attendant~~] for each run involving emergency care and transportation or nonemergency runs. **One (1)** [~~The~~] attendant shall remain with the patient at all times during transport;

(b) There shall be no more patients, personnel and other persons than can be safely secured, by means of seat safety belts or similar devices, in the ambulance during transporta-

tion; and

(c) All personnel shall be capable of performing their job duties, and shall not cause the patient or other personnel any undue jeopardy.

(2) Qualifications of personnel.

(a) As a minimum, within six (6) months from the effective date of these regulations, the driver on each emergency care ambulance run shall:

1. Be at least eighteen (18) years of age, with current motor vehicle operator's license;

2. Have at least two (2) years of licensed driver/operator experience;

3. Complete a defensive driving training program that is developed by the ambulance service or in conjunction with another agency or organization. As a minimum, the training program shall consist of four (4) hours review of driving a vehicle under emergency conditions;

4. Documentation shall be available to support training in at least the following areas:

a. Review of KRS 189.910 through 189.950 regarding emergency vehicles.

b. Forward and back-up driving maneuvers in a controlled situation, such as in an obstacle course designed specifically for this purpose.

c. Review of defensive driving techniques and procedures by either hands-on experience, or exposure by visual aids, such as video tapes, slides or planned demonstrations.

5. The driver shall be capable of performing assigned duties.

(b) One (1) ambulance attendant on each prehospital emergency care ambulance run shall be certified or licensed for one (1) of the following levels:

1. Emergency medical technician (EMT);

2. Paramedic;

3. Registered nurse; or

4. Physician.

(c) The second ambulance attendant, who may also be the driver, as a minimum shall have certification or licensing within six (6) months after employment, for one (1) of the following levels:

1. American Red Cross advanced first aid and emergency care certification including supplemental cardiopulmonary-resuscitation (CPR) instruction approved by the American Red Cross or American Heart Association, until six (6) months after the effective date of this regulation, after which each shall become certified as an EMT first responder; or

2. EMT first responder;

3. EMT;

4. Paramedic;

5. Registered nurse; or

6. Physician.

(d) Personnel who on occasion may serve as either an attendant or a driver shall meet the qualifications for both roles. Personnel who serve as drivers only in a three (3) person crew and do not render any type of first aid or medical treatment, or personnel who serve as attendants only, shall have documentation of such in their personnel file.

(e) Ambulance personnel required to meet patient needs for interfacility or facility-to-home patient transports shall be determined by the attending physician and the initiating facility, in conjunction with the ambulance service staff.

Section 7. Each ambulance used in the provision of emergency care and ambulance transportation shall carry and maintain in full operational order the following minimum equipment and supplies:

(1) Suction, ventilation and blood pressure equipment.

(a) Suction apparatus (fixed and portable);

(b) Hand operated bag mask ventilation unit with adult and child size masks (capable of use with oxygen);

(c) Hand operated infant bag-mask ventilation unit with infant size masks (capable of use with oxygen);

(d) Oropharyngeal airways (adult, child, and infant sizes); and

(e) Adult, obese adult and pediatric sphygmomanometer cuffs and stethoscope (permanently mounted sphygmomanometer shall not satisfy this requirement).

(2) Oxygen equipment.

(a) Fixed and portable oxygen tanks with a filled, minimum size D, secured spare portable cylinder;

(b) Pressure gauge and flow rate regulator (range of zero to fifteen (15) liters per minute);

(c) Oxygen humidifier attachment for use on the fixed oxygen tank;

(d) Adaptor and tubing;

(e) Transparent masks (adult, and child); and

(f) Nasal cannulas.

(3) Bandages and tape.

(a) Minimum of two (2) sterile universal dressings at least ten (10) inches by thirty (30) inches, compactly folded and packaged;

(b) Minimum of twenty-five (25) sterile gauze pads, four (4) inches by four (4) inches;

(c) Minimum of ten (10) soft roller self-adhering bandages, various sizes;

(d) Minimum of four (4) rolls of adhesive tape, minimum of two (2) sizes;

(e) Minimum of ten (10) triangular bandages with large safety pins; and

(f) Minimum of two (2) sterile burn sheets.

(4) Miscellaneous supplies.

(a) Eye protector pads and shields;

(b) Minimum of one (1) roll of aluminum foil, or any acceptable occlusive substitute;

(c) Shears for bandages;

(d) Flashlight;

(e) Minimum of one (1) thermometer;

(f) Minimum of two (2) sterile obstetrical kits;

(g) A poison kit to contain at least one (1) bottle of syrup of ipecac (with current expiration date) and one (1) bottle of activated charcoal (if in suspension, shall have current expiration date); and

(h) Sterile irrigation fluids with current expiration date.

(5) Splints and immobilization devices.

(a) Lower extremity traction splint, or equivalent as approved by the cabinet for use in EMT training;

(b) Splints for arm, leg and foot (e.g., inflatable air splints, padded boards or ladder splints, or an acceptable substitute);

(c) Immobilization devices.

1. Short spine board or other acceptable extrication device, as determined by the cabinet; and

2. Long spine board with cervical immobilization accessories, and an orthopedic "scoop" stretcher or other fullbody immobilization device as determined by the cabinet.

(d) Rigid, stiff cervical collars in large, medium, small adult and pediatric sizes;

(e) A short spine board or an acceptable substitute, as determined by the cabinet, shall be provided for administering CPR.

(6) Safety supplies and equipment.

(a) Minimum of two (2) five (5) pound size, ABC multipurpose fire extinguishers, approved by Underwriters Laboratory, Coast Guard or Factory Mutual. One (1) shall be located in the driver compartment and the other located in the patient compartment;

(b) Multiposition stretcher with wheels and a mechanism to secure the stretcher while in transit;

(c) Minimum of one (1) pocket mask with oxygen inlet and isolation valve per patient attendant;

(d) Minimum of one (1) kit [~~two (2) kits~~] that include a clean scrub gown[~~s~~] (or substitute, such as disposable coveralls), disposable mask[~~s~~] and gloves per patient attendant;

(e) [~~When the patient or attendant is allergic to latex~~] [~~For instances when disposable gloves are not practical for use~~] A means of cleansing the hands shall be provided such as the

provision of a solution or disposable towelettes;
(f) Hospital type disinfectants;
(g) Plastic bags for disposal of waste materials;
(h) If sharps are carried, puncture resistant containers shall be provided for disposal of the sharp objects;
(i) Clean linens; and
1. Sheets; and
2. Minimum of two (2) blankets.
(j) Personal supplies.
1. Tissues; and
2. Emesis.
(7) Additional medical supplies and equipment desired for storage in the ambulance for persons responding to the scene who are certified to provide higher level medical skills may be considered for approval by the cabinet. For eligibility, the ambulance service shall include documentation to assure a system of accountability for the storage and handling of the additional medical supplies and equipment. The cabinet shall have the authority to deny approval of the arrangement, if it is determined that such an arrangement is not in the best interest of quality patient medical care, or safety of the patient and personnel.

Section 8. Extrication Equipment. (1) For response to trauma scenes, each ambulance service shall provide and maintain in full operational order, the following minimum light access and extrication equipment on each ambulance:
(a) Minimum of two (2) pairs of eye protection goggles;
(b) Minimum of two (2) pairs of heavy work gloves;
(c) Minimum of two (2) hard hats;
(d) Minimum of one (1) spring loaded window punch or acceptable substitute; and
(e) A minimum of six (6) flares.
(2) For response to trauma scenes, each ambulance service shall as a minimum provide one (1) vehicle, which need not be an ambulance, equipped with the following fully operational, more extensive access and extrication equipment. Ambulance services that have written agreements for this provision by rescue squads, fire departments for any emergency service agency that meets the requirement established by the cabinet, shall not be required to provide the more extensive access and extrication equipment.
(a) Minimum of two (2) 50 ft. long seven-sixteenths (7/16) or one-half (1/2) inch static **or** ~~[nylon]~~ dynamic **nylon** ropes;
(b) Minimum of one (1) pair of pliers, vise grip;
(c) Minimum of one (1) wrench, with adjustable, stable open end;
(d) Minimum of one (1) set of screw drivers, four (4) sizes, regular blade;
(e) Minimum of one (1) set of screw drivers, four (4) sizes, Phillips type;
(f) Minimum of one (1) double action tin snip;
(g) Minimum of one (1) crow bar, with pinch point;
(h) Minimum of one (1) hacksaw, with twelve (12) blades; and
(i) Minimum of one (1) hammer, three (3) pound size;
(j) Minimum of one (1) fire axe;
(k) Minimum of one (1) wrecking bar;
(l) Minimum of one (1) bolt cutter, with a minimum of one and one-fourth (1 1/4) inch jaw opening;
(m) Minimum of one (1) four (4) ton porta-power jack and spreader tool;
(n) Minimum of one (1) shovel, short handle, with pointed blade;
(o) Minimum of one (1) shovel, long handle, with pointed blade;
(p) Minimum of one (1) come-along tool; and
(q) Minimum of two (2) fire blankets.

Section 9. Specialized Emergency Care and Ambulance Transportation Service. An ambulance service which complies with Sections 1 through 8 of this regulation, and may also comply with Section 12, of this regulation may be allowed to have the following variances. If the ambulance service operates with these approved variances, it may be licensed as a specialized emergency care and ambulance transportation service:
(1) Each specialized ambulance service license shall specify the limitations of the services approved by the cabinet;
(2) In reference to Section 5(1) of this regulation, a specialized ambulance service shall not be required to provide emergency care and ambulance transportation on a twenty--four (24) hour, seven (7) days a week basis;
(3) Depending on the level of care to be provided, a specialized ambulance service shall be required to meet the minimum equipment, supplies and personnel requirements as listed in Sections 6 and 7 of this regulation or Section 12 of this regulation with certain variations as approved by the cabinet. Each specialized ambulance service desiring variations in equipment, supplies or personnel shall submit the requests in writing for consideration and for approval by the cabinet.

Section 10. Nonconforming Emergency Ambulance Service. No new ambulance service shall be eligible to become licensed as a nonconforming emergency ambulance service. Each existing service licensed as nonconforming shall on their next annual licensure survey submit an acceptable plan of correction to the licensing agency, for licensing as a basic ambulance service and may continue to operate according to the nonconforming license until it is able to meet the full criteria of the present regulations, or until the following annual survey whichever comes first, at which time it shall become licensed and fully comply with the standards of this regulation as a ~~[nonemergency health or a]~~ basic ambulance service. A nonconforming emergency ambulance service shall meet the minimum requirements of Sections 1 through 8 of this regulation with the exception of the following, until such time as the service is able to upgrade its operation to meet all requirements of the current laws and regulations governing ambulance services:
(1) In reference to Section 3(1) of this regulation, no ambulance service licensed in any category other than nonconforming ambulance service, shall be eligible to become licensed as a nonconforming ambulance service.
(2) In reference to Section 3(3)(b) of this regulation, a nonconforming ambulance service shall not expand its geographic area of operation unless it is in the process of upgrading to fully comply with the laws and regulations governing ambulance services.
(3) In reference to Section 3(5) of this regulation, a nonconforming ambulance service shall not expand its service by the addition of ambulances, other than replacement of a previously approved ambulance, unless it is in the process of upgrading to fully comply with the current laws and regulations governing ambulance services.
(4) In reference to Section 4(2) and (3) and Section 5(3)(d) of this regulation, a nonconforming ambulance service shall not be required to keep written records and reports.
(5) In reference to Section 5(3)(a), (b) and (c), a nonconforming ambulance service may continue to operate ambulances that were in operation prior to these regulations that did not meet GSA federal specifications. Each ambulance purchased after the effective date of these regulations shall have been originally designed for use as an ambulance, shall meet the GSA federal design specifications in effect at the time of manufacture except for color and location of the provider identification and shall be provided with a certification sticker by the manufacturer.
(6) In reference to Section 6 of this regulation, as a minimum the attendants for each emergency care ambulance run for a nonconforming ambulance service shall have current certification for one (1) of the following levels:
(a) American Red Cross Advanced First Aid, including supplemental CPR instruction approved by the American Red Cross or American Heart Association, until six (6) months

after the effective date of this regulation, after which each shall become certified as an EMT first responder;

(b) EMT-first responder;

(c) EMT;

(d) Paramedic;

(e) Registered nurse; or

(f) Physician.

(7) In reference to Section 5(4)(b) of this regulation, a portable radio communication device, for use when away from the ambulance, shall not be required for a nonconforming ambulance service.

~~[Section 11. Nonemergency Health Care and Transportation (NEHT) Service. (1) A service that is designed for the transportation of a person who is unable to utilize common carrier and complies with Sections 1 through 8 of this regulation, while having the following variances, shall be deemed as meeting the requirements for a nonemergency health care and transportation exclusive service.~~

~~(2) In reference to Section 3(3)(b) of this regulation, NEHT exclusive services shall not be required to meet a maximum of thirty (30) minutes initial response time for ninety five (95) percent of the population within the service area.~~

~~(3) In reference to Section 3(3)(d) of this regulation, NEHT exclusive services shall have only primary vehicles.~~

~~(4) In reference to Section 5(1) of this regulation, a NEHT exclusive service shall not be required to operate nor provide dispatch coverage on a twenty four (24) hour basis, but may limit its prescheduled coverage to a designated range of hours.~~

~~(5) In reference to Section 5(3)(a), (b) and (c) of this regulation, vehicles used exclusively for nonemergency, convalescent health transportation may deviate from federal GSA requirements. In accordance with KRS 189.920, the NEHT vehicles shall not be equipped with emergency lights or sirens. As a minimum, each vehicle for a NEHT exclusive service shall:~~

~~(a) Be constructed to allow verbal communication between the driver and patient attendant during transit;~~

~~(b) In reference to Section 5(3)(c)1 and 2 of this regulation, have comparable heating and air conditioning systems in both the driver and patient compartments;~~

~~(c) Have two (2) access doors to the patient compartment, one (1) being at the right side and one (1) at the rear of the patient compartment; and~~

~~(d) Have in the patient compartment, interior minimum dimensions as follows:~~

~~1. Height of forty two (42) inches from floor to ceiling;~~

~~2. Width of forty eight (48) inches; and~~

~~3. Length of ninety two (92) inches from the rear door to the driver section.~~

~~(6) In reference to Section 6(2)(a)3 of this regulation, the driver on each NEHT exclusive service run shall not be required to complete a defensive driving training program.~~

~~(7) In reference to Section 6(2)(b) of this regulation, the patient attendant on each NEHT exclusive service run shall as a minimum have:~~

~~(a) American Red Cross advanced first aid and emergency care certification, including supplemental CPR instruction certification approved by the American Red Cross or American Heart Association, until six (6) months after the effective date of this regulation after which each shall become certified as an EMT first responder; or~~

~~(b) EMT first responder certification.~~

~~(c) A second attendant, who may also be the driver, shall not be required to have certification or licensing in one (1) of the categories listed in Section 6(2)(c) of this regulation.~~

~~(d) For nonemergency health transportation in which the patient may require monitoring or potential treatment by personnel trained beyond the EMT first responder level, ambulances licensed to be staffed and equipped for basic or advanced life support shall be used for transporting the patient.~~

~~(8) In reference to Section 7 of this regulation, all vehicles used exclusively for provision of nonemergency health care and transportation shall be required to provide and maintain in full operational order, only the following minimum supplies and equipment:~~

~~(a) Two (2) five (5) pound size, ABC multipurpose fire extinguishers approved by Underwriters Laboratory, the Coast Guard or Factory Mutual. One (1) extinguisher shall be located in the driver compartment and the other one shall be located in the patient compartment;~~

~~(b) Oxygen equipment, as specified in Section 7(2) of this regulation may be utilized only when the vehicle patient compartment is staffed minimally by EMT first responder certified personnel.~~

~~(c) Multiposition stretcher with wheels and a mechanism to secure the stretcher while in transit or equipped with a wheelchair lift and a mechanism to secure all wheelchairs utilized during transport;~~

~~(d) First aid supplies and equipment of quantities to be determined by the NEHT service director to include:~~

~~1. Sterile gauze pads, four (4) inches by four (4) inches;~~

~~2. Soft roller self adhering bandages;~~

~~3. Adhesive tape, various size rolls;~~

~~4. Triangular bandages with large safety pins;~~

~~5. Bandaids, various sizes; and~~

~~6. Shears for bandages.~~

~~(e) Clean linens as required by Section 7(6)(i) of this regulation; and~~

~~(f) Personal supplies as required by Section 7(6)(j) of this regulation.~~

~~(9) In reference to Section 8 of this regulation, NEHT exclusive services shall not be required to carry extrication equipment nor have a written agreement with another service for this provision.~~

~~(10) In reference to Section 5(1) of this regulation, a NEHT exclusive service shall not be required to operate twenty four (24) hours a day.~~

~~(11) The following additional variances shall apply to NEHT exclusive services:~~

~~(a) Each NEHT exclusive vehicle shall not be labelled to imply that it provides emergency medical services, nor display the Star of Life or the word ambulance. Vehicles so labelled prior to the effective date of this regulation shall, on the next scheduled licensure survey, submit an acceptable plan of correction to the licensing agency for complying with this regulation.~~

~~(b) The minimum staffing requirement for a NEHT exclusive vehicle shall be one (1) driver and one (1) attendant who shall remain with the patient at all times.~~

~~(c) Nonemergency health transportation exclusive vehicles, purchased after the effective date of these regulations, that have an orange stripe shall have a nonwhite field (a white field is acceptable for any vehicle having a nonorange stripe).]~~

Section 11. ~~[12.]~~ Advanced Life Support (ALS) Emergency Care and Ambulance Transportation Service. (1) An ALS ambulance service shall meet all the minimum requirements of Sections 1 through 8 of this regulation. It shall also meet the additional requirements of this section.

(2) Evidence shall be on file to verify that the ALS written medical protocols have been reviewed by the Kentucky Board of Medical Licensure to assure compliance with 201 KAR 9:161.

(3) An ALS emergency care and ambulance transportation service shall provide services on a twenty-four (24) hour, seven (7) days a week basis. This provision may be met through an adequate call system or by a written mutual aid agreement with another licensed advanced life support emergency care ambulance service.

(4) Each ALS ambulance shall be staffed according to the requirements of 201 KAR 9:171, Section 5.

(5) Each ALS nontransportation vehicle shall be staffed by a minimum of one (1) person who shall have minimum

training and current certification as an EMT paramedic.

(6) In addition, each ALS service shall have a medical director who:

(a) Shall assume responsibilities in accordance with 201 KAR 9:171, Section 2(1) through (5);

(b) Shall assume other responsibilities as agreed upon between the medical director and the director of the ALS ambulance service;

(c) Shall meet the qualifications specified in 201 KAR 9:171, Section 2(6). Evidence shall be on file, to verify that the qualifications of the medical director have been reviewed by the Kentucky Board of Medical Licensure to assure compliance with 201 KAR 9:171, Section 2(6); and

(d) Shall have, within six (6) months after the effective date of this regulation, completed a residency program in emergency medicine approved by the Residency Review Committee of the American Medical Association, or shall be a physician who holds or is in the process of completing certification in advanced cardiac and advanced trauma life support, or shall have, in the personnel file, written approval from the Kentucky Board of Medical Licensure.

(7) Each ambulance used in the provision of ALS emergency care and ambulance transportation shall carry and maintain in full operational order the minimum equipment and supplies required by 902 KAR 20:115.

(8) A nonambulance, nontransportation ALS vehicle shall have available the minimum equipment and supplies required by 902 KAR 20:115. This may be accomplished through the coordinated response of an ambulance from the same service, or the coordinated response of an ambulance from a separate service under the provisions of a written mutual aid agreement on file with both services.

(9) In addition, each ALS service shall carry and maintain in full operational order the minimum ALS equipment and supplies as required in 201 KAR 9:171, Section 7, on each ALS ambulance or nontransportation vehicle.

(10) Drugs and medications, as provided for in protocols established in accordance with subsection (2) of this section shall be stocked and maintained.

(11) A locked compartment, or equivalent approved by the cabinet, shall be provided for the storage of controlled drugs.

Section **12.** [~~13 (1).~~] 902 KAR 20:115 is hereby repealed. [~~(2) 902 KAR 20:120 is hereby repealed.~~]

CLAY CESSNA, Inspector General
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 31, 1991
FILED WITH LRC: November 4, 1991 at 3 p.m.

REGULATIONS AMENDED AFTER PUBLIC HEARING OR WRITTEN COMMENTS RECEIVED

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(Amended After Hearing)

405 KAR 8:010. General provisions for permits.

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

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

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

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

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

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

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

(b) Renewal of valid permanent program permits. An application for renewal of a permit under Section 21 of this regulation shall be filed with the cabinet at least 120 days before the expiration of the permit.

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

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

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

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

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

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

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

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

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

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

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

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

1. Preliminary Application, MPA-00;
2. Permittee Information for a Mining Permit, MPA-01;
3. Operator Information for a Mining Permit, MPA-02;
4. Technical Information for a Mining Permit, MPA-03;
5. Surface Owner's Affidavit: Lands Historically Used for

Cropland, MPA-03-20.1.B;

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

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

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

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

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

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

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

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

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

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

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

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

(3) The collection and analysis of all technical data submitted in the application shall be planned by or conducted under the direction of a professional qualified in the subject to be analyzed and shall be accompanied by:

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

(b) Dates of the collection and analyses; and

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

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

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

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

(6) General requirements for maps and plans.

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

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

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

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

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

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

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

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

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

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

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

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

applicant's receipt of written notice from the cabinet that the application has been deemed administratively complete and ready for technical review.

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

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

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

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

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

(b) A map or description which shall:

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

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

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

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

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

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

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

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

(g) The application number.

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

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

(b) The application number;

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

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

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

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

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

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

1. The USDA Soil Conservation Service State Conservationist;

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

3. The National Park Service;

4. Kentucky and federal fish and wildlife agencies; and

5. The state historic preservation officer.

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

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

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

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

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

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

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

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

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

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

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

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

(2) Except as provided in subsection (3) of this section, if a permit conference has been requested in accordance with subsection (1) of this section, the cabinet shall hold a confer-

ence within twenty (20) working days after the last date to request a conference under subsection (1)(c) of this section. The conference shall be conducted according to the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) Review of violations.

(a) Based on available information concerning failure-to-abate cessation orders issued by OSM, Kentucky, or any other state; unabated imminent harm cessation orders issued by OSM, Kentucky, or any other state; delinquent civil penalties assessed pursuant to SMCRA, federal regulations enacted pursuant to SMCRA, KRS Chapter 350 and regulations adopted pursuant thereto, or any other state's laws or regulations under SMCRA; bond forfeitures by OSM, Kentucky, or any other state where violations upon which the forfeitures were based have not been corrected; delinquent abandoned mine reclamation fees; and unabated violations of

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

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

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

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

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

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

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

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

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

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

(4) The proposed permit area is:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) The applicant;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) General.

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

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

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

(2) Right of entry.

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

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

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

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

(3) Environment, public health, and safety.

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

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

2. Immediate implementation of measures necessary to comply; and

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

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

(c) The permittee shall conduct its operations:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Major revision.

(a) Except as provided in subsections (3)(f) and (6) of this section, a revision shall be deemed [~~is~~] a major revision if the cabinet determines that the proposed change is of such scope and nature that [~~the cabinet determines that~~] public notice is necessary to allow participation in the cabinet's decision by persons who have an interest which may be adversely affected by the proposed change. Major revisions shall

include, but shall not be limited to:

1. Changes in the postmining land use;

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

3. Variances to approximate original contour requirements;

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

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

6. Proposed experimental practices;

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

8. Incidental boundary revisions that affect new watersheds; and

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

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

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

(3) Minor revisions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

c. The operation will not generate coal mine waste;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

a. The total acreage of the minor off-permit disturbances is no more than one (1) acre combined per proposal;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) Proposed minor revisions which only seek to change the engineering design of impoundments and diversions of overland flow where no change in permit boundary is involved shall not be subject to the administrative completeness

determination of Section 13(2) of this regulation; however, the application shall be processed in, and written notice that the application has been determined to be subject to this paragraph and is being forwarded for technical review shall be provided to the applicant within ten (10) working days. The time frame for review in Section 16(1)(a)3 of this regulation shall begin at the time of this notice.

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

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

2. Are contiguous to the current permit area;

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

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

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

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

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

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

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

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

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

(5) Size limitations for incidental boundary revisions.

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

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

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

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

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

(6) Operator change revisions.

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

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

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

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

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

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

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

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

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

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

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

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

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

(h) **For a complete and accurate application,** the cabinet shall notify in writing the permittee, the proposed operator, and any commenters on the application, of its **decision to approve or deny the application within fifteen (15) working days after the close of the public comment period under paragraph (f) of this subsection, except that periods of temporary withdrawal shall not be counted against the fifteen (15) working day period available to the cabinet. If the notice, hearing, and conference procedures mandated by KRS Chapter 350 and KAR Title 405 prevent a decision from being made within the time period specified in this paragraph, the cabinet shall have additional time to issue its decision, but not to exceed twenty (20) days from the completion of the notice, hearing and conference procedures** [~~final decision~~].

(7) [~~(5)~~] Fees. Applications for [~~major and minor~~] revisions shall include a basic fee of $375, except that minor field

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

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

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

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

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

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

(d) A renewal fee of $375;

(e) Evidence that the performance bond will continue in effect for any renewal requested, as well as any additional bond required by the cabinet pursuant to 405 KAR 10:020; and

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

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

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

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

(6) Approval or denial of renewal applications.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4. A processing fee of $375.

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

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

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

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

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

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

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

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

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

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

(7) Rights of successor. All rights and liabilities under the

original permit shall pass to the successor upon reissuance of the permit, except that the original permittee shall remain liable for any civil penalties resulting from violations occurring prior to the date of reissuance of the permit. The cabinet shall not approve transfer of a surface coal mining permit to any person who would be ineligible to receive a new permit under KRS 350.130(3).

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

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

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

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

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

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

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

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

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

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

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

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

(b) The violation, penalty, or fee:

1. Remains unabated or delinquent; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

RONALD P. MILLS, Acting Commissioner
PHILLIP J. SHEPHERD, Secretary
APPROVED BY AGENCY: January 10, 1992
FILED WITH LRC: January 10, 1992 at noon

PUBLIC PROTECTION AND REGULATION CABINET
Public Service Commission
(Amended After Hearing)

807 KAR 5:006. General rules.

RELATES TO: KRS Chapter 278, 49 CFR Part 192
STATUTORY AUTHORITY: KRS 278.280(2), 49 CFR Part 192
NECESSITY AND FUNCTION: KRS 278.280(2) provides that the Public Service Commission (hereinafter referred to as "commission") shall prescribe rules for the performance of any service or the furnishing of any commodity by any utility. This regulation establishes general rules which apply to electric, gas, water, sewage and telephone utilities. This regulation includes the substance of 807 KAR 5:008, which it repeals.

Section 1. Definitions. (1) "Utility" means a utility as defined in KRS 278.010(3).
(2) "Customer" means any person, firm, corporation or body politic applying for or receiving service from any utility.

Section 2. [1.] General Provisions. (1) The adoption of regulations by the commission shall not preclude the commission from altering or amending the same in whole or in part, or from requiring any other or additional service, equipment, facility, or standards, either upon request, or upon its own motion, or upon the application of the utility. No regulation of the commission shall in any way relieve a utility from any of its duties under the laws of Kentucky [this state].
(2) Any reference to [Whenever] standards or codes [are referred to] in [the] commission['s] regulations shall not prohibit [it is understood that] utilities employing competent [corps of] engineers [are not to be prohibited thereby] from continuing or initiating experimental work and installations which tend to improve, decrease the cost of, or increase the safety of their service.

[Section 2. Definitions. In addition to the definitions as set out in KRS 278.010, the following definitions shall be used in interpreting the commission's regulations:]
[(1) "Commission" means the Public Service Commission.]
[(2) "Utility" means a utility as defined in KRS 278.010(3).]
[(3) "Customer" means any person, firm, corporation or body politic supplied service by any utility.]

Section 3. Reports. (1) Financial and statistical reports. Every utility shall file annually a financial and statistical report upon forms to be furnished by the commission. This [Said] report shall be based upon the accounts set up in conformity with the [commission's order adopting] uniform system [classification] of accounts for utilities. This report shall be filed on or before March 31, each year, for the preceding calendar year. The forms for this report are hereby incorporated by reference, and may be obtained at the commission's offices at 730 Schenkel Lane, P.O. Box 615, Frankfort, Kentucky, 40602, Monday through Friday between the hours of 8 a.m. and 4:30 p.m. local time. For good cause shown, the executive director of the commission may, upon application in writing, allow a reasonable extension of time for such filing.
(2) Report of meters, customers and refunds. Every gas, electric and water utility shall make periodic[al] reports on [such] forms [as may be] prescribed by the commission, of meter tests, number of customers and amount of refunds. These forms are hereby incorporated by reference, and may be obtained at the commission's offices at 730 Schenkel Lane, P.O. Box 615, Frankfort, Kentucky, 40602, Monday through Friday between the hours of 8 a.m. and 4:30 p.m. local time.
(3) Report of terminations for nonpayment of bills. Each electric and gas utility shall report annually the number of residential accounts terminated for nonpayment. These reports shall be filed no later than August 15 and shall cover the period ending June 30.
(4) Other reports. Every utility shall make such other reports as the commission may at its discretion from time to time require.
(5) Record and report retention. [(4)] All records and reports shall be retained in accordance with the uniform system of accounts unless otherwise specified [herein].
(6) Transmittal letter. [(5)] All reports shall be accompanied by two (2) copies of a transmittal letter describing the report being furnished.

Section 4. Service Information. (1) The utility shall, on request, give its customers or prospective customers such information as is reasonably possible in order that they may secure safe, efficient and continuous service. The utility shall inform its customers of any change made or proposed in the character of its service which might affect the efficiency, safety, or continuity of operation.
(2) Prior to making any substantial change in the character of the service furnished, which would affect the efficiency, adjustment, speed or operation of the equipment or appliances of any customer, the utility shall obtain the approval of the commission. The application shall show the nature of the change to be made, the number of customers affected, and the manner in which they will be affected.
(3) The utility shall inform each applicant for service of each [the] type, class and character of service [that is] available [to him or her] at his [or her] location.

Section 5. Special Rules or Requirements. (1) No utility shall establish any special rule or requirement without first obtaining the approval of the commission on proper application.
(2) A customer who has complied with commission [the] regulations [of the commission] shall not be denied service for failure to comply with the utility's rules [of the utility] which have not been made effective in the manner prescribed by the commission.
(3) Obtaining easements and rights-of-way necessary to extend service shall be the responsibility of the utility. No utility shall require a prospective customer to obtain easements or rights- of-way on property not owned by the prospective customer as a condition for providing service. The cost of obtaining easements or rights-of-way shall be included in the total per foot cost of an extension, and shall be apportioned among the utility and customer in accordance with the applicable extension regulation.

Section 6. Billings, Meter Readings and Information. (1) Information on bills. Each bill for utility service issued [rendered] periodically by a utility [utilities] shall clearly show the following, if applicable: class of service; [, the] present and last preceding meter readings; [, the] date of the present reading; [, the] number of units consumed; [, the] meter constant, if any; [, the] net amount for service rendered; [,] all taxes; any [, the] adjustments; [, if any,] and the gross amount of the bill. The date after which a penalty may apply to the gross amount shall [must] be indicated. Estimated or calculated bills shall be distinctly marked as such. The rate schedule under which the bill is computed shall be furnished under one (1) of the following methods:
(a) By printing it [rate schedule] on the bill.
(b) By publishing it in a newspaper of general circulation once each year [or when rate is changed].
(c) By mailing it to each customer once each year [or when rate is changed].
(d) By providing a place on each bill where a customer may indicate his desire for a copy of the applicable rates. The utility shall mail the customer a copy [and furnishing same] by return first class mail.
[(2) Meter readings. The registration of each meter shall read in the same units as used for billing unless a conversion factor be shown on the billing forms and if the meter does not

~~read direct, the constant shall be plainly marked on the face of the meter dial.~~]

(2) [~~(3)~~] Flat rates. Flat rates for unmetered service shall approximate as closely as possible the utility's rates for metered service. [~~and~~] The rate schedule shall clearly set out the basis upon which consumption is estimated.

(3) Bill format. [~~(4) Utilities now using or desiring to adopt mechanical billing or other billing systems of such a nature as to render compliance with all of the terms of subsection (1) of this section impracticable may make application to the commission for relief from part of these terms. For good cause shown, the commission may allow the omission of part of these requirements.~~] Each utility shall include [~~submit~~] the [~~form of~~] billing form to be used by it, or its contents, in its tariffed rules [~~to the commission for its approval~~].

(4) Meter readings. Registration of each meter shall read in the same units as used for billing unless a conversion factor is shown on the billing form.

(5) Frequency of meter reading. Each utility, except if prevented by reasons beyond its control, shall read customer meters at least quarterly, except that each utility using customer-read meter information shall [~~initiate a program to~~] read each revenue related meter on its system at least once during each calendar year. Records shall be kept by the utility to insure that this information is available to [~~the~~] commission staff and any customer requesting this [~~such~~] information. If, due to reasons beyond its control, a utility is unable to read a meter in accordance with this subsection, the utility shall record the date and time the attempt was made, if applicable, and the reason the utility was unable to read the meter.

Section 7. Deposits. (1) Determination of deposits. A utility may require from any customer [~~or applicant for service~~] a minimum cash deposit or other guaranty to secure payment of bills, except from those customers qualifying for service reconnection under Section 15 of this regulation. The method of determining the amount of a cash deposit may differ between classes of customers, but shall be uniform for all customers within the same class. The amount of a cash deposit shall be determined by one (1) of the following methods:

(a) Calculated deposits. If actual usage data is available for the customer at the same or similar premises, the deposit amount shall be calculated using the customer's average bill for the most recent twelve (12) month period. If actual usage data is not available, the deposit amount shall be based on the average bills of similar customers and premises in the system. Deposit amounts shall not exceed two-twelfths (2/12) of the customer's actual or estimated annual bill where bills are rendered monthly, three-twelfths (3/12) where bills are rendered bimonthly, or four-twelfths (4/12) where bills are rendered quarterly.

(b) Equal deposits. The utility may establish an equal deposit amount for each class based on the average bill of customers in that class. Deposit amounts shall not [~~of an amount not to~~] exceed two-twelfths (2/12) of the average [~~estimated annual~~] bill of [~~such~~] customers in the class where bills [~~or applicant, where bills~~] are rendered monthly, [~~or an amount not to exceed~~] three-twelfths (3/12) [~~of the estimated annual bill of such customer or applicant,~~] where bills are rendered bimonthly, or [~~an amount not to exceed~~] four-twelfths (4/12) [~~of the estimated bill of such customer or applicant~~] where bills are rendered quarterly.

(c) Recalculation of deposits. If the utility will or may retain either an equal or calculated deposit for more than eighteen (18) months, it shall notify customers in writing that, at the customer's request, the deposit will be recalculated every eighteen (18) months based on actual usage of the customer. The notice of deposit recalculation shall be included either on the customer's application for service or on the receipt of deposit, or may be included annually with or on customer bills. The notice of deposit recalculation shall state that if the deposit on account differs by more than ten (10) dollars for residential customers, or by more than ten (10) percent for nonresidential customers, from the deposit calculated on actual usage, then the utility shall refund any over-collection and may collect any underpayment. Refunds shall be made either by check or by credit to the customer's bill, except that a utility shall not be required to refund any excess deposit if the customer's bill is delinquent at the time of recalculation. [~~The utility may require an equal deposit from all applicants for the same class of service. If the utility retains a residential deposit for more than eighteen (18) months, it shall advise the customer that the deposit will be recalculated based on actual usage upon the customer's request. The notice of deposit recalculation shall state that if the deposit on account differs by more than ten (10) dollars from the deposit calculated on actual usage, then the utility shall refund any over collection and may collect any underpayment. Refunds may be made by check or by credit to the customer's bill.~~]

[~~(2) Notification of a customer's right to a deposit recalculation shall be made at least once annually. The notice may be made by means of a general mailing (or bill stuffer) to all customers which specifies the above conditions.~~]

(2) Waiver of deposits. Deposits may be waived at the discretion of the utility in accordance with its currently effective tariff based upon a customer's showing of satisfactory credit and payment history.

[~~(3) The refund provisions contained in subsection (1) of this section notwithstanding, a utility shall not be required to refund any excess deposit if the customer's bill is delinquent by more than one (1) billing period at the time of recalculation.~~]

(3) Additional deposit requirement. If a deposit has been waived, as allowed in subsection (2) of this section, or has been returned and the customer fails to maintain a satisfactory payment record as defined in the utility's currently effective tariff, the utility may require that a deposit be made. If substantial change in usage has occurred, the utility may require that an additional deposit be made. No additional or subsequent deposit shall be required of residential customers whose payment record is satisfactory, unless the customer's classification of service changes, except as provided in subsection (1)(c) of this section.

[~~(4) The utility shall issue to every customer from whom a deposit is received a certificate of deposit, showing the name of the customer, location of initial premises occupied, date and amount of the deposit. If a residential deposit is recalculated in accordance with the above provisions, the customer shall return the original certificate of deposit to the utility in return for a new, accurate certificate.~~]

(4) Receipt of deposit. The utility shall issue to every customer from whom a deposit is collected a receipt of deposit. The receipt shall show the name of the customer, location of the service or customer account number, date, and amount of deposit. If the notice of recalculation described in subsection (1)(c) of this section is not included in the utility's application for service or mailed with customer bills, the receipt of deposit shall contain the notification. If deposit amounts change, the utility shall issue a new receipt of deposit to the customer.

(5) Deposits as a condition of service. Except as otherwise provided by Section 15 of this regulation, customer service may be refused or discontinued pursuant to Section 14 of this regulation if payment of requested deposits is not made.

(6) Interest on deposits. Interest shall accrue on all deposits at the rate prescribed by law, beginning on the date of deposit. Interest accrued shall be refunded to the customer or credited to the customer's bill on an annual basis, except that a utility shall not be required to refund or credit interest on deposits if the customer's bill is delinquent on the anniversary of the deposit date. All interest that has accrued as of the effective date of this regulation shall be refunded or credited to the customer's bill on the first anniversary of the deposit date after the effective date of this regulation. If interest is

paid or credited to the customer's bill prior to twelve (12) months from the date of deposit, the payment or credit shall be on a prorated basis. Upon termination of service, the deposit, any principal amounts, and interest earned and owing shall be credited to the final bill with any remainder refunded to the customer.

(7) Tariff requirements. Each utility which chooses to require deposits shall establish and include in its filed tariff the deposit policy to be utilized. This policy shall include:

(a) The method by which deposit amounts will be determined for each customer class;

(b) Standard criteria for determining when a deposit will be required or waived;

(c) The deposit amount for each customer class if the method in subsection (1)(b) of this section is used;

(d) The period of time the utility will retain the deposit, or the conditions under which the utility will refund the deposit, or both if applicable;

(e) The manner in which interest on deposits will be calculated and accrued and refunded or credited to customers' bills.

Section 8. Special Charges. (1) A utility may make special nonrecurring charges to recover customer-specific costs incurred which would otherwise result in monetary loss to the utility or increased rates to other customers to whom no benefits accrue from the service provided or action taken. Any utility desiring to establish or change any special nonrecurring charge shall apply for commission approval of such charge in accordance with the provisions of 807 KAR 5:011, Section 10.

(2) Special charges shall be included in the utility's tariff and applied uniformly throughout the area served by the utility. They shall relate directly to the service performed or action taken and shall yield only enough revenue to pay the expenses incurred in rendering the service.

(3) Special charges may include, but are not limited to:

(a) Turn-on charge. A turn-on charge may be assessed for a new service turn on, seasonal turn on or temporary service. A turn-on charge shall not be made for initial installation of service where a tap fee is applicable.

(b) Reconnect charge. A reconnect charge may be assessed to reconnect a service which has been terminated for nonpayment of bills or violation of the utility's rules or commission regulations. Customers qualifying for service reconnection under Section 15 of this regulation shall be exempt from reconnect charges.

(c) Termination or field collection charge. A charge may be assessed when a utility representative makes a trip to the premises of a customer for the purpose of terminating service. The charge may be assessed if the utility representative actually terminates service or if, in the course of the trip, the customer pays the delinquent bill to avoid termination. The charge may also be made if the utility representative agrees to delay termination based on the customer's agreement to pay the delinquent bill by a specific date. The utility may make a field collection charge only once in any billing period.

(d) Special meter reading charge. This charge may be assessed when a customer requests that a meter be reread, and the second reading shows the original reading was correct. No charge shall be assessed if the original reading was incorrect. This charge may also be assessed when a customer who reads his own meter fails to read the meter for three (3) consecutive months, and it is necessary for a utility representative to make a trip to read the meter.

(e) Meter resetting charge. A charge may be assessed for resetting a meter if the meter has been removed at the customer's request.

(f) Meter test charge. This charge may be assessed if a customer requests the meter be tested pursuant to Section 18 of this regulation, and the tests show the meter is not more than two (2) percent fast. No charge shall be made if the test shows the meter is more than two (2) percent fast.

(g) Returned check charge. A returned check charge may be assessed if a check accepted for payment of a utility bill is not honored by the customer's financial institution.

(h) Late payment penalty. A penalty may be assessed if a customer fails to pay a bill for services by the due date shown on the customer's bill. The penalty may be assessed only once on any bill for rendered services. Any payment received shall first be applied to the bill for service rendered. Additional penalty charges shall not be assessed on unpaid penalty charges.

Section 9. [~~8.~~] Customer Complaints to the Utility. Upon complaint to the utility by a customer [~~either~~] at the utility's [~~its~~] office, by telephone or in writing, the utility shall make a prompt and complete investigation and advise the complainant of its findings. The utility [~~thereof. It~~] shall keep a record of all written [~~such~~] complaints concerning its [~~utility~~] service. This record [~~which~~] shall show the name and address of the complainant, the date and nature of the complaint, and the adjustment or disposition of the complaint [~~thereof~~]. [~~Such~~] Records shall be maintained for two (2) [~~five (5)~~] years from the date of [~~the~~] resolution of the complaint. If a written complaint or a complaint made in person at the utility's office is not resolved, the utility shall provide written notice to the complainant of his right to file a complaint with the commission, and shall provide him with the address and telephone number of the commission. If a telephonic complaint is not resolved, the utility shall provide at least oral notice to the complainant of his right to file a complaint with the commission and the address and telephone number of the commission.

Section 10. [~~9.~~] Bill Adjustment for Gas, Electric and Water Utilities. (1) If [~~Whenever a meter in service is found~~] upon periodic test, request test, or complaint test a meter in service is found to be more than two (2) percent fast, additional tests shall be made [~~at once~~] to determine the average error of the meter. Said tests shall be made in accordance with [~~the~~] commission[~~'s~~] regulations applicable to the type of meter involved.

(2) If test [~~the~~] results [~~of tests~~] on a customer's meter show an average error greater than two (2) percent fast or slow, or if a customer has been incorrectly billed for any other reason, except in an instance where a utility has filed a verified complaint with the appropriate law enforcement agency alleging fraud or theft by a customer, the utility shall immediately determine the period during which the error has existed, and shall recompute and adjust the customer's bill to either provide a refund to the customer or collect an additional amount of revenue from the underbilled customer. The utility shall readjust the account based upon the period during which the error is known to have existed. If the period during which the error existed cannot be determined with reasonable precision, the time period shall be estimated using such data as elapsed time since the last meter test, if applicable, and historical usage data for the customer. If that data is not available, the average usage of similar customer loads shall be used for comparison purposes in calculating the time period. If the customer and the utility are unable to agree on an estimate of the time period during which the error existed, the commission shall determine the issue. In all instances of customer overbilling, the customer's account shall be credited or the overbilled amount refunded at the discretion of the customer within thirty (30) days after final meter test results. A utility shall not require customer repayment of any underbilling to be made over a period shorter than a period coextensive with the underbilling. [~~, then the customer's bills, for the period during which the meter error is known to have existed, shall be recomputed and the account adjusted on the basis of the test. In the event the period during which the meter error existed is unknown, then the customer's bill shall be recomputed for one half (1/2) of the elapsed time since the last previous test or for the past twelve (12) month period, whichever is less. (See exception in subsection (5) of this~~

~~section.)]~~

~~[(3) If the result of tests on a customer's meter shows an average error greater than two (2) percent slow, then the customer's bill, for the period during which the meter error is known to have existed, may be recomputed and the account adjusted on the basis of the test. In the event the period during which the meter error existed is unknown, then the customer's bill may be recomputed for one half (1/2) of the elapsed time since the last previous test but in no case to exceed twelve (12) months.]~~

~~[(4) It shall be understood that when a meter is found to have an error in excess of two (2) percent fast or slow the figure for calculating the amount of refund or the amount to be collected by the utility shall be that percentage of error as determined by the test; i.e., it is the duty of the utility to maintain the accuracy of its measuring devices as nearly 100 percent as is commercially practicable. Therefore, percent error shall be that amount of error as is indicated by the test.]~~

~~[(5) The burden of maintaining measuring equipment so that it will register accurately is upon the utility; therefore, if meters are found upon test to register fast and if time for periodic test has passed the refund shall be for the twelve (12) months specified in subsection (2) of this section plus the time exceeding the periodic test period; provided, however, that the commission may relieve the utility from this requirement in any particular case in which it is shown that the failure to make the periodic test was due to causes beyond the utility's control.]~~

(3) Monitoring usage. [~~(6)~~] Each utility shall [~~establish procedures, to be included in its rules and regulations, to~~] monitor customers' usage at least annually according to [~~and shall file the~~] procedures which shall be included in its tariff on file with the commission [~~for review~~]. The procedures shall be designed to draw the utility's attention to unusual deviations in a customer's usage and shall provide for reasonable means by which the utility can [~~may~~] determine the reasons for the unusual deviation. If a customer's usage is unduly high and the deviation is not otherwise explained, the utility shall test the customer's meter to determine whether the meter shows an average error greater than two (2) percent fast or slow [~~in accordance with subsection (2), (3) or (5) of this section~~].

(4) Usage investigation. If [~~(7) In instances in which~~] the utility's procedure for monitoring usage indicates that an investigation of a customer's usage is necessary, the utility shall notify the customer in writing either during or immediately after the investigation of the reasons for the investigation, and of the findings of the investigation. If [~~In those instances where~~] knowledge of a serious situation requires more expeditious [~~immediate~~] notice, the utility shall notify the customer by the most expedient means available.

(5) Customer notification. If [~~(8) When~~] a meter is tested and it is found necessary to make a refund or back bill a customer, the customer shall be notified in substantially the following form:

On _____, 19___, the meter bearing identification No.____ installed in your building located at _____ (Street and Number) in _____ (city) was tested at _____ (on premises or elsewhere) and found to register _____ (percent fast or slow). The meter was tested on _____ _____ (Periodic, Request, Complaint) test.

Based upon this we herewith _____ (charge or credit) with the sum of $_____, which amount has been noted on your regular bill. If you desire a cash refund, rather than a credit to your account, of any amount overbilled, you must notify this office in writing within seven (7) days of the date of this notice.

~~[(9) Whenever it is determined that a customer has been incorrectly billed for any reason, other than a meter which was registering incorrectly due to being out of tolerance or in an instance where a utility has filed a verified complaint with the appropriate law enforcement agency alleging fraud or theft by a customer, the utility may immediately attempt to determine the period during which the error has existed, and the customer's bill for the period during which the error is known to have existed may be recomputed, and the account readjusted to give a refund or collect an additional amount of revenue from the underbilled. The basis for recomputing the customer bills shall be based upon the historic usage data for the customer over the previous time period, unless that information is not available; and in that case, then an average usage of similar customer loads over the previous time period involved shall be used in this adjustment. In the event the period during which the meter error existed is unknown, the customer's bill may be recomputed for one half (1/2) of the elapsed time since the last previous test, or the past twelve (12) month period, whichever is less. Customer repayment of any underbilling shall be made over a period coextensive with the underbilling, not to exceed twelve (12) months.]~~

(6) [~~(10)~~] Customer accounts shall be considered to be current while a dispute is pending pursuant to this section, as long as a customer continues to make payments for the disputed period in accordance with historic usage, or if that data is not available, the average usage of similar customer loads, and stays current on subsequent bills.

Section 11. Status of Customer Accounts During Billing Dispute. With respect to any billing dispute to which Section 10 of this regulation does not apply, customer accounts shall be considered to be current while the dispute is pending as long as a customer continues to make undisputed payments and stays current on subsequent bills.

Section 12. [~~10.~~] Customer's Request for Termination [~~Discontinuance~~] of Service. (1) Any customer desiring service terminated [~~discontinued~~] or changed from one address to another shall give the utility three (3) working days' notice in person, [~~or~~] in writing, or by telephone, provided such notice does not violate contractual obligations or tariff provisions. The customer shall not be responsible for charges for service beyond the three (3) day notice period if the customer provides reasonable access to the meter during the notice period. If the customer notifies the utility of his request for termination by telephone, the burden of proof is on the customer to prove that service termination was requested if a dispute arises.

(2) Upon request that service be reconnected at any premises subsequent to the initial installation or connection to its service lines, the utility may, subject to subsection (3) of this section, charge the applicant a reconnect fee set out in its filed tariff [~~an amount not to exceed the actual average cost as approved by this commission of making such reconnection~~].

(3) Any utility desiring to establish a termination [~~disconnection and~~] or reconnection charge under the provisions of subsection (2) of this section, shall apply [~~submit~~] for commission approval of such charge in accordance with the provisions of 807 KAR 5:011, Section 10. [~~a formal application setting out:~~]

~~[(a) The actual average cost of making such reconnections; and]~~

~~[(b) The effect of such charges on the utility's revenues.]~~

Section 13. Utility Customer Relations. (1) A utility shall post and maintain regular business hours and provide representatives available to assist its customers.

(a) Available telephone numbers. Each utility shall maintain a telephone, shall publish the telephone number in all service areas, and shall permit all customers to contact the utility's designated representative without charge.

(b) Designated representatives. Each utility shall designate at least one (1) representative to be available to answer customer questions, resolve disputes and negotiate partial

payment plans at the utility's office. The designated representative shall be knowledgeable of the commission's regulations regarding customer bills and service and shall be authorized to negotiate and accept partial payment plans.

1. Each major gas or electric utility (as defined by the Uniform System of Accounts) and each water and sewer utility having annual operating revenues of $250,000 or more shall make the designated representative available during the utility's established working hours not fewer than seven (7) hours per day, five (5) days per week, excluding holidays.

2. Each nonmajor gas or electric utility (as defined by the Uniform System of Accounts) and each water or sewer utility having annual operating revenues of less than $250,000 shall make the designated representative available during the utility's established working hours not fewer than seven (7) hours per day, one (1) day per week. Additionally, during the months of November through March, each previously defined nonmajor utility providing gas or electric service shall make available the designated representative during the utility's established working hours not fewer than five (5) days per week.

(c) Display of customer rights. Each utility shall prominently display in each office in which payment is received a summary, to be prepared and provided by the commission, of the customer's rights under this section and Section 15 of this regulation. If a customer indicates to any utility personnel that he is experiencing difficulty in paying a current utility bill, that employee shall refer the customer to the designated representative for explanation of the customer's rights.

(d) Utility personnel training. The chief operating officer of each electric and gas utility providing service to residential customers shall be required to certify each year the training of utility personnel assigned to counsel persons presenting themselves for utility service under the provisions of this section. Training is hereby defined as an annual review of commission regulations and policies regarding winter hardship and disconnect regulations, Cabinet for Human Resources policy and programs for issuing certificates of need, and the utility's policies regarding collection, arrears repayment plans, budget billing procedures, and weather/health disconnect policies. Certification is defined as written notice to the commission by no later than October 31 of each year identifying the personnel trained, the date training occurred, and that the training met the requirements of this section.

(2) Partial payment plans. Each utility shall negotiate and accept reasonable partial payment plans at the request of residential customers who have received a termination notice for failure to pay as provided in Section 14 of this regulation, except that a utility is not required to negotiate a partial payment plan with a customer who is delinquent under a previous partial payment plan. Partial payment plans shall be mutually agreed upon and subject to the conditions in this section and Section 14 of this regulation. Partial payment plans which extend for a period longer than thirty (30) days shall be in writing and shall advise customers that service may be terminated without additional notice if the customer fails to meet the obligations of the plan.

(a) Budget payment plans for gas and electric utilities. Each gas and electric utility shall develop and offer to its residential customers a budget payment plan based on historical or estimated usage whereby a customer may elect to pay a fixed amount each month in lieu of monthly billings based on actual usage. Under such plans, utilities shall issue bills which adjust accounts so as to bring each participating customer current once each twelve (12) month period. The customer's account may be adjusted at the end of the twelve (12) month period or through a series of levelized adjustments on a monthly basis if usage indicates that the account will not be current upon payment of the last budget amount. Budget payment plans shall be offered to residential customers but may be extended to other classes of customers. The provisions of the budget plan shall be included in the utility's tariffed rules. The utility shall provide information to its customers regarding the availability of such budget payment plans.

(b) Partial payment plans for customers with medical certificates or certificates of need. For customers presenting certificates under the provisions of Sections 14(3) and 15 of this regulation, gas and electric utilities shall negotiate partial payment plans based upon the customer's ability to pay, requiring accounts to become current not later than the following October 15. Such plans may include, but are not limited to, budget payment plans and plans that defer payment of a portion of the arrearage until after the end of the heating season through a schedule of unequal payments.

(3) Utility inspections of service conditions prior to providing service. Each electric, gas, water and sewer utility shall inspect the condition of the meter and service connections before making service connections to a new customer so that prior [~~unsafe, faulty,~~] or **fraudulent** [~~illegal~~] use of the facilities will not be attributed to the new customer. The new customer shall be afforded the opportunity to be present at such inspections. The utility shall not be required to render service to any customer until any defects in the customer-owned portion of the service facilities have been corrected.

(4) Prompt connection of service. Except as provided in Section 15 of this regulation, the utility shall reconnect existing service within twenty-four (24) hours, and shall install and connect new service within seventy-two (72) hours, when the cause for refusal or discontinuance of service has been corrected and the utility's tariffed rules and commission regulations have been met.

(5) Advance termination notice. When advance termination notice is required, the termination notice shall be mailed or otherwise delivered to the last known address of the customer. The termination notice shall be in writing, distinguishable and separate from any bill. The termination notice shall plainly state the reason for termination, that the termination date will not be affected by receipt of any subsequent bill, and that the customer has the right to dispute the reasons for termination. The termination notice shall also comply with the applicable requirements of Section 14 of this regulation.

Section 14. Refusal or Termination [~~11. Discontinuance~~] of Service. (1) A [~~The~~] utility may refuse or terminate service to a [~~discontinue to serve an applicant or~~] customer only under the following conditions except as provided in subsections (2), (3) and (4) of this section:

(a) For noncompliance with the utility's tariffed rules or commission[~~'s rules and~~] regulations. A utility may terminate service for failure to comply with applicable tariffed rules or commission regulations pertaining to that service. However, no utility shall terminate [~~discontinue~~] or refuse service to any customer [~~or applicant~~] for noncompliance with [~~violation of~~] its tariffed rules or commission regulations without first having made a reasonable effort to obtain [~~induce the~~] customer compliance. [~~or applicant to comply with its rules and regulations as filed with the commission.~~] After such effort by [~~on the part of~~] the utility, service may be terminated [~~discontinued~~] or refused only after the customer has [~~shall have~~] been given at least ten (10) days written termination notice pursuant to Section 13(5) of this regulation [~~of such intention, delivered to an adult member of his or her household or mailed to his or her last known address~~].

(b) For dangerous conditions. If [~~When~~] a dangerous condition relating to the utility's service which could subject any person to imminent harm or result in substantial damage to the property of the utility or others, is found to exist on the customer's [~~or applicant's~~] premises, the service shall be [cut ~~off without notice or~~] refused or terminated without advance notice. The utility shall [~~, provided that the utility~~] notify the customer [~~or applicant~~] immediately in writing and, if possible, orally of the reasons for the termination [~~discontinuance~~] or refusal. Such notice shall be recorded by the utility and shall include [~~and~~] the corrective action to be taken by the [~~applicant or~~] customer or utility before service can be restored or

provided. However, if the dangerous condition, such as gas piping or a gas-fired appliance, can be effectively isolated or secured from the rest of the system, the utility need discontinue service only to the affected piping or appliance.

(c) For refusal of access. When a customer [or applicant] refuses or neglects to provide reasonable access to the premises for [the purpose of] installation, operation, meter reading, maintenance or removal of utility property, the utility may terminate [discontinue] or refuse service. Such action shall be taken only when corrective action negotiated between the utility and customer has failed to resolve the situation and after the customer has [or applicant shall have] been given at least ten (10) [fifteen (15)] days' written notice of termination pursuant to Section 13(5) of this regulation [such intention].

(d) For outstanding indebtedness. Except as provided in Section 15 of this regulation [subsection (2) of this section], a utility shall not be required to furnish new service to any customer who [applicant when such applicant] is indebted to the utility for service furnished or other tariffed charges until that customer has [such applicant shall have] paid his [such] indebtedness.

(e) For noncompliance with state, local or other codes. A utility may refuse or terminate [discontinue] service to a customer [or applicant] if the customer [or applicant] does not comply with state, municipal or other codes, rules and regulations applying to such service. A utility may terminate service pursuant to this subsection only after ten (10) days' written notice is provided pursuant to Section 13(5) of this regulation, unless ordered to terminate immediately by a governmental official.

[(2) A gas or electric utility may discontinue service under the following conditions:]

(f) [(a)] For nonpayment of bills [- ten (10) day notice]. A utility may terminate service at a point of delivery for nonpayment of charges incurred for utility service at that point of delivery; however, no utility shall terminate [discontinue] service to any customer for nonpayment of bills for any tariffed [(including delayed] charge[(s)] without first having mailed or otherwise delivered an advance termination notice which complies with the requirements of Section 13(5) of this regulation.

1. Termination notice requirements for electric or gas service. Each electric or gas utility proposing to terminate customer service for nonpayment shall mail or otherwise deliver to that customer [made a reasonable effort to induce the customer to pay same. The customer shall be given at least] ten (10) days' written notice of intent to terminate. Under no circumstances shall service be terminated [, but the cutoff shall not be effected] before twenty-seven (27) days after the mailing date of the original unpaid bill. The [Such] termination notice to residential customers shall [be exclusive of and separate from any bill. The termination notice shall] include written notification to the customer [in writing] of the existence of local, state and federal programs providing for the payment of utility bills under certain conditions, and of the address and telephone number of the Department for Social Insurance of the Cabinet for Human Resources [offices] to contact for [such] possible assistance.

2. Termination notice requirements for water, sewer, or telephone service. Each water, sewer, or telephone utility proposing to terminate customer service for nonpayment shall mail or otherwise deliver to that customer five (5) days' written notice of intent to terminate. Under no circumstances shall service be terminated before twenty (20) days after the mailing date of the original unpaid bill.

3. The termination notice requirements of this subsection shall not apply if termination notice requirements to a particular customer or customers are otherwise dictated by the terms of a special contract between the utility and customer which has been approved by the commission.

(g) For illegal use or theft of service. A utility may terminate service to a customer without advance notice if it has evidence that a customer has obtained unauthorized service by illegal use or theft. Within twenty-four (24) hours after such termination, the utility shall send written notification to the customer of the reasons for termination or refusal of service upon which the utility relies, and of the customer's right to challenge the termination by filing a formal complaint with the commission. This right of termination is separate from and in addition to any other legal remedies which the utility may pursue for illegal use or theft of service. The utility shall not be required to restore service until the customer has complied with all tariffed rules of the utility and laws and regulations of the commission.

(2) A utility shall not terminate service to a customer if the following conditions exist:

(a) If payment for services is made. If, following receipt of a termination notice for nonpayment but prior to the actual termination of service, there is delivered to the utility office payment of the amount in arrears, service shall not be terminated.

(b) If a payment agreement is in effect. Service shall not be terminated for nonpayment if the customer and the utility have entered into a partial payment plan in accordance with Section 13 of this regulation and the customer is meeting the requirements of the plan.

(c) If a medical certificate is presented. Service shall not be terminated for thirty (30) days beyond the termination date if [If prior to discontinuance of service, there is delivered to the utility office, payment of the amount in arrears, then discontinuance of service shall not be made, or where a written certificate is filed signed by] a physician, [a] registered nurse or [a] public health officer certifies in writing [stating] that termination [, in the opinion of the person making the certification discontinuance] of service will aggravate a debilitating [an existing] illness or infirmity on the affected premises. A utility may refuse to grant consecutive extensions for medical certificates past the original [, service shall not be discontinued until the affected resident can make other living arrangements or until] thirty (30) days unless the certificate is accompanied by an agreed partial payment plan in accordance with Section 13 of this regulation. **A utility shall not require a new deposit from a customer to avoid termination of service for a thirty (30) day period who presents to the utility a medical certificate certified in writing by a physician, registered nurse or public health officer.**

(3) A gas or electric utility shall not terminate service for thirty (30) days beyond the termination date if the Kentucky Cabinet for Human Resources (or its designee) certifies in writing that the customer is eligible for the cabinet's energy assistance program or household income is at or below 130 percent of the poverty level, and the customer presents such certificate to the utility. Customers eligible for such certification from the Cabinet for Human Resources shall have been issued a termination notice between November 1 and March 31. Certificates shall be presented to the utility during the initial ten (10) day termination notice period. As a condition of the thirty (30) day extension, the customer shall exhibit good faith in paying his indebtedness by making a present payment in accordance with his ability to do so. In addition, the customer shall agree to a repayment plan in accordance with Section 13 of this regulation which will permit the customer to become current in the payment of his bill as soon as possible but not later than October 15. **A utility shall not require a new deposit from a customer to avoid termination of service for a thirty (30) day period who presents a certificate to the utility certified by the Kentucky Cabinet for Human Resources (or its designee) that the customer is eligible for the cabinet's Energy Assistance Program or whose household income is at or below 130 percent of the poverty level.** [elapse from the time of the utility's notification to the customer in writing of the existence of local, state and federal programs, providing for the payment of utility bills under certain conditions and of the offices to contact for such possible assistance. Service shall not be discontinued when the customer and the utility have reached agreement on

~~a partial payment plan pursuant to subparagraph 1 of this paragraph and the customer is meeting the requirements of the plan. The written notice for any discontinuance of service shall advise the customer of his or her rights under this paragraph and of his or her right to dispute the reasons for such discontinuance.]~~

~~[1. Employee available to answer consumer questions and negotiate partial payment plan.]~~

~~[a. Every gas and electric utility shall have an employee available to answer questions regarding a customer's bill and to resolve disputes over the amount of such bill. Utilities shall keep the designated employee informed of the commission's regulations regarding customer bills. If a customer indicates to any utility personnel that he or she is experiencing difficulty in meeting a current utility bill, that employee shall be able to refer the customer to the designated employee for explanation of the customer's rights under this paragraph and 807 KAR 5:008. The designated employee shall be authorized to negotiate partial payment plans of an outstanding bill and accept payments where the customer has shown good faith in attempting to meet his or her financial obligations to the utility. Said employee shall be authorized by the utility to consider and shall consider proposals by the customer for a partial payment plan and retention of service. Each gas and electric utility shall also prominently display in each office in which payment is received a summary of the customer's rights under this section and 807 KAR 5:008.]~~

~~[b. Each utility shall maintain a telephone, shall publish the telephone number in all service areas, and shall make the necessary provisions so that all customers may contact the utility employee without charge. Such provisions may include a policy allowing customers to make collect calls to the utility.]~~

~~[c. Each major utility (as defined by the Uniform System of Accounts) shall have at least one (1) employee available to answer consumer questions and negotiate partial payment plans at the utility's office during the utility's established working hours but not less than seven (7) hours per day, five (5) days per week excluding holidays.]~~

~~[d. Each minor utility (as defined as all utilities that are not major utilities under the Uniform System of Accounts) shall have an employee available to answer consumer questions and negotiate partial payment plans at the utility's office during the utility's established office hours but not less than seven (7) hours per day, one (1) day per week.]~~

~~[2. Certificate of need from Department for Social Insurance. Federal and statewide energy assistance programs are administered by the Kentucky Cabinet for Human Resources, Department for Social Insurance. Upon written certification from the Department for Social Insurance, issued at one (1) of its offices or the office of its designee, a customer who is eligible for energy assistance under the department's guidelines or is certified as being in genuine financial need, defined as any household with gross income at or below 130 percent of the poverty level, and who has been issued a ten (10) day notice between December 1 and March 1 for nonpayment of a gas or electric bill and who presents such notice to the Department for Social Insurance or its designee, shall be allowed thirty (30) days in addition to such ten (10) day period in which to negotiate a partial payment plan with the utility provided such certification is delivered to the utility during the initial ten (10) day notice period by the applicant in person, by his or her agent, by mail, or by a telephone call from an employee of the Department for Social Insurance or its designee. The thirty (30) day period shall begin to run at the end of the tenth day of the ten (10) day period. When the customer exhibits good faith by offering to make a present payment commensurate with his or her ability to do so and by agreeing to a repayment schedule which would permit the customer to become current in the payment of his or her gas or electric bill as soon as possible but not later than October 15, the utility shall accept such partial payment plan. In addition to advising the customer of his or her rights under this paragraph, the ten (10) day notice or a bill insert sent with the ten (10) day notice shall inform the customer of the telephone number and address of the nearest office of the Kentucky Cabinet for Human Resources, Department for Social Insurance. Referral of such customer to such office of the department may be made by a church, by a charitable or social organization, by a unit of state or local government, or by any other person.]~~

~~[3. Budget payment plan. Each jurisdictional gas and electric utility shall develop a budget payment plan whereby a customer may elect to pay a fixed amount each month on a yearly basis in lieu of monthly billings based on actual usage. The provisions of this section relating to partial payments and budget plans shall apply primarily to a utility's residential customers; however, a utility may offer budget payment plans to other classes of customers. It shall be the responsibility of the utility to disseminate information to its customers regarding the availability of such budget payment plan. If the commission finds, upon application, a budget plan for residential customers would materially impair or damage the utility's credit or operations, then it may grant the utility an exemption from the requirements of the budget plan. No exemption may extend beyond one (1) year without another application by the utility and a finding by the commission that said exemption should be allowed.]~~

~~[(b) For fraudulent or illegal use of service. When the utility has discovered evidence that by fraudulent or illegal means a customer has obtained unauthorized service or has diverted the service for unauthorized use or has obtained service without same being properly measured, the service to the customer may be discontinued without notice. The utility shall not be required to restore service until the customer has complied with all rules of the utility and regulations of the commission and the utility has been reimbursed for the estimated amount of the service rendered and the cost to the utility incurred by reason of the fraudulent use.]~~

~~[(3) A water, sewage or telephone utility may discontinue service under the following conditions:]~~

~~[(a) For nonpayment of bills. However, no utility shall discontinue service to any customer for nonpayment of bills (including delayed charges) without first having made a reasonable effort to induce the customer to pay same. The customer shall be given at least forty eight (48) hours written notice, but the cutoff shall not be effected before twenty (20) days after the mailing date of the original bill. Such termination notice shall be exclusive of and separate from any bill. The termination notice shall include notification to the customer in writing of the existence of local, state and federal programs providing for the payment of utility bills under certain conditions and of the offices to contact for such possible assistance. If prior to discontinuance of service, there is delivered to the utility office payment of the amount in arrears, then discontinuance of service shall not be made, or where a written certificate is filed signed by a physician, a registered nurse or a public health officer stating that, in the opinion of the person making the certification discontinuance of service will aggravate an existing illness or infirmity on the affected premises, service shall not be discontinued until the affected resident can make other living arrangements or until ten (10) days elapse from the time of the utility's notification.]~~

~~[(b) For fraudulent or illegal use of service. When the utility has discovered evidence that by fraudulent or illegal means a customer has obtained unauthorized service or has diverted the service for unauthorized use or has obtained service without same being properly measured, the service to the customer may be discontinued without notice. The utility shall not be required to restore service until the customer has complied with all rules of the utility and regulations of the commission and the utility has been reimbursed for the estimated amount of the service rendered and the cost to the utility incurred by reason of the fraudulent use.]~~

~~[(4) It shall be the duty of the utility before making service connections to a new customer to ascertain the condition of the meter and service facilities for such customer in order that~~

~~prior fraudulent use of the facilities, if any, will not be attributed to the new customer, and the new customer shall be afforded the opportunity to be present at such inspections. The utility shall not be required to render service to such customer until all defects in the customer owned portion of the service, if any, shall have been corrected.]~~

~~[(5) Reconnection. For all cases of refusal or discontinuance of service as herein defined, except as provided in 807 KAR 5:008, where the cause for refusal or discontinuance has been corrected and all rules and regulations of the utility and the commission have been complied with, the utility shall promptly render service to the customer or applicant.]~~

~~[(6) When advance notice is required, such notice may be given by the utility by mailing by United States mail, postage prepaid, to the last known address of the applicant or customer.]~~

Section 15. Winter Hardship Reconnection. (1) Notwithstanding the provisions of Section 13(4) of this regulation to the contrary, an electric or gas utility shall reconnect service to a residential customer who has been disconnected for nonpayment of bills pursuant to Section 14(1)(f) of this regulation prior to application for reconnection, and who applies for such reconnection during the months from November through March if the customer or his agent:

(a) Presents a certificate of need from the Cabinet for Human Resources, Department for Social Insurance, including a certification that a referral for weatherization services has been made in accordance with subsection (3) of this section;

(b) Pays one-third (1/3) of his outstanding bill or $200, whichever is less; and

(c) Agrees to a repayment schedule which would permit the customer to become current in the payment of his electric or gas bill as soon as possible but no later than October 15. However, if, at the time of application for reconnection, the customer has an outstanding bill in excess of $600 and agrees to a repayment plan that would pay current charges and makes a good faith reduction in the outstanding bill consistent with his ability to pay, then such plan shall be accepted. In addition to payment of current charges, repayment schedules shall provide an option to the customer to select either one (1) payment of arrearages per month or more than one (1) payment of arrearages per month.

(d) A utility shall not require a new deposit from a customer whose service is reconnected due to paragraphs (a), (b) or (c) of this subsection.

(2) Certificate of need for reconnection. Federal and statewide energy assistance programs are administered by the Kentucky Cabinet for Human Resources, Department for Social Insurance. A customer who is eligible for energy assistance under the department's guidelines or is certified as being in genuine financial need, which is defined as any household with gross income at or below 130 percent of the poverty level, may obtain a certificate of need from the department to be used in obtaining a service reconnection from the utility.

(3) Weatherization program. Customers obtaining a certificate of need under this regulation shall agree to accept referral to and utilize weatherization services which are administered by the Cabinet for Human Resources. The provision and acceptance of weatherization services is contingent on the availability of funds and other program guidelines. Weatherization services include, but are not limited to, weather stripping, insulation and caulking.

(4) Customers who are current in their payment plans under subsection 1(c) of this section shall not be disconnected.

~~[Section 12. Special Charges. (1) A utility may make a reasonable charge for each of the following trips:]~~

~~[(a) To read a meter when the customer has failed to read the meter for three (3) consecutive billing periods. This pertains only to those utilities whose customers ordinarily read their own meters.]~~

~~[(b) To collect a delinquent bill. This trip may be made only after written notice has been sent to the customer stating that if the bill is not paid by a certain date, the service will be disconnected.]~~

~~[(c) To reconnect a service that has been disconnected for nonpayment of bills or for violation of the utility's or commission's rules and regulations. This charge may include the cost of disconnecting the service and, in accordance with Section 10 of this regulation, shall not exceed the actual average cost.]~~

~~[(2) The charges, however, shall be applied uniformly within reasonable classifications throughout the entire area served by the utility, shall be incorporated in the utility's rules and regulations, shall be subject to the approval of the commission, and shall yield only enough revenue to pay the expenses incurred in rendering these services.]~~

Section 16. ~~[13.]~~ Meter Testing. (1) All electric, gas and water utilities furnishing metered service shall provide meter standards and test facilities, as more specifically set out under 807 KAR 5:022, 807 KAR 5:041 and 807 KAR 5:066. Before being installed for [the] use by ~~[of]~~ any customer, all electric, gas and water meters shall be tested and in good working order and shall be adjusted as close to the optimum operating tolerance as possible, as more specifically set out in 807 KAR 5:022, Section 8(3)(a), 807 KAR 5:041, Section 17(1)(a)-(c) and 807 KAR 5:066, Section 15 ~~[16]~~(2)(a)-(b).

(2) A utility may have all or part of its testing of meters performed by another utility or agency approved by the commission for that ~~[such]~~ purpose. Each utility having tests made by another agency or utility shall notify the commission of those ~~[said]~~ arrangements in detail to include make, type and serial number of standards used to make the ~~[said]~~ checks or tests.

(3) No utility shall place in service any basic measurement standard required by these rules unless the calibration ~~[it]~~ has been approved ~~[calibrated]~~ by the commission~~['s Meter Standards Laboratory]~~. All utilities or agencies making tests or checks for utility purposes shall notify the commission promptly of the adoption or deletion of any basic standards requiring commission approval of the calibration ~~[by the commission]~~.

(4) Each electric, gas and water utility or agency doing meter testing for a utility shall have in its employ meter testers certified by the ~~[this]~~ commission. These certified meter testers shall perform ~~[such]~~ tests as ~~[may be]~~ necessary to determine the accuracy of the utility's meters and to adjust the utility's meters to the degree of accuracy required by ~~[the regulations of the]~~ commission regulations.

(5) A utility or agency desiring to have its employees certified as meter testers shall submit the names of applicants on the commission's form entitled "Application for Appointment of Meter Testers", and after compliance with the requirements noted in this form, the applicant may be certified as a meter tester and furnished with a card authorizing him ~~[or her]~~ to perform meter tests. This form is hereby incorporated by reference, and may be obtained at the commission's offices at 730 Schenkel Lane, Frankfort, Kentucky, on Monday through Friday between the hours of 8 a.m. and 4:30 p.m. local time.

(6) A utility or agency may employ apprentices in training for certification as meter testers. The apprentice period shall be a minimum of six (6) months, after which the meter tester apprentice shall comply with subsection (5) of this section. All tests performed during this period by an apprentice shall be witnessed by a certified meter tester.

~~[Section 14. Access to Property. The utility shall at all reasonable hours have access to meters, service connections and other property owned by it and located on customer's premises for purposes of installation, maintenance, meter reading, operation or removal of its property at the time~~

~~service is to be terminated. Any employee of the utility whose duties require him or her to enter the customer's premises shall wear a distinguishing uniform or other insignia, identifying him or her as an employee of the utility, or carry a badge or other identification which will identify him or her as an employee of the utility, the same to be shown by him or her upon request.]~~

Section 17. [~~15.~~] Meter Test Records. (1)(a) [~~Test cards.~~] A complete record of all meter tests and adjustments and data sufficient to allow checking of test calculations shall be recorded by the meter tester. Such record shall include: Information to identify the unit and its location; [~~the~~] date of tests; [~~the~~] reason for such tests; readings before and after [~~the~~] test; [~~a~~] statement of "as found" and "as left" accuracies sufficiently complete to permit checking of [~~the~~] calculations employed; notations [~~indications~~] showing that all required checks have been made; [~~a~~] statement of repairs made, if any; [~~the~~] identifying number of the meter; [~~the~~] type and capacity of the meter; and the meter constant [~~of the meter~~].

(b) The complete record of tests of each meter shall be continuous for at least two (2) periodic test periods and shall in no case be less than two (2) years.

(2) Historical records [~~History~~]. Each utility shall keep numerically arranged and properly classified records [~~giving~~] for each meter owned, [~~and~~] used and inventoried by the utility. [~~for any purpose~~] The identification number, date of purchase, name of manufacturer, serial number, type, rating, and [~~the~~] name and address of each customer on whose premises the meter has been in service with date of installation and removal shall be included in the records. These records shall also contain [~~give~~] condensed information concerning all tests and adjustments including dates and general results of such adjustments. The records shall reflect [~~be of such character that a system can be used that will record~~] the date of the last test and indicate the proper date for the next periodic test required by the applicable [~~regulation of the~~] commission regulation.

(3) Sealing of meters. Upon completion of adjustment and test of any meter pursuant to [~~under the provisions of the regulations of the~~] commission regulations, the utility shall affix to the meter [~~thereto~~] a suitable seal in such a manner that adjustments or registration of the meter cannot be altered [~~tampered with~~] without breaking the seal. [~~The seal shall be of a type acceptable to the commission.~~]

(4) A utility may store any or all of the meter test and historical data described or required in subsections (1) and (2) of this section in a computer storage and retrieval system upon notification to the commission. If a utility elects to use a computer storage and retrieval system, a back-up copy of the identical information shall be retained.

~~[Section 16. Pole Identification. (1) Each utility owning poles or other structures supporting the company's wires, shall mark every pole or structure located within a built up community with the initials or other distinguishing mark by which the owner of every such structure may be readily determined. For the purpose of this rule the term "built up community" shall mean urban areas and those areas immediately adjacent thereto.]~~

~~[(2) Identification marks may be of any type but must be of a permanent material and shall be of such size and so spaced and hereafter maintained so as to be easily read from the surface of the ground at a distance of six (6) feet from the structure.]~~

~~[(3) When utilities' structures are located outside of a built up community only every tenth structure need be so marked.]~~

~~[(4) All junction structures shall bear the identification mark and structure number of the owner.]~~

~~[(5) Poles need not be marked if they are clearly and unmistakably identifiable as the property of the utility.]~~

~~[(6) Each utility shall either number their structures and maintain a numbering system or use some other method of identification so that each structure in the system may be easily identified.]~~

~~[(7) The requirements herein shall apply to all existing structures and those hereafter erected and to all changes in ownership.]~~

Section 18. Request Tests. (1) Each utility shall make a test of any meter upon written request of any customer if the request is not made more frequently than once each twelve (12) months. The customer shall be given the opportunity to be present at the request tests. If the tests show that the meter was not more than two (2) percent fast, the utility may make a reasonable charge for the test. The amount of the charge shall be approved by the commission and set out in the utility's filed tariff.

(2) After having first obtained a test from the utility, any customer of the utility may request a meter test by the commission upon written application. Such request shall not be made more frequently **on one (1) meter** than once each twelve (12) months.

~~[Section 17. Cable Television Pole Attachments and Conduit Use. (1) Each utility owning poles or other facilities conducting the company's wires shall permit cable television system operators who have all necessary licenses and permits to attach cables to such poles and to use such facilities, as customers, for transmission of signals to their patrons.]~~

~~[(2) The rates, terms and conditions on which such use of the utility's facilities are made shall be set forth in the tariffs of the utilities, which shall be prepared and filed in accordance with the regulations of the commission governing tariffs generally.]~~

~~[(3) With respect to a complaint proceeding in any individual matter concerning cable television pole attachments before the commission, final action shall be taken on the same within a reasonable time, but in no event to exceed 360 days.]~~

Section 19. Access to Property. The utility shall at all reasonable hours have access to meters, service connections and other property owned by it and located on customer's premises for purposes of installation, maintenance, meter reading, operation, replacement or removal of its property at the time service is to be terminated. Any employee of the utility whose duties require him to enter the customer's premises shall wear a distinguishing uniform or other insignia, identifying him as an employee of the utility, or show a badge or other identification which will identify him as an employee of the utility.

~~[Section 18. System Maps and Records. (1) Each utility shall have on file at its principal office located within the state and shall file upon request with the commission a map or maps of suitable scale of the general territory it serves or holds itself ready to serve showing the following:]~~

~~[(a) Operating districts.]~~

~~[(b) Rate districts.]~~

~~[(c) Communities served.]~~

~~[(d) Location and size of transmission lines, distribution lines and service connections.]~~

~~[(e) Location and layout of all principal items of plant.]~~

~~[(f) The date of construction of all items of plant by year and month.]~~

~~[(2) In each division or district office there shall be available such information relative to the utility's system as will enable the local representative to furnish necessary information regarding the rendering of service to existing and prospective customers.]~~

~~[(3) In lieu of showing the above information on maps a card record or suitable means may be used. For all construction the records shall also show the date of construction by~~

~~month and year.]~~

Section 20. Pole Identification. (1) Each utility owning poles or other structures supporting its wires, shall mark every pole or structure located within a built-up community with the initials or other distinguishing mark by which the owner of every such structure can be readily determined. For the purpose of this rule the term "built-up community" shall mean urban areas and those areas immediately adjacent thereto.

(2) Identification marks may be of any type but shall be of a permanent material and shall be easily read from the ground at a distance of six (6) feet from the structure.

(3) If utilities' structures are located outside of a built-up community, at least every tenth structure shall be marked as set forth in subsection (2) of this section.

(4) All junction structures shall bear the identification mark and structure number of the owner.

(5) Poles need not be marked if they are clearly and unmistakably identifiable as the property of the utility.

(6) Each utility shall either number its structures and maintain a numbering system or use some other method of identification so that each structure in the system can be easily identified.

~~[Section 19. Location of Records. All records required by the regulations of the commission shall be kept in the principal office of the utility or other acceptable safe storage place, and shall be made available to representatives, agents or employees of the commission upon reasonable notice and at all reasonable hours.]~~

Section 21. Cable Television Pole Attachments and Conduit Use. (1) Each utility owning poles or other facilities supporting its wires shall permit cable television system operators who have all necessary licenses and permits to attach cables to poles and to use facilities, as customers, for transmission of signals to their patrons.

(2) The tariffs of the utility shall set forth the rates, terms and conditions under which the utility's facilities may be used.

(3) With respect to a complaint before the commission in any individual matter concerning cable television pole attachments final action shall be taken on the matter within a reasonable time, but no later than 360 days after filing of the complaint.

~~[(4) If a regulated utility attaches its facilities to a pole it does not own, the regulated utility shall be responsible for assuring that its facilities comply with commission regulations and applicable codes. If the owner of the pole is a regulated utility, the pole owner shall be jointly responsible with the utility attaching its facilities for assuring that the attached facilities comply with commission regulations and applicable codes. However, the pole owner shall be jointly responsible for noncompliance only if it has actual knowledge of noncompliance or is charged with constructive knowledge through the regular inspections of its facilities prescribed in Section 25 of this regulation.]~~

~~[(5) If a party which is not subject to commission jurisdiction attaches its facilities to a pole owned by a regulated utility, the owner of the pole shall be responsible for compliance with commission regulations and applicable codes. However, the pole owner shall be responsible for noncompliance only if it has actual knowledge of noncompliance or is charged with constructive knowledge through the regular inspections of its facilities prescribed in Section 25 of this regulation.]~~

~~[Section 20. Request Tests. Each utility shall make a test of any meter upon written request of any customer provided such request is not made more frequently than once each twelve (12) months. The customer shall be given the opportunity of being present at such request tests. If such tests show that the meter was not more than two (2) percent fast, the utility may make a reasonable charge for the test, the amount of such charge to be set out in the utility's rules and regulations filed with the commission, and subject to the approval of the commission.]~~

Section 22. System Maps and Records. (1) Each utility shall have on file at its principal office located within the state and shall file upon request with the commission a map or maps of suitable scale of the general territory it serves or holds itself ready to serve showing the following:

(a) Operating districts.

(b) Rate districts.

(c) Communities served.

(d) Location and size of transmission lines, distribution lines and service connections.

(e) Location and layout of all principal items of plant.

(f) Date of construction of all items of plant by year and month.

(2) In each division or district office there shall be available information relative to the utility's system that will enable the local representative to furnish necessary information regarding the rendering of service to existing and prospective customers.

(3) In lieu of showing the above information on maps, a card record or other suitable means may be used. For all construction the records shall also show the date of construction by month and year.

~~[Section 21. Complaint Tests. Any customer of the utility may request a meter test by written application to the commission, after having first obtained a test from the utility. Such request may not be made more frequently than once each twelve (12) months.]~~

Section 23. Location of Records. All records required by commission regulations shall be kept in the office of the utility and shall be made available to representatives, agents or staff of the commission upon reasonable notice at all reasonable hours.

Section 24. [~~22.~~] Safety Program. Each utility shall adopt and execute a safety program, appropriate [~~fitted~~] to the size and type of its operations. At [~~As~~] a minimum, the safety program shall:

(1) Establish a safety manual with written guidelines for safe working practices and procedures to be followed by utility employees [~~Require employees to use suitable tools and equipment in order that they may perform their work in a safe manner~~].

(2) Instruct employees in safe methods of performing their work.

(3) Instruct employees who, in the course of their work, are subject to the hazard of electrical shock, asphyxiation or drowning, in accepted methods of artificial respiration.

Section 25. [~~23.~~] Inspection of Systems. (1) Each utility shall adopt inspection procedures [~~for inspection~~] to assure safe and adequate operation of its facilities and compliance with commission rules and regulations. These procedures shall [~~must~~] be filed with [~~approved by~~] the commission for review.

(2) Upon receipt of a report of a potentially hazardous condition at any utility facility made by a qualified employee, public official, or customer, the utility shall inspect all portions of the system which are the subject of the report.

(3) Appropriate records shall be kept by each utility to identify the inspection made, deficiencies found and action taken to correct the deficiencies.

(4) Electric utility inspection. Each electric utility shall make systematic inspections of its system in the manner set out below to insure [~~for the purpose of insuring~~] that the commission's safety requirements are being met. These [~~Such~~] inspections shall be made as often as necessary but not [~~in no event~~] less frequently than is set forth below for

various classes of facilities and types of inspection.

(a) As a part of operating procedure, each utility shall continuously monitor and inspect all production facilities regularly operated and manned.

(b) At intervals not to exceed six (6) months, the utility shall inspect:

[1. Production facilities regularly operated and manned; continuous surveillance, monitoring and inspection as a part of operating procedure.]

1. [2.] Unmanned production facilities, including peaking units not on standby status, [; units shall be operated and inspected] and all monitoring devices, for any [shall be checked to determine that there is no] evidence of abnormality.

2. [3.] Substations where the primary voltage is sixty-nine (69) KV or greater, for [; examination for the purpose of discovering] damage to or deterioration of components including structures, fences, gauges [and fences; checking of all gauges and] monitoring devices.

3. [4.] Underground network transformers and network protectors in vaults located in buildings or under sidewalks, [examination] for leaks, condition of case, connections, temperature and overloading.

4. [5.] Electric lines operating at sixty-nine (69) KV or greater, including insulators, conductors, and supporting facilities, for damage or deterioration.

(c) [(b)] At intervals not to exceed one (1) year, the utility shall inspect:

1. Production facilities maintained on a standby status, [; also inspection and examination prior to any start up,] Except for remotely controlled facilities, all production facilities shall also be thoroughly inspected.

2. Substations with [where the] primary voltage of [is less than sixty nine (69) KV but is] fifteen (15) to sixty-eight (68) KV [or greater].

(d) [(c)] At intervals not to exceed two (2) years, the utility shall inspect [:] electric lines operating at voltages of less than sixty-nine (69) KV, including insulators, conductors and supporting facilities.

(e) [(d)] The utility shall inspect other facilities as follows.

1. Utility buildings shall be inspected for compliance with safety codes at least annually [intervals not greater than one (1) year].

2. Construction equipment shall be inspected for defects, wear and operational hazards at least [intervals not greater than] quarterly.

(f) [(e)] Aerial inspections shall not be used as the sole basis for evidence of compliance with commission regulations. [On the receipt of a report of a potentially hazardous condition made by a qualified employee or public official or by a customer, all portions of the system (including those listed above) which are the subject of the report.]

[(f) Appropriate records shall be kept by each utility to identify the inspections made, deficiencies found and action taken to correct such deficiencies.]

(5) Gas utility inspection. [(3)] Each gas utility shall make systematic inspections of its system to insure [for the purpose of insuring] that the commission's safety requirements are being met. These [Such] inspections shall be made as often as necessary but not [in no event] less frequently than is prescribed or recommended by the Department of Transportation, 49 CFR Part 192 Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards, for the various classes of facilities [as defined in said standards, in accordance with the inspection procedures described therein].

(a) [(4)] The following maximum time intervals are prescribed for certain inspections provided for in 49 CFR Part 192 Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards, with respect to which intervals are not specified, and for certain additional inspections not provided for in such code.

1. [(a)] At intervals not to exceed every fifteen (15) months but at least once each calendar year, the utility shall inspect and visually examine [one (1) year]:

a. [1.] Production wells, storage wells, and well equipment, including their [; visual inspection and examination of all] exterior components.

b. [2.] Pressure limiting stations, relief devices, [and] pressure regulating stations, and [including] vaults.

c. Accessibility of [3.] the curb box and valve on a service line [shall be inspected for accessibility].

2. The utility shall inspect [(b)] other facilities as follows:

a. [1.] Utility buildings shall be inspected for compliance with safety codes at least annually.

b. [2.] Construction equipment under the control of the utility shall be inspected for defects, wear and operational hazards at least quarterly.

(b) [(c)] At intervals not to exceed the periodic meter test intervals, individual residential customer service regulators, vents and relief valve vents shall be checked for satisfactory operation.

(c) [(d)] At intervals not to exceed the periodic meter test intervals, the curb box and valve on the service line shall be inspected for operable condition.

(d) Aerial inspections shall not be used as the sole basis for evidence of compliance with commission regulations.

[(e) On the receipt of a report of a potentially hazardous condition made by a qualified employee or public official or by a customer, all portions of the system (including those listed above) which are the subject of the report.]

[(f) Appropriate records shall be kept by each utility to identify the inspections made, deficiencies found and action taken to correct such deficiencies.]

(6) [(5)(a)] Water utility inspections. Each water utility shall make systematic inspections of its system in the manner set out below to insure [for the purpose of insuring] that the commission's safety requirements are being met. These [Such] inspections shall be made as often as necessary but not [in no event] less frequently than is set forth below for various classes of facilities and types of inspection.

(a) The utility shall annually inspect all structures pertaining to source of supply for their safety and physical and structural integrity, including dams, intakes, and traveling screens. The utility shall semiannually inspect supply wells, their motors and structures, including electric power wiring and controls for proper and safe operation.

(b) The utility shall annually inspect all structures pertaining to purification for their safety, physical and structural integrity and for leaks, including sedimentation basins, filters, and clear wells; chemical feed equipment; pumping equipment and water storage facilities, including electric power wiring and controls; hydrants, mains, and valves.

(c) The utility shall monthly inspect construction equipment and vehicles for defects, wear, operational hazards, lubrication, and safety features.

[1. Source of supply.]

[a. Dams, physical and structural, annually.]

[b. Intake structures, physical and structural, annually.]

[c. Traveling screens, physical and structural and safety of operation, annually.]

[2. Purification.]

[a. Sedimentation basins filters and clear wells, physical and structural and safety of operation, annually.]

[b. Chemical feed equipment, for proper and safe operation, annually.]

[c. Pumping equipment including electric power wiring and controls, for proper and safe operation, annually.]

[d. Hydrants, for proper and safe operation, annually.]

[e. Utility buildings, inspection for compliance with safety codes, annually.]

[f. Construction equipment, inspection for defects, wear and operational hazards, quarterly.]

[g. Mains and valves, leaks, annually.]

[(b) On the receipt of a report of a potentially hazardous condition made by a qualified employee or public official or by a customer, all portions of the system (including those listed

~~above) which are the subject of the report.]~~

~~[(c) Appropriate records shall be kept by each utility to identify the inspections made, deficiencies found and action taken to correct such deficiencies.]~~

(7) Telephone utility inspection. [~~(6)(a)~~] Each telephone utility shall make systematic inspections of its system in the manner set out below to insure [~~for the purpose of insuring~~] that the commission's safety requirements are being met. Such inspections shall be made as often as necessary but not [~~in no event~~] less frequently than is set forth below for various classes of facilities and types of inspection.

(a) The utility shall inspect [~~1.~~] aerial plant[~~. Inspection~~] for electrical hazards, proper clearance for electric facilities and climbing safety every two (2) years.

(b) The utility shall inspect [~~2.~~] underground plant[~~. Inspection~~] for presence of gas, proper clearance from electric facilities and safe working conditions at least annually.

(c) The utility shall inspect [~~3.~~] utility-provided station equipment and connections[~~. Inspection~~] for external electrical hazards, damaged instruments or wiring, appropriate protection from lightning and safe location of equipment and wiring when on a customer's premises.

(d) The utility shall inspect [~~4.~~] utility buildings[~~. Inspection~~] for compliance with safety codes at least annually.

(e) The utility shall inspect [~~5.~~] construction equipment[~~. Inspection~~] for defects, wear and operational hazards at least quarterly.

(f) Aerial inspections shall not be used as the sole basis for evidence of compliance with commission regulations.

~~[(b) On the receipt of a report of a potentially hazardous condition made by a qualified employee or public official or by a customer, all portions of the system (including those listed above) which are the subject of the report.]~~

~~[(c) Appropriate records shall be kept by each utility to identify the inspections made, deficiencies found and action taken to correct such deficiencies.]~~

(8) Sewage utility inspection. Each sewage utility shall make systematic inspections of its system in the manner set out below to insure that the commission's safety requirements are being met. Such inspections shall be made as often as necessary but not less frequently than is set out below for the various types of inspections, or as otherwise required in 807 KAR 5:071.

(a) The utility shall annually inspect collecting sewers and manholes on a scheduled basis unless conditions warrant more frequent inspections.

(b) The utility shall weekly inspect all mechanical equipment unless otherwise authorized by the commission.

Section 26. [~~24.~~] Reporting of Accidents, Property Damage or Loss of Service. (1) Within two (2) hours following discovery each utility, other than a natural gas utility, shall notify the commission by telephone or electronic mail of any utility related accident which results in:

(a) Death; or shock or burn requiring medical treatment at a hospital or similar medical facility, or any accident requiring inpatient overnight hospitalization [~~serious injury to any person~~];

(b) Actual or potential [~~or any other incident which has or may result in substantial~~] property damage [~~or substantial loss~~] of $25,000 or more; or

(c) Loss of service for four (4) or more hours to ten (10) percent or 500 or more of the utility's customers, whichever is less [~~Prompt notice of fatal accidents shall be given to the commission by telephone or telegraph~~].

(2) A summary written report shall be submitted by the utility to the commission within seven (7) calendar days of the utility related accident.

(3) Natural gas utilities shall report utility related accidents in accordance with the provisions of 807 KAR 5:027.

Section 27. [~~25.~~] Deviations from Regulation [~~Rules~~]. In special cases, for good cause shown, the commission may permit deviations from this regulation [~~these rules~~].

Section 28. 807 KAR 5:008, Winter hardship reconnection of residential electric and gas service, is hereby repealed.

ROBERT M. DAVIS, Vice Chairman
EDWARD J. HOLMES, Secretary
APPROVED BY AGENCY: January 7, 1992
FILED WITH LRC: January 7, 1992 at 11 a.m.

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

902 KAR 20:016. Hospitals; operations and services.

RELATES TO: KRS 216B.010 to 216B.130, 216B.107, 216B.990(1), (2)
STATUTORY AUTHORITY: KRS 216B.042, 216B.105
NECESSITY AND FUNCTION: KRS 216B.042 mandate that the Kentucky Cabinet for Human Resources regulate health facilities and health services. This regulation provides for the minimum licensure requirements for the operation of hospitals and the basic services to be provided by hospitals.

~~[Section 1. Scope of Operations and Services. Hospitals are establishments with organized medical staffs and permanent facilities with inpatient beds which provide medical services, including physician services and continuous nursing services for the diagnosis and treatment of patients who have a variety of medical conditions, both surgical and nonsurgical.]~~

Section 1. [~~2.~~] Definitions. (1) "Governing authority" means the individual, agency, partnership, or corporation, in which the ultimate responsibility and authority for the conduct of the institution is vested.

(2) "Medical staff" means an organized body of physicians, and dentists when applicable, appointed to the hospital staff by the governing authority. All members of the medical staff shall be licensed to practice medicine or dentistry in Kentucky, with the exception of graduate physicians who are in the first year of hospital training.

(3) "Registered records administrator" means a person who is certified as a Registered Records Administrator by the American Medical Record Association.

(4) "Accredited record technician" means a person who has graduated from a program for medical record technicians accredited by the Council on Medical Education of the American Medical Association and the American Medical Record Association; and who is certified as an Accredited Record Technician by the American Medical Record Association.

(5) "Qualified dietician" or "nutritionist" means:

(a) A person who has a bachelor of science degree in foods and nutrition, food service management, institutional management or related services and has successfully completed a dietetic internship or coordinated undergraduate program accredited by the American Dietetic Association (ADA) and is a member of the ADA or is registered as a dietician by ADA; or

(b) A person who has a master's degree in nutrition and is a member of ADA or is eligible for registration by ADA; or

(c) A person who has bachelor of science degree in home economics and three (3) years of work experience with a registered dietician.

(6) "Certified radiation operator" means a person who has been certified pursuant to KRS 211.870 and 902 KAR 105:010 to 105:070 as an operator of sources of radiation.

(7) "Protective devices" means devices that are designed to protect a person from falling, to include side rails, safety vest or safety belt.

(8) "Restraint" means any pharmaceutical agent or

physical or mechanical device used to restrict the movement of a patient or the movement of a portion of a patient's body.

(9) "Psychiatric unit" means a department of a general acute care hospital consisting of eight (8) or more psychiatric beds organized for the purpose of providing psychiatric services.

(10) "Induration" means a firm area in the skin which develops as a reaction to injected tuberculosis proteins when a person has tuberculosis infection. The diameter of the firm area is measured to the nearest millimeter to gauge the degree of reaction. A reaction of ten (10) millimeters or more of induration is considered highly indicative of tuberculosis infection.

(11) "Skin test" means a tuberculin skin test utilizing the intradermal (Mantoux) technique using five (5) tuberculin units of purified protein derivative (PPD). The results of the test must be read forty-eight (48) to seventy-two (72) hours after injection and recorded in terms of millimeters of induration.

(12) "Two (2) step skin testing" means a series of two (2) tuberculin skin tests administered seven (7) to fourteen (14) days apart.

(13) "Organ procurement agency" means a federally designated organization which coordinates and performs activities which encourage the donation of organs/tissues for transplantation.

Section 2. Scope of Operation and Services. Hospitals are establishments with organized medical staffs and permanent facilities with inpatient beds which provide medical services, including physician services and continuous nursing services for the diagnosis and treatment of patients who have a variety of medical conditions, both surgical and nonsurgical.

Section 3. Administration and Operation. (1) Governing authority licensee.

(a) The hospital shall have a recognized governing authority that has overall responsibility for the management and operation of the hospital and for compliance with federal, state, and local laws and regulations pertaining to its operation.

(b) The governing authority shall appoint an administrator whose qualifications, responsibilities, authority, and accountability shall be defined in writing and approved by the governing authority, and shall designate a mechanism for the periodic performance review of the administrator.

(2) Administrator.

(a) The administrator shall act as the chief executive officer and shall be responsible for the management of the hospital, and shall provide liaison between the governing authority and the medical staff.

(b) The administrator shall keep the governing authority fully informed of the conduct of the hospital through periodic reports and by attendance at meetings of the governing authority.

(c) The administrator shall develop an organizational structure including lines of authority, responsibility, and communication, and shall organize the day-to-day functions of the hospital through appropriate departmentalization and delegation of duties.

(d) The administrator shall establish formal means of accountability on the part of subordinates to whom he has assigned duties.

(e) The administrator shall hold interdepartmental and departmental meetings (where appropriate), shall attend or be represented at such meetings on a regular basis, and shall report to such departments as well as to the governing authority the pertinent activities of the hospital.

(3) Administrative records and reports.

(a) Administrative reports shall be established, maintained and utilized as necessary to guide the operation, measure productivity, and reflect the programs of the facility. Such reports shall include: minutes of the governing authority and staff meetings, financial records and reports, personnel records, inspection reports, incident investigation reports, and other pertinent reports made in the regular course of business.

(b) The hospital shall maintain a patient admission and discharge register. Where applicable, a birth register and a surgical register shall also be maintained.

(c) Licensure inspection reports and plans of correction shall be made available to the general public upon request.

(4) Policies. The hospital shall have written policies and procedures governing all aspects of the operation of the facility and the services provided, including:

(a) A written description of the organizational structure of the facility including lines of authority, responsibility and communication, and departmental organization;

(b) Admission policies which assure that patients are admitted to the hospital in accordance with policies of the medical staff;

(c) Constraints imposed on admissions by limitations of services, physical facilities, staff coverage or other factors;

(d) Financial requirements for patients on admission;

(e) Emergency admissions;

(f) Requirements for informed consent by patient, parent, guardian or legal representative for diagnostic and treatment procedures;

(g) There shall be an effective procedure for recording accidents involving a patient, visitor, or staff, and incidents of transfusion reactions, drug reactions, medication errors, etc.; and a statistical analysis shall be reported in writing through the appropriate committee;

(h) Reporting of communicable diseases to the health department in whose jurisdiction the disease occurs pursuant to KRS Chapter 214 and 902 KAR 2:020;

(i) Use of restraints and a mechanism for monitoring and controlling their use;

(j) Internal transfer of patients from one (1) level or type of care to another (if applicable);

(k) Discharge and termination of services; and

(l) Organ procurement for transplant protocol developed by the medical staff in consultation with the organ procurement agency.

(5) Patient identification. The hospital shall have a system for identifying each patient from time of admission to discharge (e.g., an identification bracelet imprinted with name of patient, hospital identification number, date of admission, and name of attending medical staff member).

(6) Discharge planning.

(a) The hospital shall have a discharge planning program to assure the continuity of care for patients being transferred to another health care facility or being discharged to the home.

(b) The professional staff of the facility involved in the patient's care during hospitalization shall participate in discharge planning of the patient whose illness requires a level of care outside the scope of the general hospital.

(c) The hospital shall coordinate the discharge of the patient with the patient and the person(s) or agency responsible for the postdischarge care of the patient. All pertinent information concerning postdischarge needs shall be provided to the responsible person(s) or agency.

(7) Transfer procedures and agreements.

(a) The hospital shall have written patient transfer procedures and agreements with at least one (1) of each type of other health care facilities which can provide a level of inpatient care not provided by the hospital. Any facility which does not have a transfer agreement in effect but has documented a good faith effort to enter into such an agreement shall be considered to be in compliance with this requirement. The transfer procedures and agreements shall specify the responsibilities each institution assumes in the transfer of patients and shall establish responsibility for notifying the other institution promptly of the impending transfer of a patient and arranging for appropriate and safe transportation.

(b) If the patient is transferred to another health care

facility or to the care of a home health agency, a transfer form shall accompany the patient or be sent immediately to the home health agency. The transfer form shall include at least: attending medical staff member's instructions for continuing care, a current summary of the patient's medical record, information as to special supplies or equipment needed for patient care, and pertinent social information on the patient and family. When such transfer occurs, a copy of the patient's signed discharge summary shall be forwarded to another health care facility or home health agency within thirty (30) [~~fifteen (15)~~] days of the patient's discharge.

(c) When a transfer is to another level of care within the same facility, the complete medical record or a current summary thereof shall be transferred with the patient.

(8) Medical staff.

(a) The hospital shall have a medical staff organized under bylaws approved by the governing authority, which is responsible to the governing authority of the hospital for the quality of medical care provided to the patients and for the ethical and professional practice of its members.

(b) The medical staff shall develop and adopt policies or bylaws, subject to the approval of the governing authority, which shall:

1. State the necessary qualifications for medical staff membership. For purposes of this document, medical staff shall mean physicians, and dentists when applicable.

2. Define and describe the responsibilities and duties of each category of medical staff (e.g., active, associate, courtesy, consulting, or honorary), delineate the clinical privileges of staff members, and establish a procedure for granting and withdrawing staff privileges to include credentials review.

3. Provide a mechanism for appeal of decisions regarding staff membership and privileges.

4. Provide a method for the selection of officers of the medical staff.

5. Establish requirements regarding the frequency of, and attendance at, general staff and department/service meeting of the medical staff.

6. Provide for the appointment of standing and special committees, and include requirements for composition and organization, frequency of and attendance at meetings, and the minutes and reports which shall be part of the permanent records of the hospital. These committees may include: executive committee, credentials committee, medical audit committee, medical records committee, infections control committee, tissue committee, pharmacy and therapeutics committee, utilization review committee, and quality assurance committee.

(9) Personnel.

(a) The hospital shall employ a sufficient number of qualified personnel to provide effective patient care and all other related services and shall have written personnel policies and procedures which shall be available to all hospital personnel.

(b) There shall be a written job description for each position. Job descriptions shall be reviewed and revised as necessary.

(c) There shall be an employee health program for mutual protection of employees and patients including provisions for preemployment and periodic health examination. The hospital shall comply with the following tuberculosis testing requirements:

1. The skin test status of all staff members shall be documented in the employee's personnel record. A skin test shall be initiated on all new staff members before or during the first week of employment and the results shall be documented in the employee's personnel record within the first month of employment. No skin testing is required at the time of initial employment if the employee documents a prior skin test of ten (10) or more millimeters of induration or if the employee is currently receiving or has completed six (6) months of prophylactic therapy or a course of multiple-drug chemotherapy for tuberculosis. Two (2) step skin testing is required for new employees over age forty-five (45) whose initial test shows less than ten (10) millimeters of induration, unless they can document that they have had a tuberculosis skin test within one (1) year prior to their current employment. All staff who have never had a skin test of ten (10) or more millimeters induration must be skin tested annually on or before the anniversary of their last skin test.

2. All staff who are found to have a skin test of ten (10) or more millimeters induration, on initial employment testing or annual testing, must receive a chest x-ray unless a chest x-ray within the previous two (2) months showed no evidence of tuberculosis, or the individual can document the previous completion of a course of prophylactic treatment with isoniazid. Such employees shall be advised of the symptoms of the disease and instructed to report to their employer and seek medical attention promptly if symptoms persist.

3. The hospital administrator shall be responsible for ensuring that all skin tests and chest x-rays are done in accordance with subparagraphs 1 and 2 of this paragraph. All skin testing dates and results and all chest x-ray reports shall be recorded as a permanent part of the personnel record.

4. The following shall be reported by the hospital administrator to the local health department having jurisdiction immediately upon becoming known: names of staff who convert from a skin test of less than ten (10) to a skin test of ten (10) millimeters or more induration at the time of employment; and all chest x-rays suspicious for tuberculosis.

5. Any staff whose skin test status changes on annual testing from less than ten (10) to ten (10) or more millimeters of induration shall be considered to be recently infected with Mycobacterium tuberculosis. Such recently infected persons who have no signs or symptoms of tuberculosis disease on chest x-ray or medical history should be given preventive therapy with isoniazid for six (6) months unless medically contraindicated, as determined by a licensed physician. Medications shall be administered only upon the written order of a physician. If such individual is unable to take isoniazid therapy, the individual shall be advised of the clinical symptoms of the disease, and have an interval medical history and a chest x-ray taken and evaluated for tuberculosis disease every six (6) months during the two (2) years following conversion, for a total of five (5) chest x-rays.

6. Any staff who can document completion of preventive treatment with isoniazid shall be exempt from further screening requirements.

(d) Current personnel records shall be maintained for each employee which include the following:

1. Name, address, Social Security number;

2. Health records;

3. Evidence of current registration, certification, or licensure of personnel;

4. Records of training and experience;

5. Records of performance evaluation.

(10) Physical and sanitary environment.

(a) The condition of the physical plant and the overall hospital environment shall be maintained in such a manner that the safety and well-being of patients, personnel and visitors are assured.

(b) A person shall be designated responsible for services and for the establishment of practices and procedures in each of the following areas: plant maintenance, laundry operations (if applicable), and housekeeping.

(c) There shall be an infection control committee charged with the responsibility of investigating, controlling and preventing infections in the hospital. Infection incident reports shall be filed.

(d) There shall be written infection control policies, which are consistent with the Centers for Disease Control guidelines including:

1. Policies which address the prevention of disease transmission to and from patients; visitors and employees, including but not limited to:

a. Universal blood and body fluid precautions;

b. Precautions for infections which can be transmitted by the airborne route; and

c. Work restrictions for employees with infectious diseases.

2. Policies which address the use of environmental cultures. Results of all testing shall be recorded and reported to the Infection Control Committee; and

3. Policies which address the cleaning, disinfection, and sterilization methods used for equipment and the environment.

(e) The hospital shall provide in-service education programs on the cause, effect, transmission, prevention and elimination of infections.

(f) The hospital buildings, equipment, and surroundings shall be kept in a condition of good repair, neat, clean, free from all accumulations of dirt and rubbish, and free from foul, stale or musty odors.

1. An adequate number of housekeeping and maintenance personnel shall be provided.

2. Written housekeeping procedures shall be established for the cleaning of all areas and copies shall be made available to personnel.

3. Equipment and supplies shall be provided for cleaning of all surfaces. Such equipment shall be maintained in a safe, sanitary condition.

4. Hazardous cleaning solutions, compounds, and substances shall be labeled, stored in closed metal containers and kept separate from other cleaning materials.

5. The facility shall be kept free from insects and rodents with harborages and entrances for these eliminated.

6. Garbage and trash shall be stored in areas separate from those used for preparation and storage of food and shall be removed from the premises regularly. Containers shall be cleaned regularly.

(g)1. Sharp wastes, including needles, scalpels, razors, or other sharp instruments used for patient care procedures, shall be segregated from other wastes and placed in puncture resistant containers immediately after use.

2. Needles shall not be [~~recapped,~~] purposely bent or broken, or otherwise manipulated by hand **as a means of disposal. Recapping of needles which have been used in or have come into direct contact with a patient, shall only be performed using a mechanical device designed and marketed for that purpose. Sterile needles may be recapped** [~~self sheathing needles, resheathing instruments or forceps may be utilized~~].

3. The containers of sharp wastes shall either be incinerated on or off site, or be rendered nonhazardous by a technology of equal or superior efficacy, which is approved by both the Cabinet for Human Resources and the Natural Resources and Environmental Protection Cabinet.

4. Nondisposable sharps such as large-bore needles or scissors shall be placed in a puncture resistant container for transport to the Central Medical and Surgical Supply Department in accordance with 902 KAR 20:009, Section 22.

(h)1. All disposable waste shall be placed in suitable bags or closed containers so as to prevent leakage or spillage, and shall be handled, stored, and disposed of in such a way as to minimize direct exposure of personnel to waste materials.

2. The hospital shall establish specific written policies regarding handling and disposal of all wastes.

3. The following wastes shall receive special handling:

a. Microbiology laboratory waste which includes, but is not limited to viral or bacterial cultures, contaminated swabs, and specimen containers and test tubes used for microbiologic purposes shall either be incinerated, autoclaved or be rendered nonhazardous by technology of equal or superior efficacy, which is approved by both the Cabinet for Human Resources and the Natural Resources and Environmental Protection Cabinet; and

b. Pathological waste which includes all tissue specimens from surgical or necropsy procedures shall be incinerated.

4. The following wastes shall be disposed of by incineration, or be autoclaved before disposal, or be carefully poured down a drain connected to a sanitary sewer: blood, blood specimens, used blood tubes, or blood products.

5. Any wastes conveyed to a sanitary sewer shall comply with applicable federal, state, and local pretreatment regulations pursuant to 40 CFR 403 and 401 KAR 5:055, Section 9.

6. Any incinerator used for the disposal of waste shall be in compliance with 401 KAR 59:020 and 401 KAR 61:010.

(i) The hospital shall have available at all times a quantity of linen essential to the proper care and comfort of patients.

I. Linens shall be handled, stored, and processed so as to control the spread of infection.

2. Clean linen and clothing shall be stored in clean, dry, dust-free areas designated exclusively for this purpose. Uncovered mobile carts may be used to distribute a daily supply of linen in patient care areas.

3. Soiled linen and clothing shall be placed in suitable bags or closed containers so as to prevent leakage or spillage, and will be handled in such a way as to minimize direct exposure of personnel to soiled linen. Soiled linen shall be stored in areas separate from clean linen.

(11) Medical records.

(a) The hospital shall have a medical records service with administrative responsibility for medical records. A medical record shall be maintained, in accordance with accepted professional principles, for every patient admitted to the hospital or receiving outpatient services.

1. The medical records service shall be directed by a registered records administrator, either on a full-time, part--time, or consultative basis, or by an accredited record technician on a full-time or part-time basis, and shall have available a sufficient number of regularly assigned employees so that medical record services may be provided as needed.

2. All medical records shall be retained for a minimum of five (5) years from date of discharge, or in the case of a minor three (3) years after the patient reaches the age of majority under state law, whichever is the longer.

3. Provision shall be made for written designation of specific location(s) for storage of medical records in the event the hospital ceases to operate because of disaster, or for any other reason. It shall be the responsibility of the hospital to safeguard both the record and its informational content against loss, defacement, and tampering. Particular attention shall be given to protection from damage by fire or water.

(b) A system of identification and filing to insure the prompt location of a patient's medical record shall be maintained:

1. Index cards shall bear at least the full name of the patient, the birth date, and the medical record number.

2. There shall be a system for coordinating the inpatient and outpatient medical records of any patient whose admission is a result of or related to outpatient services.

3. All clinical information pertaining to inpatient or outpatient services shall be centralized in the patient's medical record.

4. In hospitals using automated data processing, indexes may be kept on punch cards or reproduced on sheets kept in books.

(c) Records of patients are the property of the hospital and shall not be taken from the facility except by court order. This does not preclude the routing of the patient's records, or portion thereof, including x-ray film, to physicians or dentists for consultation.

1. Only authorized personnel shall be permitted access to the patient's records.

2. Patient information shall be released only on authorization of the patient, the patient's guardian or the executor of his estate.

(d) Medical record contents shall be pertinent and current and shall include the following:

1. Identification data and signed consent forms, including name and address of next of kin, and of person or agency responsible for patient;

2. Date of admission and name of attending medical staff member;

3. Chief complaint;

4. Medical history including present illness, past history, family history and physical examination;

5. Report of special examinations or procedures, such as consultations, clinical laboratory tests, x-ray interpretations, EKG interpretations, etc.;

6. Provisional diagnosis or reason for admission;

7. Orders for diet, diagnostic tests, therapeutic procedures, and medications, including patient limitations, signed and dated by the medical staff member; and, if given verbally, undersigned by the medical staff member upon his next visit to hospital;

8. Medical, surgical and dental treatment notes and reports, signed and dated by a physician, or dentist when applicable, including records of all medication administered to the patient;

9. Complete surgical record signed by attending surgeon, or oral surgeon, to include anesthesia record signed by anesthesiologist or anesthetist, preoperative physical examination and diagnosis, description of operative procedures and findings, postoperative diagnosis, and tissue diagnosis by qualified pathologist on tissue surgically removed;

10. Patient care plan which addresses the comprehensive care needs of the patient, to include the coordination of the facility's service departments that have impact on patient care;

11. [~~10.~~] Physician's, or dentist's when applicable, progress notes and nurses' observations;

12. [~~11.~~] Record of temperature, blood pressure, pulse and respiration;

13. [~~12.~~] Final diagnosis using terminology in the current version of the International Classification of Diseases or the American Psychiatric Association's Diagnostic and Statistical Manual, as is applicable;

14. [~~13.~~] Discharge summary, including condition of patient on discharge, and date of discharge;

15. [~~14.~~] In case of death, autopsy findings, if performed; and

16. [~~15.~~] In the case of death, an indication that the patient has been evaluated for organ donation in accordance with hospital protocol.

(e) Records shall be indexed according to disease, operation, and attending medical staff member. For indexing, any recognized system may be used.

1. The disease and operative indices shall be developed using a recognized nomenclature, and shall include each specific disease created and each operative procedure performed, and shall include all essential data on each patient having that particular condition;

2. The attending medical staff index shall include all patients attended or seen in consultation by each medical staff member;

3. Indexing shall be current, within six (6) months following discharge of the patient.

(12) Organ donation.

(a) The hospital shall establish and maintain a written organ procurement for transplant protocol, in consultation with an organ procurement agency, which encourages organ donation and identifies potential organ donors.

(b) In cases where an individual has died or death is imminent, the patient's attending physician shall determine, in accordance with the hospital's protocol, whether the patient is a potential organ/tissue donor.

(c) The hospital protocol shall include:

1. Criteria, developed in consultation with the organ procurement agency for identifying potential donors;

2. Procedures for obtaining consent for organ donation;

3. Procedures for the hospital administrator or his designee to notify the organ procurement agency of potential organ donors;

4. Procedures by which the patient's attending physician or designee in accordance with hospital protocol shall document in the patient's medical record that the organ procurement agency has been notified in the case of potential donors or contraindications to donation.

(d) No patient with impending or declared brain death and/or cardiopulmonary death as determined pursuant to KRS 446.400 should be considered as a potential donor if contraindications are identified and documented in the patient's medical record.

Section 4. Provision of Services. (1) Medical staff services.

(a) Medical care provided in the hospital shall be under the direction of a medical staff member in accordance with staff privileges granted by the governing authority.

(b) The attending medical staff member shall assume full responsibility for diagnosis and care of his/her patient. A physician, or other member of the medical staff if so designated in the hospital bylaws, shall conduct and record a complete history and physical examination for the patient within twenty-four (24) hours after admission to the hospital.

(c) The attending medical staff member shall state his final diagnosis, complete the discharge summary and sign the records within thirty (30) [~~fifteen (15)~~] days following the patient's discharge.

(d) Physician services shall be available twenty-four (24) hours a day on at least an on-call basis.

(e) There shall be sufficient medical staff coverage for all clinical services of the hospital in keeping with their size and scope of activity.

(2) Nursing service.

(a) The hospital shall have a nursing department organized to meet the nursing care needs of the patients and maintain established standards of nursing practice. A registered nurse, preferably one who has a bachelor of science degree in nursing, shall serve as director of the nursing department.

(b) There shall be a registered nurse on duty at all times.

1. There shall be registered nurse supervision and staff nursing personnel for each service or nursing unit to insure the immediate availability of a registered nurse for all patients on a twenty-four (24) hour basis.

2. There shall be other nursing personnel in sufficient numbers to provide nursing care not requiring the service of a registered nurse.

3. There shall be additional registered nurses for surgical, obstetrical, emergency, and other services of the hospital in keeping with their size and scope of activity.

4. All persons not employed by the hospital who render special duty nursing services in the hospital shall be under the supervision
of the nursing supervisor of the department or service concerned.

(c) The hospital shall have written nursing care procedures and written nursing care plans for patients. Patient care shall be carried out in accordance with attending medical staff member's orders, nursing process [~~care plans~~], and nursing care procedures.

1. The nurse shall evaluate the patient by utilizing the nursing process in accordance with KRS 314.011. [~~Nursing care plans shall be developed for each patient and shall be kept current daily. Plans shall indicate long and short term goals, nursing care needed, and methods, approaches and modifications necessary to insure best results for the patient.~~]

2. A registered nurse shall assign staff and evaluate the nursing care of each patient in accordance with the patient's need and the nursing staff available.

3. Nursing notes shall be written and signed on each shift by persons rendering care to patients. The notes shall be descriptive of the nursing care given and shall include information and observations of significance which contribute to the continuity of patient care.

4. Medications shall be administered by a registered nurse, a physician, or dentist except in the case of a licensed

practical nurse under the supervision of a registered nurse.

5. No medication or treatment shall be given without a written order signed by a physician or dentist, when applicable. Telephone orders for medications shall be given only to licensed or registered nurses or a pharmacist and signed by the medical staff member within twenty-four (24) hours from the time the order is given. Telephone orders may be given to licensed physical, occupational, speech or respiratory therapists in accordance with the therapist's scope of practice and the hospital's protocols.

6. No form of patient restraint or protective device other than bed rails shall be used, except in an emergency until the attending medical staff member can be contacted, or upon written or telephone orders of the attending medical staff member. When such restraint is necessary, the least restrictive form of protective device shall be used which affords the patient the greatest possible degree of mobility and protection. In no case shall a locking restraint be used.

7. Meetings of the nursing staff and other nursing personnel shall be held at least monthly to discuss patient care, nursing service problems, and administrative policies. Written minutes of all meetings shall be kept.

(3) Dietary services.

(a) The hospital shall have a dietary department, organized, directed and staffed to provide quality food service and optimal nutritional care.

1. The dietary department shall be directed on a full-time basis by an individual who by education or specialized training and experience is knowledgeable in food service management.

2. The dietary service shall have at least one (1) qualified dietician or nutritionist, either full-time, part-time, or on a consultative basis, to supervise the nutritional aspects of patient care.

3. Sufficient additional personnel shall be employed to perform assigned duties to meet the dietary needs of all patients.

4. The dietary department shall have available for all dietary personnel current written policies and procedures for food storage, handling, and preparation.

5. An in-service training program, which shall include the proper handling of food, safety and personal grooming, shall be given at least quarterly for new dietary employees.

(b) Menus shall be planned, written and rotated to avoid repetition. Nutritional needs shall be met in accordance with recommended dietary allowances of the Food and Nutrition Board of the National Research Council of the National Academy of Sciences and in accordance with the medical staff member's orders.

(c) Meals shall correspond with the posted menu. When changes in menu are necessary, substitution shall provide equal nutritive value and the changes shall be recorded on the menu. Menus shall be kept on file for thirty (30) days.

(d) All diets, regular and therapeutic, shall be prescribed in writing, dated, and signed by the attending medical staff member. Information on the diet order shall be specific and complete and shall include the title of the diet, modifications in specific nutrients stating the amount to be allowed in the diet, and specific problems that may affect the diet or eating habits.

(e) Food shall be prepared by methods that conserve nutritive value, flavor, and appearance, and shall be served at the proper temperatures and in a form to meet individual needs (e.g., it shall be cut, chopped, or ground to meet individual patient needs).

(f) If a patient refuses foods served, nutritious substitutions shall be offered.

(g) At least three (3) meals or their equivalent shall be served daily with not more than a fifteen (15) hour span between a substantial evening meal and a breakfast unless otherwise directed by the attending medical staff member. Meals shall be served at regular times with between-meal or bedtime snacks of nourishing quality offered.

(h) There shall be at least a three (3) day supply of food available in the facility at all times to prepare well-balanced palatable meals for all patients.

(i) There shall be an identification system for patient trays, and methods used to assure that each patient receives the appropriate diet as ordered.

(j) The hospital shall comply with all applicable provisions of KRS 219.011 to KRS 219.081 and 902 KAR 45:005 (Kentucky's Food Service Establishment Act and Food Service Code).

(4) Laboratory services. The hospital shall have a well-organized, adequately supervised laboratory with the necessary space, facilities and equipment to perform those services commensurate with the hospital's needs for its patients. Anatomical pathology services and blood bank services shall be available either in the hospital or by arrangement with other facilities.

(a) Clinical laboratory. Basic clinical laboratory services necessary for routine examinations shall be available regardless of the size, scope and nature of the hospital.

1. Equipment necessary to perform the basic tests shall be provided by the hospital.

2. All equipment shall be in good working order, routinely checked, and precise in terms of calibration.

3. Provision shall be made to carry out adequate clinical laboratory examinations including chemistry, microbiology, hematology, serology, and clinical microscopy.

a. Some of these services may be provided through arrangements with another licensed hospital which has the appropriate laboratory facilities, or with an independent laboratory licensed pursuant to KRS 333.030 and any regulations promulgated thereunder.

b. When work is performed by an outside laboratory, the original report from this laboratory shall be contained in the patient's medical record.

4. Laboratory facilities and services shall be available at all times.

a. Adequate provision shall be made to assure the availability of emergency laboratory services twenty-four (24) hours a day, seven (7) days a week, including holidays, either in the hospital or under arrangements as specified in paragraph (a)3a of this subsection.

b. Where services are provided by an outside laboratory, the conditions, procedures, and availability of such services shall be in writing and available in the hospital.

5. There shall be a clinical laboratory director and a sufficient number of supervisors, technologists and technicians to perform promptly and proficiently the tests requested of the laboratory. Laboratory services shall be under the direction of a pathologist on a full-time, regular part-time, or a consultative basis. The laboratory shall not perform procedures and tests which are outside the scope of training of the laboratory personnel.

6. Signed reports of all laboratory services provided shall be filed with the patient's medical record and duplicate copies kept in the department.

a. The laboratory report shall be signed by the technologist who performed the test.

b. There shall be a procedure for assuring that all requests for laboratory tests are ordered and signed by **qualified personnel in accordance with their scope of practice and the hospital's protocols and bylaws** [~~a medical staff member~~].

(b) Anatomical pathology. Anatomical pathology services shall be provided as indicated by the needs of the hospital either in the hospital or under arrangements as specified in paragraph (a)3a of this subsection.

1. Anatomical pathology services shall be under the direct supervision of a pathologist on a full-time, regular part-time or regular consultative basis. If the latter pertains, the hospital shall provide for at least monthly consultative visits by a pathologist.

2. The pathologist shall participate in staff, departmental

and clinicopathologic conference.

3. The pathologist shall be responsible for establishing the qualifications of staff and for their in-service training.

4. With exceptions of those exclusions listed in written policies of the medical staff, all tissues removed at surgery shall be macroscopically, and if necessary, microscopically examined by the pathologist.

a. A list of tissues which do not routinely require microscopic examination shall be developed in writing by the pathologist or designated physician with the approval of the medical staff.

b. A tissue file shall be maintained in the hospital.

c. In the absence of a pathologist, there shall be an established plan for sending to a pathologist outside the hospital all tissues requiring examination.

5. Signed reports of tissue examinations shall be promptly filed with the patient's medical record and duplicate copies kept in the department.

a. All reports of macro and microscopic examinations performed shall be signed by the pathologist.

b. Provision shall be made for the prompt filing of examination results in the patient's medical record and notification of the medical staff member requesting the examination.

c. Duplicate copies of the examination reports shall be filed in the laboratory in a manner which permits ready identification and accessibility.

(c) The laboratory shall meet the minimum proficiency testing and quality control provisions in accordance with Medicare certification requirements.

(d) Blood bank. Facilities for procurement, safekeeping and transfusion of blood and blood products shall be provided or be readily available.

1. The hospital shall maintain, as a minimum, proper blood storage facilities under adequate control and supervision of the pathologist or other authorized physician.

2. For emergency situations the hospital shall maintain at least a minimum blood supply in the hospital at all times, shall be able to obtain blood quickly from community blood banks or institutions, or shall have an up-to-date list of donors and equipment necessary to bleed them.

3. If the hospital utilizes outside blood banks, there shall be a written agreement governing the procurement, transfer and availability of blood.

4. There shall be a provision for prompt blood typing and cross-matching and for laboratory investigation of transfusion reactions, either through the hospital or by arrangements with others on a continuous basis, under the supervision of a physician.

5. Blood storage facilities in the hospital shall have an adequate alarm system, which shall be regularly inspected and tested and is otherwise safe and adequate.

6. Records shall be kept on file indicating the receipt and disposition of all blood provided to patients in the hospital.

7. A committee of the medical staff or its equivalent shall review all transfusions of blood or blood derivatives and shall make recommendations concerning policies governing such practices.

8. Samples of each unit of blood used at the hospital shall be retained, according to the instructions of the committee indicated in subparagraph 7 of this paragraph, for further testing in the event of reactions. Blood not so retained which has exceeded its expiration date shall be disposed of promptly.

9. The review committee shall investigate all transfusion reactions occurring in the hospital and shall make recommendations to the medical staff regarding improvements in transfusion procedures.

(5) Pharmaceutical services.

(a) The hospital shall have adequate provisions for the handling, storing, recording, and distributing of pharmaceuticals in accordance with state and federal laws and regulations.

1. A hospital which maintains a pharmacy for the compounding and dispensing of drugs shall provide pharmaceutical services under the supervision of a registered pharmacist on a full-time or part-time basis, according to the size and demands of the hospital.

a. The pharmacist shall be responsible for supervising and coordinating all the activities of the pharmacy department.

b. Additional personnel competent in their respective duties shall be provided in keeping with the size and activity of the department.

2. Hospitals not maintaining a pharmacy shall have a drug room utilized only for the storage and distribution of drugs, drug supplies and equipment. Prescription medications shall be dispensed by a registered pharmacist elsewhere. The drug room shall be operated under the supervision of a pharmacist employed at least on a consultative basis.

a. The consulting pharmacist shall assist in drawing up correct procedures, rules for the distribution of drugs, and shall visit the hospital on a regularly scheduled basis in the course of his duties.

b. The drug room shall be kept locked and the key shall be in the possession of a responsible person on the premises designated by the administrator.

(b) Records shall be kept of the transactions of the pharmacy or drug room and correlated with other hospital records where indicated.

1. In accordance with accounting procedures of the hospital, the pharmacy shall establish and maintain a system of records and bookkeeping in accordance with policies of the hospital for maintaining adequate control over the requisitioning and dispensing of all drugs and drug supplies and charging patients for drugs and pharmaceutical supplies.

2. A record of the stock on hand and of the dispensing of all controlled substances shall be maintained in such a manner that the disposition of any particular item may be readily traced.

(c) The medical staff in cooperation with the pharmacist and other disciplines, as necessary, shall develop policies and procedures that govern the safe administration of drugs, including:

1. The administration of medications only upon the order of an individual who has been assigned clinical privileges or who is an authorized member of the house staff;

2. Review of the physician's, or dentist's when applicable, original order, or a direct copy by the pharmacist dispensing the drugs;

3. The establishment and enforcement of automatic stop orders;

4. Proper accounting for and disposition of unused medications or special prescriptions returned to the pharmacy as a result of patient being discharged, or when such medications/prescriptions do not meet sterile and label requirements;

5. Provision for emergency pharmaceutical services; and

6. Provision for reporting adverse medication reactions to the appropriate committee of the medical staff.

(d) Therapeutic ingredients of medications dispensed shall be included in the United States Pharmacopoeia, National Formulary, United States Homeopath-Pharmacopoeia, New Drugs, or Accepted Dental Remedies (except for any drugs unfavorably evaluated therein), or shall be approved for use by the appropriate committee of the medical staff.

1. A pharmacist shall be responsible for determining specifications and choosing acceptable sources for all drugs, with approval of the appropriate committee of the medical staff.

2. There shall be available a formulary or list of drugs accepted for use in the hospital which shall be developed and amended at regular intervals by the appropriate committee of the medical staff.

(6) Radiology services.

(a) The hospital shall have diagnostic radiology facilities. The radiology service shall have a current license or registration pursuant to KRS 211.842 to 211.852 and any regulations promulgated thereunder.

1. The hospital shall provide at least one (1) fixed diagnostic x-ray unit which is capable of general x-ray procedures.

2. The hospital shall have a radiologist on at least a consulting basis to function as medical director of the department and to interpret films that require specialized knowledge for accurate reading.

3. Personnel adequate to supervise and conduct the services shall be provided, and at least one (1) certified radiation operator shall be on duty or on call at all times.

(b) There shall be written policies and procedures governing radiologic services and administrative routines that support sound radiologic practices.

1. Signed reports shall be filed in the patient's record and duplicate copies kept in the department.

2. Radiologic services shall be performed only upon written order of **qualified personnel in accordance with their scope of practice and the hospital's protocols and bylaws** ~~[a physician or dentist]~~, and the order shall contain a concise statement of the reason for the service/examination.

3. Reports of interpretations shall be written or dictated and signed by the radiologist.

4. The use of all x-ray apparatus shall be limited to certified radiation operators, under the direction of medical staff members as necessary. The same limitation shall apply to personnel applying and removing radium element, its disintegration products, and radioactive isotopes.

(c) The radiology department shall be free of hazards for patients and personnel. Proper safety precautions shall be maintained against fire and explosion hazards, electrical hazards and radiation hazards.

(7) Physical restoration/rehabilitation service. If the hospital provides rehabilitation, **work hardening,** physical therapy, ~~[(including work hardening),]~~ occupational therapy, audiology, or speech pathology services, the services shall be organized and staffed to insure the health and safety of patients.

(a) Hospitals in which physical restoration/rehabilitation services are available shall provide individualized techniques required to achieve maximum physical function normal to the patient while preventing unnecessary debilitation and immobilization.

(b) Written policies and procedures shall be developed for each rehabilitation service provided.

(c) A member of the medical staff shall be designated to have responsibility for coordinating the restorative services provided to the patients in accordance with their needs.

(d) Equipment for ~~[physical]~~ therapy shall be adequate to meet the needs of the service and shall be in good condition.

(e) ~~[Physical]~~ Therapy services shall be provided only upon written orders of **qualified personnel in accordance with their scope of practice and according to the hospital's protocols and bylaws** ~~[a medical staff member]~~.

(f) ~~[Physical]~~ Therapy services shall be provided by or under the supervision of a licensed ~~[physical]~~ therapist, on a full-time, part-time or consultative basis.

(g) Complete therapy reports shall be maintained for each patient provided such services. The reports shall be signed by the therapist who prepared it and shall be a part of the patient's medical record.

(8) Emergency services.

(a) Every hospital shall have procedures for taking care of the emergency patient with at least a registered nurse on duty to evaluate the patient and a physician on call.

(b) If the facility has an organized emergency department/service, policies and an emergency care procedures manual governing medical and nursing care provided in the emergency room shall be established by and be a continuing responsibility of the medical staff.

1. The emergency service shall be under the direction of a licensed physician. Medical staff members shall be available at all times for the emergency service, either on duty or on call. Current schedules and telephone numbers shall be posted in the emergency room.

2. Nursing personnel shall be assigned to, or designated to cover, the emergency service at all times.

3. Facilities shall be provided to assure prompt diagnosis and emergency treatment. A specific area of the hospital shall be utilized for patients requiring emergency care on arrival. The emergency area shall be located in close proximity to an exterior entrance of the facility and shall be independent of the operating room suite.

4. Diagnostic and treatment equipment, drugs, and supplies shall be readily available for the provision of emergency services and shall be adequate in terms of the scope of services provided.

5. Adequate medical records shall be kept on every patient seen in the emergency room. These records shall be under the supervision of the Medical Record Service and, where appropriate, shall be integrated with inpatient and outpatient records. Emergency room records shall include at least:

a. A log book listing chronologically the patient visits to the emergency room including patient identification, means of arrival and person(s) transporting patient, and time of arrival;

b. History of present complaint and physical findings;

c. Laboratory and x-ray reports, where applicable;

d. Diagnosis;

e. Treatment ordered and details of treatment provided;

f. Patient disposition;

g. Record of all referrals;

h. Instructions to the patient and/or family for those not admitted to the hospital; and

i. Signatures of attending medical staff member, and nurse when applicable.

(9) Outpatient services.

(a) A hospital which has an organized outpatient department shall have written policies and procedures relating to the staff, functions of service, and outpatient medical records.

(b) The outpatient department shall be organized in sections (clinics), the number of which shall depend on the size and degree of departmentalization of the medical staff, the available facilities, and the needs of the patient it serves.

(c) The outpatient department shall have appropriate cooperative arrangements and communications with community agencies such as home health agencies, the local health department, social and welfare agencies, and other outpatient departments.

(d) Services offered by the outpatient department shall be under the direction of a physician who is a member of the medical staff.

1. A registered nurse shall be responsible for the nursing services of the department.

2. The number and type of other personnel employed shall be determined by the volume and type of services provided and type of patient served in the outpatient department.

(e) Necessary laboratory and other diagnostic tests shall be available either through the hospital or a laboratory in another licensed hospital or a laboratory licensed pursuant to KRS 333.030 and any regulations promulgated thereunder.

(f) Medical records shall be maintained and, where appropriate, coordinated with other hospital medical records.

1. The outpatient medical record shall be filed in a location which insures ready accessibility to the medical staff members, nurses, and other personnel of the outpatient department.

2. Information in the medical record shall be complete and sufficiently detailed relative to the patient's history, physical examination, laboratory and other diagnostic tests, diagnosis, and treatment to facilitate continuity of care.

(10) Surgery services.

(a) Hospitals in which surgery is performed shall have an operating room(s) and a recovery room supervised by a registered nurse qualified by training, experience and ability to direct surgical nursing care.

1. Sufficient surgical equipment including suction facilities and instruments in good repair shall be provided to assure safe and aseptic treatment of all surgical cases.

2. When flammable anesthetics are used, precautions shall be taken to eliminate hazards of explosions, including use of shoes with conductive soles and prohibition of garments or other items of silk, wool, or synthetic fibers which accumulate static electricity.

(b) There shall be effective policies and procedures regarding surgical staff privileges, functions of the service, and evaluation of the surgical patient.

1. Surgical privileges shall be delineated for all members of the medical staff doing surgery in accordance with the competencies of each, and a roster shall be maintained.

2. Except in emergencies, a surgical operation or other hazardous procedures shall be performed only on written consent of the patient or his legal representative.

3. The operating room register shall be complete and up to date. It shall include the patient's name; hospital room number; preoperative and postoperative diagnosis; complications, if any; names of surgeon, first assistant, anesthesiologist or anesthetist, scrub and circulating nurse; operation performed; and type of anesthesia.

4. There shall be a complete history and physical workup in the chart of every patient prior to surgery. If such has been transcribed but not yet recorded in the patient's chart, there shall be a statement to that effect and an admission note by the attending medical staff member in the chart. The chart of the patient shall accompany him to the operating suite and shall be returned to the patient's floor or room after the operation.

5. An operative report describing the techniques and findings shall be written or dictated immediately following surgery and signed by the surgeon.

6. All tissues removed by surgery shall be placed in suitable solutions, properly labeled, and submitted to the pathologist for macroscopic and, if necessary, microscopic examinations.

7. All infections of clean surgical cases shall be recorded and reported to the appropriate committee of the medical staff. A procedure shall exist for the investigation of such cases.

(c) Rules and policies related to the operating rooms shall be available and posted.

(11) Anesthesia services.

(a) The hospital which provides surgical or obstetrical services shall have anesthesia services available, and these services shall be organized under written policies and procedures regarding staff privileges, the administration of anesthetics, and the maintenance of safety controls.

(b) A physician member of the medical staff shall be the medical director of anesthesia services. Whenever possible, the director shall be a physician specializing in anesthesiology.

(c) If anesthetics are not administered by an anesthesiologist, the medical staff shall designate a medical staff anesthetist or a registered nurse anesthetist qualified to administer anesthetics under the supervision of the operating surgeon.

(d) Every patient requiring anesthesia services shall have a preanesthetic physical examination by a medical staff member with findings recorded within forty-eight (48) hours of surgery, an anesthetic record on a special form, a postanesthetic follow-up, with findings recorded by the anesthesiologist, medical staff anesthetist, or nurse anesthetist.

(e) The postanesthetic follow-up note shall be written upon discharge from the postanesthesia recovery area or within three (3) to twenty-four (24) hours after the procedures which required anesthesia. This note shall include a record of blood pressure, pulse, presence or absence of the swallowing reflex and cyanosis, any postoperative abnormalities or complications, and the general condition of the patient.

(12) Obstetrics service.

(a) Hospitals providing obstetrical care of patients shall have adequate space, necessary equipment and supplies, and a sufficient number of nursing personnel to assure safe and aseptic treatment of mothers and newborns and provide protection from infection and cross-infection.

1. The obstetrics service shall be under the medical direction of a physician and under the supervision of a registered nurse qualified by training, experience, and ability to direct effective obstetrical and newborn nursing care. In hospitals where the obstetrical caseload does not justify a separate nursing staff, obstetrical nurses shall be designated and shall be oriented to the specific needs of obstetrical patients.

2. A registered nurse shall be on duty in the labor and delivery unit whenever any patient is in the unit. Each obstetrics patient shall be kept under close observation by professional personnel during the period of recovery after delivery, whether in the delivery room or in a recovery area, until she is transferred to the maternity unit.

3. An on-call schedule or other suitable arrangement shall be provided to ensure that a physician who is experienced in obstetrics is readily available for consultation and obstetrical emergencies.

4. Provisions shall be made for the care of patients in labor with adequately equipped labor rooms.

(b) An adequate supply of prophylaxis for the prevention of infant blindness shall be kept on hand and administered within thirty (30) minutes after delivery.

(c) The hospital shall comply with the provisions of KRS 214.155 and 902 KAR 4:030 in administering tests for inborn errors of metabolism to infants.

(d) There shall be an acceptable method and procedure for the positive associative identification of the mother and infant. This shall be done in the delivery room at the time of birth and shall remain in place during the entire period of hospitalization.

(e) An up-to-date register book of all deliveries shall be maintained containing the following information:

1. Infant's full name, sex, date, time of birth and weight;

2. Mother's full name, including maiden name, address, birthplace and age at time of this birth;

3. Father's full name, birthplace, age at time of this birth; and

4. Full name of attending physician or nurse midwife.

(f) Each hospital providing maternity service shall provide a nursery which shall not be used for any other purpose. Specific routines for daily care of infants and their environment shall be prepared in writing and posted in the nursery workroom.

(g) A policy shall be established for deliveries occurring outside the delivery room and for patients who are infectious.

(h) Written policies and procedures shall be developed to cover alternative use of obstetrical beds.

(13) Pediatric services.

(a) Hospitals providing pediatric care shall have proper facilities for the care of children apart from the newborn and maternity nursing services. If there is not a separate area permanently designated as the pediatric unit, there shall be an area within an adult care unit for pediatric patient care. There shall be available beds and other equipment which are appropriate in size for pediatric patients.

(b) There shall be proper facilities and procedures for the isolation of children with infectious, contagious or communicable conditions. At least one (1) patient room shall be available for isolation use.

(c) A physician with pediatric experience shall be on call at all times for the care of pediatric patients.

(d) Pediatric nursing care shall be under the supervision of a registered nurse qualified by training, experience and ability to direct effective pediatric nursing. All nursing personnel assigned to pediatric service shall be oriented to the special care of children.

(e) Policies shall be established to cover conditions under which parents may stay with small children or "room-in" with

their hospitalized child for moral support and assistance with care.

(14) Psychiatric services. Hospitals which have a psychiatric unit shall designate the location and number of beds to be licensed as psychiatric beds and meet the requirements of psychiatric hospitals operations and services, licensure regulation.

(15) Chemical dependency treatment services. Hospitals providing chemical dependency treatment services shall meet the requirements of 902 KAR 20:160, Chemical dependency treatment services and facility specifications, Section 3, Administrative and Operation and Section 4, Provision of Services, and designate location and the number of beds to be used for this purpose.

(16) Medical library.

(a) The hospital shall maintain appropriate medical library services according to the professional and technical needs of hospital personnel.

(b) The medical library shall be in a location accessible to the professional staff, and its contents shall be organized and available at all times to the medical and nursing staffs.

CLAY CESSNA, Inspector General
FONTAINE BANKS, JR. for LEONARD E. HELLER, Secretary
APPROVED BY AGENCY: January 3, 1992
FILED WITH LRC: January 6, 1992 at 11 a.m.

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

905 KAR 8:090. Personal care assistance services.

RELATES TO: KRS 205.900 through 205.920
STATUTORY AUTHORITY: KRS 194.050, 205.910
NECESSITY AND FUNCTION: KRS 205.910 requires [~~directs~~] the Cabinet for Human Resources to establish [~~promulgate~~] an eligibility standard for personal care assistance services which shall take [~~takes~~] into consideration the unique economic and social needs of severely physically disabled adults. The Department for Social Services has drafted procedures that shall enable provisions of KRS 205.910, concerning personal care assistance services to be implemented. [~~The purpose of this regulation is to satisfy the requirements of KRS 205.910.~~]

Section 1. Definitions. (1) The definition of "cabinet" is governed by KRS 205.900(1).

(2) The definition of "evaluation team" is governed by KRS 205.900(2).

(3) The definition of "personal care assistance services" is governed by KRS 205.900(3).

(4) The definition of "qualified agency or organization" is governed by KRS 205.900(4).

(5) The definition of "secretary" is governed by KRS 205.900(5).

(6) The definition of "severely physically disabled adult" is governed by KRS 205.900(6).

(7) "Activities of daily living (ADLs)" means feeding, bathing, and dressing oneself; transferring and toileting.

(8) "Administrative support personnel" means staff designated within the contract agency who offer technical assistance to, and monitor the activities of the qualified agency.

(9) "Approved plan" means the response written by the contract agency to the request for proposal and agreed upon by the Division of Aging Services.

(10) "Authorized representatives of the cabinet" means the Director of the Division of Aging Services or official designee.

(11) "Evaluation team's recommendations" means the official response of the evaluation team signed by all three (3) team members.

(12) "Income eligibility criteria" means a formula to determine eligibility for the personal care attendant program which **addresses** [~~complies with the statutorial requirement that~~] the "unique economic needs of severely physically disabled adults" **as governed by KRS 205.910(1)** [~~shall be addressed~~].

(13) "Instrumental activities of daily living (IADLs)" means cooking, shopping, laundry, housekeeping, and other assistance necessary to maintain a person in his own home.

(14) "Contract agency" means the agency with whom the Cabinet for Human Resources has contracted to administer the personal care attendant program.

(15) "Living arrangement" means a noninstitutional environment for a physically disabled adult who lives alone or with family or others.

(16) "Mentally capable" means an adult who is able to recruit, hire, fire, and supervise the persons who provide personal care assistance services. There is no provision for a proxy.

(17) "Participant" means a person accepted into the personal care attendant program who has met the eligibility requirements of a severely physically disabled adult.

(18) "Personal care attendant" means a person who provides personal care attendant services.

(19) "Personal care attendant services" means services to assist an adult with physical disabilities in performing:

(a) Activities of daily living;
(b) Instrumental activities of daily living;
(c) Routine bodily functions care (bowel and bladder);
(d) Turning;
(e) Repositioning; and
(f) If necessary, ambulation and emergency procedures.

(20) "Prescreening" means a process, using a quick checklist, which assesses whether or not an applicant appears to meet the basic requirements for eligibility.

(21) "Subsidy" means a financial reimbursement paid by the state through the contract agency to the participant for services provided by an attendant. The subsidy shall not be considered income for any purpose to the extent permitted by federal law and regulation.

(22) "Work agreement" means an agreement of time and tasks developed by the participant as the employer, for the attendant as the employee.

Section 2. Participant Responsibilities. The participant's responsibilities shall include:

(1) Recruiting attendants;
(2) Screening attendants;
(3) Interviewing attendants;
(4) Selecting attendants;
(5) Hiring attendants;
(6) Instructing attendants on specific personal care duties;
(7) Supervising attendants;
(8) Evaluating attendant care;
(9) Firing attendants;
(10) Discussing and coming to agreement with each attendant about what services shall be provided;
(11) Keeping records and reporting to the agency time worked for payment to the attendant;
(12) Computing required employee payroll, withholdings, and actual payment of required withholdings and taxes appropriate to being an employer;
(13) Establishing terms of employment for attendant to include time, hours, duties, and responsibilities. This shall be in the form of a written agreement between the disabled adult and the attendant; and
(14) Coordinating with the program coordinator the aspects of program requirements.

Section 3. Attendant Responsibilities. The attendant's responsibilities shall include:

(1) Entering into written agreement for terms of work as specified by the participant.

(2) Performing the tasks agreed on between the participant and attendant.
(3) Performing the tasks as instructed by the participant.
(4) Reporting to work as scheduled.
(5) Maintaining the privacy and confidentiality of the participant.
(6) Notifying participant at least six (6) hours in advance when unable to report for work as scheduled.
(7) Maintaining a list of emergency numbers.
(8) Attending attendant training related to specific care needs.
(9) Keeping a daily record of hours worked and services rendered.
(10) Submitting to the participant, documents and material necessary to comply with the formal payment process.
(11) Meeting with participant and program coordinator regarding the participant's progress and the state of the relationship between the participant and the attendant.
(12) Disclosing misdemeanor or felony convictions to the participant and authorize the participant to obtain a record check on the attendant through law enforcement agencies.
(13) Notifying program coordinator of conditions which seriously threaten the health or safety of the participant or attendant.

Section 4. Program Coordinator Responsibilities. The program coordinator's responsibilities shall include:
(1) Locating severely physically disabled persons who may be eligible for participation.
(2) Prescreening applicants who may be eligible to participate in the personal care attendant program.
(3) Assisting the participant in how to conduct an interview and screen prospective attendants.
(4) Assisting in the recruitment and referral of attendants to participants.
(5) Assisting in or arranging for the training of attendants if necessary.
(6) Reviewing with the participant the evaluation completed by the evaluation team.
(7) Assisting the participant in developing a work agreement between the disabled adult and attendant.
(8) Monitoring the progress of each participant on a quarterly basis.
(9) Assisting the participant in finding back-up attendants for emergencies or regular attendant's time off.
(10) Assisting in the recruitment of personal care attendants when requested.
(11) Maintaining a list of qualified personal care attendants.
(12) Assuring that participants receive training in record-keeping and tax responsibilities related to services.
(13) Completing ten (10) hours of initial care management training and any follow-up training required by the cabinet.

Section 5. Qualified Agency Responsibilities. The responsibilities of the qualified agency shall include:
(1) Employing or contracting with an evaluation team consisting of three (3) individuals:
(a) A program coordinator or social worker;
(b) An occupational or physical therapist; and
(c) A registered nurse.
(2) Providing monthly programmatic and financial reports on attendants per participant to the contract agency.
(3) Developing procedures for payment of subsidies and establishing appropriate fiscal control procedures within the agency.
(4) Employing or contracting for the services of a program coordinator.

Section 6. Evaluation Team Responsibilities. The responsibilities of the evaluation team shall include:
(1) Completing the initial evaluation of applicants.
(2) Reevaluating participants annually or more frequently if changes occur in the participant's situation.

Section 7. Contract Agency Responsibilities. The responsibilities of the contract agency shall include:
(1) Implement the personal care attendant program according to a plan approved by the Division of Aging Services.
(2) Assume fiscal accountability for the state funds designated for the program.
(3) Provide necessary administrative support personnel within the contract agency office.
(4) Provide an appeals procedure and hearing process in compliance with the requirements of 905 KAR 8:140.
(5) Monitor management practices, including program evaluation, to assure effective and efficient program operation and compliance with financial audit requirements.
(6) Provide, in conjunction with provider agencies, a procedure for attendant payment.
(7) Review all recommendations of the evaluation team regarding applicant eligibility and participant services.
(8) Follow the recommendations of the evaluation team or give notice to the applicant within twenty (20) days of receipt of the recommendations and the reasons for not acting upon them.
(9) Respond in writing to the provider agency regarding the evaluation team's recommendations within ten (10) working days.
(10) Submit monthly program reports to the Division of Aging Services.
(11) Maintain files and records for cabinet audit, including participant records and statistical reports.

Section 8. Division of Aging Services Responsibilities. The responsibilities of the Division of Aging Services shall include:
(1) Review proposed plans submitted by contract agencies to administer the personal care attendant program.
(2) Inform the contract agency in writing of the action taken regarding the proposed plan for administration of the personal care attendant program. Action taken by the Division of Aging Services shall include the following:
(a) Approve the plan as submitted;
(b) Require the contract agency to revise the plan; or
(c) Reject the plan.
(3) Monitor the contract agency at least annually, and the qualified agencies and participants as deemed necessary by the division.
(4) Allocate available funding.
(5) Advocate for program expansion.
(6) Provide technical assistance.

Section 9. Eligibility. [~~1. Eligibility Criteria.~~] To be eligible for participation in the personal attendant care services program a person shall meet: [~~must meet both the physical eligibility standard and the income eligibility standard as set forth in this regulation.~~]
(1) The physical eligibility standard which requires that a person shall:
(a) Be eighteen (18) years old or older;
(b) Be severely physically disabled as defined by KRS 205.900(6);
(c) Need not less than fourteen (14) hours of attendant care per week or need an attendant at night;
(d) Reside, or through this program be able to reside, in a noninstitutional setting;
(e) Agree to evaluation of his eligibility for personal care services by an evaluation team from a qualified agency or organization;
(f) Be mentally capable of recruiting, hiring, firing, and supervising attendants;
(g) Agree that his need for continuing attendant care shall be subject to an initial evaluation and reevaluations at yearly intervals;
(h) Work with the program coordinator in establishing a

personal care plan as the basis of agreement between the disabled person and his attendant; and

(i) Be capable of preparing attendant payroll reports and required employer tax statements.

[~~Section 2. Physical Eligibility Standard. To participate in the personal care assistance program a person must be eighteen (18) years of age or older with permanent, temporary, or recurring functional loss of two (2) or more limbs, need not less than fourteen (14) hours a week of personal care assistance services or need an attendant at night, and have the ability to select and manage an attendant.~~]

(2) The income equity standards [~~Section 3. Income Eligibility. (1) Income eligibility for receiving personal care assistance services~~] shall be determined by the following formula contained on a form prescribed by the cabinet:

(a) Deduct from the annual gross income the cost of unreimbursed extraordinary medical expenses and impairment related expenses, an amount adjusted to a family size of one (1) at sixty (60) percent of the median income as published in the Title XX Block Grant Plan, dependent care expenses[~~, and any other extraordinary expenses~~] for which a waiver has been obtained from the cabinet to obtain the adjusted gross income.

(b) From the adjusted gross income subtract a basic cost of living factor of $1,260 to obtain the adjusted gross income less the cost of living allowance.

(c) Divide the adjusted gross income less the cost of living allowance by two (2) to allow for the unique economic and social needs of the severely disabled adults.

(d) To obtain the remaining income subtract from the adjusted gross income less the basic cost of living allowance divided by two (2) a supplemental cost of living allowance which shall be calibrated annually so that a participant requiring the minimum level of service at the maximum rate for care shall [~~will~~] become ineligible when the difference between the adjusted gross income and the remaining income equals or exceeds eighty (80) percent of the median income as published in the Title XX Block Grant Plan.

(e) [~~(2)~~] If the remaining income equals the cost of care the client is ineligible.

(f) [~~(3)~~] If the remaining income is more than four (4) dollars but less than the cost of care the client shall contribute to the cost of care.

Section 10. [~~4.~~] Clients' Contribution to Cost of Care. When the eligibility determination indicates the client shall contribute to the cost of care, the following shall apply:

(1) The weekly amount of the clients' contribution shall be determined by dividing the remaining income by fifty-two (52).

(2) The required contribution shall be paid to the attendant.

(3) It shall be the responsibility of the qualified agency [~~or the attendant~~] to collect the contribution.

Section 11. [~~5.~~] Acceptance for Services. (1) A client shall be accepted for service when: [~~Pursuant to the established requirements of the demonstration project, and within budgetary limitations, eligible clients shall be accepted for service.~~]

(a) It is determined that he is eligible to participate in the program; and

(b) Funds are available.

(2) When programs are at capacity, eligible clients' names shall be placed on a chronological waiting list and as vacancies occur be accepted for service on a first come basis.

(3) If [~~In the event of~~] several potential participants make [~~making~~] application at the same time, an equitable procedure for selecting applicants shall [~~will~~] be proposed by the service provider agency to be approved by the contract agency, subject to the approval of the Division of Aging Services.

Section 12. Application and Assessment. (1) Referrals to the personal care attendant program may be by self, family, or other persons or agencies.

(2) When prescreening information indicates interest and eligibility, the evaluation team shall visit the applicant and assist in the completion of the "application form" herein incorporated by reference.

(3) The "evaluation team report" herein incorporated by reference shall be completed and signed by all team members.

(4) The "evaluation team findings and Recommendations" herein incorporated by reference shall be completed and signed by the three (3) team members.

(5) The provider agency shall report the evaluation team's findings and recommendations to the contract agency for final review of participants.

(6) The qualified agency shall be notified in writing as to the final determination.

(7) The qualified agency shall notify the applicant or participant when the findings and recommendations of the evaluation team are accepted by the contract agency.

(8) When the recommendations of the evaluation team are not accepted by the contract agency, the contract agency shall notify the applicant or participant in writing within twenty (20) days and state the reasons for not accepting the recommendations.

Section 13. Attendant Payment. The amount of attendant payment determined shall be in compliance with the following:

(1) The maximum hourly rate for direct personal attendant care shall be established by the Division of Aging Services annually and stated in the contract. Minimum hours per week shall be fourteen (14); maximum hours per week shall be forty (40).

(2) In an extreme situation, a temporary waiver of maximum hours and cost may be granted by the contract agency.

(3) A special night rate may be negotiated when:

(a) A participant does not require an attendant during the day;

(b) A participant does not need direct personal attendant care services from this attendant;

(c) Or to provide for caregiver respite service.

(4) It shall be the responsibility of the participant who is in need of a live-in attendant to directly negotiate with potential attendants on room and board for personal care attendant services. A live-in attendant shall not be excluded from employment as a part-time attendant. Maximum payment under this arrangement shall be for forty (40) hours of personal attendant care services per week.

Section 14. Reporting and Recording. (1) An individual record for each personal care attendant program participant shall be maintained by the qualified agency and shall include:

(a) Prescreening information form;

(b) Application;

(c) Income eligibility form (updated annually);

(d) Evaluation team findings and recommendations (updated annually);

(f) Authorization for extraordinary medical expenses (if applicable);

(g) Employee tax agreement; and

(h) A chronological record of contacts with the participant, family, physician and others involved in care with quarterly monitoring reports.

(2) Each program coordinator shall submit to the provider agency a completed monthly activity report herein incorporated by reference by the designated date in the contract. Copies shall be forwarded to the contract agency and made available to the Division of Aging Services by the contract agency.

Section 15. Suspension of Services. Suspension of services shall occur for the following reasons:

(1) Condition improved - on reevaluation participant is determined to need less than fourteen (14) hours of care per week.

(2) Condition worsened - on reevaluation participant is determined to need more hours of care than the program can provide and to be in danger when left alone due to lack of other caregivers.

(3) Participant's behavior clearly presents a danger to the program coordinator or attendant.

(4) Participant is unwilling or unable to submit required employer taxes.

(5) Participant moves from Kentucky or to an area where funding limitations prohibit services being rendered.

(6) Participant moves into an area of Kentucky where no services are contracted, unless such relocation remains feasible for the closest qualified agency, feasibility being determined by the qualified agency.

(7) Participant expires or is admitted to a long-term care facility.

(8) Participant requests suspension of services.

Section 16. Request for Fair Hearing. The applicant may request a fair hearing within thirty (30) days of any decision by the cabinet, the contract agency or qualified agency as provided by 905 KAR 8:140.

Section 17. Material Incorporated by Reference. (1) Forms necessary for the implementation of the personal care assistance program shall be herein incorporated by reference.

(2) Material incorporated by reference may be inspected and copied at the Department for Social Services, CHR Building, 6th Floor, 275 East Main Street, Frankfort, Kentucky 40601. Office hours are 8 a.m. to 4:30 p.m.

LARRY MICHALCZYK, Commissioner
FONTAINE BANKS, JR., for LEONARD HELLER, Secretary
APPROVED BY AGENCY: January 2, 1992
FILED WITH LRC: January 6, 1992 at 11 a.m.

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

905 KAR 8:210. Kentucky long-term care ombudsman program.

RELATES TO: KRS 216.535, 216.540-543, 209.030(5), 205.201, 42 USC 3001 et seq.

STATUTORY AUTHORITY: KRS 194.050, 205.204

NECESSITY AND FUNCTION: 42 USC 3001 et seq., the Older Americans Act of 1965, as amended, requires states to establish and operate, either directly or by contract, a long-term care ombudsman program to protect the rights of older individuals. KRS 194.050 authorizes the Cabinet for Human Resources to adopt regulations as necessary to implement programs mandated by federal law. KRS 205.204 designates the Cabinet for Human Resources as the state agency to administer the Older Americans Act in Kentucky. The function of this regulation is to implement a statewide long-term care ombudsman program as required by federal law, and in compliance with the statutory requirement of KRS 13A.221 that requires a separate administrative regulation for each topic of general subject matter. This administrative regulation contains the substance of 905 KAR 8:070 which is repealed.

Section 1. Definitions. (1) "Access" means the right to enter a long-term care facility, meet with the residents and review the records of a resident.

(2) "Administrator" means any person charged with the general administration or supervision of a long-term care facility without regard to whether the person has an ownership interest in the facility or to whether the person's functions and duties are shared with one (1) or more other persons.

(3) "Certification" means the official notification by the Kentucky long-term care ombudsman that local long-term care ombudsman individual staff are qualified and acceptable to function in that capacity.

(4) "Complaint" means an allegation filed by residents or on behalf of residents relating to the health, safety, welfare and rights of a resident.

(5) "Complaint resolution" means either corrective action taken in regard to an allegation or a determination as to the validity of the allegation.

(6) "Complaint verification" means a determination through investigative means that allegations relating to the health, safety, welfare and rights of a patient are valid.

(7) "Designation" means formal notification by the long-term care ombudsman that a district program meets requirements, and shall be considered a subdivision of the state office.

(8) "District ombudsman" means that individual certified by the long-term care ombudsman to implement the ombudsman provisions of the approved area agency on aging plan.

(9) "Evaluation" means periodic analysis and review conducted by the long-term care ombudsman, of district, regional and state ombudsman programs, including quality assurance and outcome measures pertaining to individual and programmatic performance.

(10) "Investigation" means the formal response by a long-term care ombudsman to complaints of issues involving the health, safety, welfare and rights of a resident.

(11) "Kentucky long-term care ombudsman" means the individual charged with the administration of the Kentucky long-term care ombudsman program under the provisions of the Older Americans Act of 1965, as amended.

(12) "Monitoring" means periodic review conducted by the Division of Aging Services and the area agency on aging measuring ombudsman program's adherence to approved plans, including analysis of nonclient specific data relating to program performance.

(13) "Primary client group" means residents of long-term care facilities and those persons making application for admission to long-term care facilities and their families.

(14) "Referral" means the appropriate channeling of information so as to effect a desired outcome of a complaint.

(15) "Regional long-term care ombudsman" means ombudsmen who operate directly from the Kentucky long-term care ombudsman program and whose responsibilities include coordination of a multiarea development district area.

(16) "Unit of service" means one-half (1/2) hour of staff time, paid or volunteer, provided to or on behalf of a client or a group of clients.

(17) "Unduplicated client" means counting each individual served by the ombudsman program one (1) time within each fiscal year.

(18) "Volunteer ombudsman" means a nonsalaried individual serving within a district program to assist a district ombudsman.

Section 2. Responsibilities of Kentucky Long-term Care Ombudsman Program. (1) The Kentucky long-term care ombudsman program shall be administered by a full time ombudsman who shall be assigned to the Office of the Director, Division of Aging Services, Cabinet for Human Resources.

(2) The Kentucky long-term care ombudsman program shall be responsible for the:

(a) Design, implementation and management of a statewide uniform system for receiving, investigating, resolving and reporting complaints on behalf of residents in long-term care facilities and provide ongoing support to assist in the resolution of those complaints;

(b) Investigation of complaints made by or on behalf of residents in long-term care facilities from areas of the state temporarily without local ombudsman programs;

(c) Development and implementation of policies and procedures for operation of the program, including those related to:

1. Receipt, investigation and resolution of complaints;
2. Protecting confidentiality of records and identity of complainants;
3. Establishing the right of public access to information regarding conditions in long-term care facilities; and
4. Securing ombudsman access to long-term care facilities, residents and residents' personal and medical records.

(d) Development and management of a system for the operation of a statewide network of district programs, including:
1. Designation of district programs;
2. Development of district program operating procedures and reporting requirements; and
3. Establishment of a communications link between the state and district programs.

(e) Establishment and maintenance of program official files and adoption of procedures to protect the confidentiality of those files;

(f) Provision of information and education regarding program activities, the long-term care system and the rights and concerns of residents and potential residents of long-term care facilities;

(g) Provision of assistance to citizen organizations, consumer groups and other interested community organizations to enhance the rights of residents in long-term care facilities;

(h) Promotion of the development of citizen organizations at the state and local level to participate in the program;

(i) Use of publicity and outreach efforts directed at long-term care residents and families, network staff and the general public about the availability of the program to receive and investigate complaints;

(j) Review of complaint, case and issue data submitted by the district programs and analysis for trends, pattern and issue identification;

(k) Annual report to the state licensing and certifying agency, the Governor, the federal Administration on Aging and the public including:
1. Operation of the Kentucky long-term care ombudsman program;
2. Status of complaints and resolutions;
3. Conditions in long-term care facilities;
4. Serious issues of widespread concern; and
5. Proposals for corrective action at relevant levels of government.

(l) Preparation of progress reports and other required program reports;

(m) Assistance to the area agencies on aging and district programs to establish, develop and coordinate ombudsman activities;

(n) Development of agreements and working relationships with relevant agencies to encourage their cooperation and assistance with the program at the state and local levels;

(o) Development, in cooperation with the legal services developer, of agreements and working relationships with legal services programs, particularly those funded by the Older Americans Act of 1965, as amended;

(p) Development and provision of training on an ongoing basis for state and local program staff and volunteers;

(q) Identification and development of additional funding and staffing resources for the program;

(r) Support and promotion of the formation of resident councils in long-term care facilities;

(s) Development and provision of testimony and comment on proposed legislation, regulations, policies and rule changes affecting the institutionalized elderly;

(t) Conduction of other activities related to the protection and dignity of residents of long-term care facilities; and

(u) Performance of other activities required by the Commissioner on Aging, federal Administration on Aging.

Section 3. Responsibilities of the Regional Ombudsman. The regional ombudsman shall be a full-time staff member of, and report directly to the Kentucky long-term care ombudsman and shall have the following responsibilities:

(1) Receive, investigate and resolve complaints;

(2) Technical assistance and coordination of district programs within the geographic area assigned;

(3) Assist in training of volunteers and local program personnel;

(4) Provide information to public agencies regarding problems of long-term care residents;

(5) Abide by established procedures related to reporting and confidentiality; and

(6) Perform other job duties as required by the Kentucky longterm care ombudsman.

Section 4. Designation of District Programs. (1) The area agency on aging plan shall contain an ombudsman portion which shall serve as the application for designation of a district ombudsman. Information contained shall include:

(a) Definition of program in terms of the following personnel:
1. Program supervisor;
2. Area development district monitor;
3. Ombudsman advisory council;
4. District ombudsman; and
5. Volunteer ombudsman.

(b) Agency to conduct the program;

(c) Ability to receive, investigate and resolve complaints on behalf of long-term care residents;

(d) Maintenance of a complaint documentation system;

(e) Ability to monitor the development and implementation of laws, policies and regulations which apply to residential long-term care;

(f) Ability to recruit and provide standardized training for volunteers;

(g) Ability to respond in a timely fashion to requests from the Kentucky long-term care ombudsman program for statistical data and other information;

(h) Ability to receive training and continuing education from the Kentucky long-term care ombudsman program;

(i) Ability to assure confidentiality of files;

(j) Ability to inform and educate residents, sponsors, organizations, the long-term care industry and the general public relative to issues affecting the long-term care system, the ombudsman program and resident rights and concerns; and

(k) Provision that no individual involved in the appointment of a subdivision of the office and that no officer, employee or other representative of the office is subject to a conflict of interest.

(l) Provision that representatives of the Kentucky long-term care ombudsman program shall not be liable under state law for the good faith performance of official duties.

(2) The Kentucky long-term care ombudsman program shall:

(a) Review applications for designation by area agencies on aging contained in their area plans for operating programs either directly or under subcontract;

(b) Review applications for designation received independently of the area agency if independently operated ombudsman services are indicated in the area plan; and

(c) Provide written confirmation of the designation.

(3) Designated ombudsmen shall be representatives of the Kentucky long-term care ombudsman program and shall be accorded rights and privileges of that office.

Section 5. Responsibilities of the District Ombudsman Program. The district ombudsman program shall:

(1) Provide services under the supervision of qualified personnel as follows:

(a) There shall be a staff person, qualified by training and experience, responsible for administering each service and supervising assigned staff;

(b) There shall be designated staff who are trained and skilled in assessing and dealing with the needs of the elderly and in the delivery of each service;

(c) Volunteers and paid staff with the same responsibilities shall meet comparable requirements for training and skills;

(d) New staff shall receive an orientation and shall be trained prior to assuming responsibilities;

(e) Staff shall attend required training and provide in-service training for staff and volunteers of local programs;

(f) Staff shall not accept personal gifts or money from participants or vendors; and

(g) Staff shall not, without prior approval of the supervisor, pay bills or cash checks for clients or participants.

(2) Assure services are accessible to older persons by telephone, correspondence or person-to-person contact.

(3) Represent residents residing in long-term care facilities within the assigned geographical areas.

(4) Assure residents' rights are upheld and promote quality care in long-term care facilities.

(5) Investigate and work to resolve complaints on behalf of long-term care residents.

(6) Promote community involvement in the program by:

(a) Publicizing the existence and function of the local and state programs;

(b) Advising the public about the availability of current state, local and federal inspection reports, statements of deficiency and plans for correction for individual long-term care facilities in the service area;

(c) Organizing and implementing an active volunteer program;

(d) Assisting in the development of resident or family and friends councils;

(e) Sponsoring community education and training programs for long-term care facilities, human service workers, families and the general public about long-term care and residents' rights issues; and

(f) Promoting citizen involvement in order to ensure regular visitations especially for those residents without available family or friends.

(7) Implement accurate recordkeeping procedures to assure:

(a) An accurate record shall be maintained on each participant which documents:

1. Participant identification data;
2. Requests for service;
3. Eligibility for services provided; and
4. Follow-up.

(b) Reports for the Kentucky long-term care ombudsman are prepared and submitted in a format and time frame as directed;

(c) Procedures are followed to protect the identity, confidentiality and privacy of clients; and

(d) Nonclient-specific statistical and financial data is submitted to the area agency on aging as required.

Section 6. Responsibilities of the Volunteer Ombudsman. The volunteer ombudsman shall:

(1) Complete required training, including training and certification requirements for those involved in complaint investigation;

(2) Provide regular visitation of residents in nursing homes;

(3) Adhere to guidelines provided by state and district ombudsmen; and

(4) Complete required paperwork.

Section 7. Ombudsman Advisory Council. (1) The designated district ombudsman program shall have an advisory council whose functions are to:

(a) Review and advise programs on policies and procedures;

(b) Provide ongoing support and leadership; and

(c) Identify and generate funding resources for program viability.

(2) The advisory council shall be comprised as follows:

(a) Members shall be persons with a strong interest in improving the quality of life for the institutionalized elderly and for protecting their rights;

(b) Group size and composition shall be individualized to the needs of the local program but shall not be less than seven (7); and

(c) One-third (1/3) of the members shall be consumers or family members of consumers.

(3) Advisory council members shall not:

(a) Be responsible for certifying or licensing long-term care facilities;

(b) Be a provider of long-term care services or part of an association of providers;

(c) Have any interest or association which may impair the ability of the ombudsman to objectively and independently investigate and resolve complaints; or

(d) Gain economically or receive any compensation from a long-term care facility or association.

Section 8. Training. The Kentucky long-term care ombudsman shall provide training as follows:

(1) Staff and volunteers shall participate in a basic training program designed to give trainees a working knowledge of the ombudsman program and the long-term care system.

(2) Program sponsors, area agency on aging directors and directors of other sponsoring agencies shall receive basic training whenever possible.

(3) The district long-term care ombudsman shall receive a minimum of twenty-four (24) hours of training including at least the following areas:

(a) The Older Americans Act of 1965, as amended, and the aging network;

(b) Characteristics, special needs and problems of the long-term care resident;

(c) Characteristics of nursing homes including:

1. Numbers of beds;
2. Levels of care;
3. Services; and
4. Costs.

(d) The long-term care reimbursement system including:

1. Medicaid;
2. Medicare;
3. SSI; and
4. State supplementation.

(e) The regulation of facilities and the enforcement of regulations;

(f) Complaint investigation and resolution;

(g) Guardianship;

(h) Residents' rights;

(i) Development of residents' councils;

(j) Recruiting, screening, selecting, training, placing and supporting volunteers; and

(k) Use of public funds.

(4) In addition to the minimum training, district ombudsmen shall attend quarterly training meetings as provided.

Section 9. Confidentiality. Investigatory files, complaints, responses to complaints and other information related to complaints or investigations maintained by the ombudsman program shall be considered confidential information in accordance with the Older Americans Act of 1965, Section 307(12)(B) and (D). Confidentiality shall be maintained using the following criteria:

(1) Persons who gain access to residents' records shall not discuss or disclose information in the records or disclose a resident's identity outside of the program without:

(a) Written consent of the resident or complainant; or

(b) A court order to disclose.

(2) Information shall be secured as follows:

(a) Complaint files shall be contained in a locked file cabinet;

(b) Computerized systems shall have secured access codes; and

(c) Computer software containing confidential information shall be stored in a locked file.

(3) The confidentiality and disclosure criteria shall not preclude the ombudsman's use of otherwise confidential information in the files for preparation and disclosure of statistical, case study and other data, if the Ombudsman does not disclose the identity of persons otherwise protected in this section.

Section 10. Rights of Access. (1) Kentucky, regional and district ombudsmen shall have unrestricted access to long--term care facilities:

(a) Without prior notice;

(b) To meet with one (1) or more residents; and

(c) To observe the operation of the facility as it affects the patient.

(2) Volunteer ombudsmen shall have access during normal visiting hours to the:

(a) Residents' dining area;

(b) Residents' living area;

(c) Residents' recreational area;

(d) Lounges; and

(e) Areas open to the general public.

(3) Representatives of the Kentucky long-term care ombudsman program shall have access to a resident's medical and social records:

(a) With permission of the resident or his legal guardian, except as provided for under KRS 209.030(5); or

(b) By court order.

(4) Access shall not include the right to examine the financial records of the facility without the consent of the administrator.

(5) If the ombudsman is denied entry to a long-term care facility the administrator or operator shall be informed of the statutory authority for access. If entry is still denied, the ombudsman shall inform the Kentucky long-term care ombudsman, the Division of Licensing and Regulation, and secure assistance from local law enforcement officials.

(6) Willful interference, as governed by KRS 216.535(7), with representatives of the Kentucky long-term care ombudsman program in the performance of official duties shall be unlawful and:

(a) Result in a fine of $100 to $500 for each violation;

(b) Each day the violation continues shall constitute a separate offense.

Section 11. Referrals. (1) The Kentucky long-term care ombudsman shall refer reports of abuse, neglect, exploitation or spouse abuse to the Divisions of Family Services and, if appropriate, Licensing and Regulation for investigation. Referrals under this subsection shall not affect the continuing duty, full freedom and independence of the ombudsman to:

(a) Insure the continued adequacy and responsiveness of complaint investigation and resolution, monitoring and data collection systems consistent with the Older Americans Act;

(b) Maintain an independent capacity to investigate and resolve complaints**, as governed by Section 13 of this regulation**;

(c) Receive and process, on a regular basis, information related to the number, type, and source of complaints, facilities involved, and the manner of complaint resolution; and

(d) Maintain by specific agreement the power, ability and right to monitor the agency's complaint processing performance and take action necessary to correct and improve deficiencies.

(2) District ombudsmen shall address concerns regarding the investigation or resolution of complaints referred under subsection (1) of this section to the Kentucky long-term care ombudsman.

(3) District ombudsmen shall make referrals to county attorneys, legal aid agencies and legal assistance offices. Referrals to the Office of the Attorney General and the Cabinet For Human Resources' Office of Counsel shall be made through the Kentucky long-term care ombudsman.

Section 12. Receiving Reports. (1) The Kentucky long--term care ombudsman, regional ombudsmen, district ombudsmen and persons identified and approved by these ombudsmen shall have the authority to provide intake of a complaint.

(2) The person receiving a report shall obtain as much information as possible, making a reasonable effort to obtain the:

(a) Name and location of the long-term care facility involved;

(b) Name and location of the resident;

(c) Name, address and telephone number of the person responsible for the resident;

(d) Nature of the complaint as specifically as possible;

(e) Name and location of alleged perpetrator; and

(f) Identity of the reporting source. Reports may be made anonymously.

(3) The person receiving the report may contact other agencies or individuals to secure additional information relevant to the investigation.

Section 13. Complaint Investigation. (1) Long-term care facility residents shall have the right to:

(a) Voice grievances and recommend changes in policies and services to facility staff and outside representatives of their choice, free from restraint, interference, coercion, discrimination or reprisal;

(b) Associate and communicate privately with persons of their choice; and

(c) Private meetings with the appropriate long-term care facility inspectors from the Cabinet for Human Resources.

(2) Long-term care ombudsmen shall investigate and resolve complaints:

(a) Made by or on behalf of elderly individuals who are residents of long-term care facilities relating to action which may adversely affect the health, safety, welfare and rights of the resident;

(b) Made by or on behalf of nonelderly long-term care facility residents if actions will:

1. Benefit elderly residents of that long-term care facility or elderly residents of long-term care facilities generally; or

2. Be the only viable avenue of assistance available to the resident; and

3. Not significantly diminish the long-term care ombudsman program's efforts on behalf of elderly persons.

(3) District and volunteer ombudsmen shall not investigate complaints unless certified by the Kentucky long-term care ombudsman program. Certification shall be extended after completion of minimum training requirements and attendance at an ombudsman competency conference conducted by the Kentucky long-term care ombudsman program or, in the case of volunteer ombudsmen, by the district long-term care ombudsman program.

(4) The Kentucky and regional ombudsmen shall inform the district ombudsmen of on-site investigations conducted in their districts.

(5) The investigation shall be conducted according to the following criteria:

(a) Investigation may include contact with the resident, staff of the long-term care facility and collateral contacts.

(b) Representatives of the program shall, upon entering the facility, promptly notify the administrator or his designated representative of their presence.

(c) Representatives of the program shall not enter the living area of residents without identifying themselves to the resident.

(6) The investigating ombudsman shall take immediate steps to resolve a substantiated complaint. **The ombudsman shall consider the resident's choice of remedy.** Reasonable avenues of assistance to the complainant, directly or by

referral, shall be addressed, and if efforts are unsuccessful, the ombudsman shall so advise the complainant and provide information explaining how to proceed independently. Resolution may include:

(a) Persuading or negotiating at nursing home administrative level to change particular nursing home behavior, pattern or practice affecting the resident;

(b) Consulting with a resident, relative or nursing home staff member to resolve a problem;

(c) Effecting positive enforcement action by a regulatory agency;

(d) Proposing regulatory or statutory changes or additions;

(e) Communicating with community groups and professional organizations; and

(f) Encouraging the utilization of legal services assistance by the complainant.

(7) Written documentation shall be completed on complaint investigations and incorporated into the ombudsman files:

(a) The DSS 1240 Long-term Care Complaint form, herein incorporated by reference, shall be completed at the conclusion of the investigation; and

(b) A narrative documentation of the investigation shall include:

1. Identity of the resident on whom the report is made;
2. Identity of the long-term care facility;
3. Complaint;
4. Identity of persons interviewed and records or documents reviewed during the course of the investigation;
5. Factual information used to support findings and conclusions; and
6. Actions taken and services provided.

(8) Resolution shall include documented followup and ongoing monitoring of the situation for a reasonable period of time through contact with the complainant or resident, or otherwise if appropriate, for the purpose of determining the causes giving rise to the complaint have not been repeated and have not recurred.

(9) Retaliation and reprisals by a long-term care facility or other entity against an employee or resident for having filed a complaint or having provided information to the Kentucky long-term care ombudsman program shall be unlawful and:

(a) Shall result in a fine of $100 to $500 for each violation;

(b) Each day a violation continues shall constitute a separate offense.

Section 14. Reporting Requirements. The Kentucky long-term care ombudsman program shall maintain a statewide uniform reporting system to collect and analyze information on complaints and conditions in long-term care facilities for the purpose of identifying and resolving significant problems.

(1) The area agency on aging shall submit quarterly reports to the Kentucky long-term care ombudsman according to the following schedule:

1st quarter	Oct 1 - Dec 31	Due January 15
2nd quarter	Jan 1 - Mar 31	Due April 15
3rd quarter	Apr 1 - Jun 30	Due July 15
4th quarter	Jul 1 - Sep 30	Due October 15

(2) The district ombudsman shall submit an annual report to the Kentucky long-term care ombudsman no later than October 15 for inclusion in the annual state ombudsman report.

(3) Copies of the DSS 1240 Long-term Care Complaint form, herein incorporated by reference, shall be submitted by the district or regional ombudsman to the Kentucky long-term care ombudsman to be reviewed and retained in a confidential file. Supporting documentation shall be submitted upon request of the Kentucky long-term care ombudsman.

(4) The following activities facilitate the delivery of services but shall not be reported as units of service:

(a) Review, update or maintenance of resource or agency files;

(b) Travel time incurred in the delivery of the service;

(c) Training or staff meetings; and

(d) Project management.

(5) The following shall be utilized to determine unduplicated client count:

(a) Persons who directly receive a service from the program, including friendly visiting;

(b) Persons who reside in a long-term care facility and benefit from services directed at improving quality of life for residents in that facility, even if the resident did not directly receive the service; and

(c) Persons who participate in training conducted by the ombudsman program and are not a part of the program.

Section 15. Monitoring and Evaluation. (1) Ombudsman programs shall be monitored annually by the area agency on aging, or if services are provided directly by the area agency on aging, by the Division of Aging Services.

(2) Formal evaluations of the district ombudsman program shall be conducted at regular intervals, at least annually, by the Kentucky long-term care ombudsman. The results of the evaluation, omitting client identifying information, shall be made available to the area agency on aging to be used to plan and implement program changes to meet participant needs.

Section 16. Material Incorporated by Reference. (1) Forms necessary for the implementation of the Kentucky long-term care ombudsman program shall be herein incorporated.

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

Section 17. Repeal. 905 KAR 8:070 is hereby repealed.

LARRY MICHALCZYK, Commissioner
FONTAINE BANKS, JR. for LEONARD HELLER, Secretary
APPROVED BY AGENCY: January 2, 1992
FILED WITH LRC: January 6, 1992 at 11 a.m.

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

906 KAR 1:100. Nurse aide registry, abuse registry and hearing procedures.

RELATES TO: KRS **Chapter 209,** 216.860, 216.865
STATUTORY AUTHORITY: KRS 194.030(12)(b), 216.865, 42 CFR 483.75, 483.150-.158
NECESSITY AND FUNCTION: KRS 216.865 states that the Secretary of the Cabinet for Human Resources shall adopt regulations relating to licensure fees, standards of care and service, and procedures for enforcement of penalties. The Office of Inspector General has been designated the promulgating agency in accordance with KRS 194.030(12)(b). The Cabinet for Human Resources (cabinet), as part of its agreement with the Health Care Financing Administration (HCFA), must establish and maintain a nurse aide registry. As part of that registry, the cabinet shall investigate allegations of resident neglect, abuse and misappropriation of resident property. Within this regulation the cabinet also provides for a hearing and appeals procedure for nurses aides that the cabinet finds reason to include on the abuse registry.

Section 1. Definitions. (1) "Abuse registry" means a computerized listing of those individual nurse aides who have had an allegation of resident neglect, abuse, or misappropriation of resident property substantiated through the process

outlined in this regulation.

(2) "Nurse aide registry" means a computerized registry of those individuals who have successfully met the requirements of the Kentucky Department for Medicaid Services nurse aide training and competency evaluation program.

(3) "Misappropriation" means exploitation as defined by KRS 209.020(8).

Section 2. Nurse Aide Registry. (1) The cabinet shall establish a nurse aide registry of individuals who have satisfactorily completed a state-approved nurse aide training and competency evaluation program.

(2) The registry shall include (as a minimum) the following:

(a) Name;

(b) Social Security number;

(c) Address;

(d) Date nurse aide was placed on the nurse aide registry; and

(e) Abuse registry indicator.

(3) If there is a twenty-four (24) month period during which the aide has not performed nursing related functions for compensation, the nurse aide's name shall be removed from the nurse aide registry.

(4) Required documentation of the nurse aide.

(a) Prior to the two (2) year anniversary date of nurse aide being placed on the nurse aide registry, the cabinet shall send a letter to the nurse aide. This letter shall request proof of employment **(such as a pay stub, W-2 form or a letter from an employer)** as a nurse aide performing nursing or nursing related functions within the past twenty-four (24) months.

(b) If the nurse aide provides documentation, then the individual's record shall remain in good standing.

(c) If the nurse aide does not respond to this letter, it shall be noted in the individual's record that the individual is not in good standing. An individual **shall** ~~[may]~~ regain good standing by providing the following information:

1. Current address; and

2. Documentation that the individual has performed nursing or nursing related functions for compensation within the past twentyfour (24) months.

(d) If a nurse aide is not in good standing and cannot provide the necessary documentation within thirty (30) days after contacting the nurse aide registry, the individual's name shall be removed from this registry.

(5) If an individual's name has been removed from the nurse aide registry, the individual must complete the Medicaid nurse aide training and competency evaluation or competency evaluation before being placed back on the nurse aide registry.

Section 3. Abuse Registry, Notice, and Hearing Rights. (1) The cabinet shall establish an abuse registry to include information pertaining to findings of resident neglect, abuse, and misappropriation of resident property by a nurse aide.

(2) The cabinet shall investigate all allegations, and if an allegation is found to be substantiated, the implicated individual will be notified by mail of the following:

(a) The preliminary finding;

(b) The opportunity to make a written response to appear on the abuse registry concerning the cabinet's findings;

(c) The hearing procedure and appeal rights; and

(d) The intent to report the findings to the abuse registry **after they become final**.

(3) Within thirty (30) working days of the date that the cabinet makes a preliminary finding and mails the notice, the implicated individual may file a written request for a hearing with the secretary of the cabinet. If a request for a hearing is not filed, the findings of the cabinet's shall be considered final and shall be placed on the abuse registry. **The notice shall be delivered by certified mail.**

(4) The abuse registry shall include a summary statement, if any, by the individual disputing the findings. Any disclosure made in response to inquiries to the registry shall include all findings and the summary statement.

(5) If the cabinet's preliminary finding of neglect, abuse or misappropriation of resident property is found unsubstantiated in the hearing process outlined in this regulation, then:

(a) The individual's name will not be placed on the abuse registry in regards to this specific case; and

(b) The individual will be notified by the cabinet.

(6) If the cabinet's preliminary finding of neglect, abuse or misappropriation of resident property is found substantiated in the hearing process, the cabinet shall place the individual's name and adverse findings on the abuse registry.

(7) If the cabinet's finding of neglect, abuse or misappropriation of resident property is overturned through the exercise of the individual's due process rights through adjudication or arbitration, then:

(a) The individual's name and accompanying information will be removed from the abuse registry in regards to this specific case; and

(b) The nurse aide shall be notified of this action by the cabinet.

(8) A nurse aide shall have the opportunity to correct any misstatements or inaccuracies in the individual nurse aide's record.

Section 4. Hearing Procedure. The hearing procedure shall provide the final finding of the cabinet in regards to resident neglect, abuse and misappropriation of resident property by a nurse aide.

(1) Upon receipt of the written request, the secretary shall appoint an impartial hearing officer.

(2) Notice of hearing shall be mailed to the individual not less than **fifteen (15) working** ~~[ten (10)]~~ days prior to the commencement of the hearing. The notice of hearing shall contain the reasons for the action. The notice of hearing shall be delivered by certified mail.

(3) The hearing must be held within sixty (60) calendar days from the receipt of the written request for a hearing.

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

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

(6) The hearing officer may place reasonable time limits upon the presentation of testimony, evidence and argument and may terminate or exclude irrelevant or redundant evidence, testimony or argument.

(7) The hearing officer shall make a written determination as to the validity of the cabinet's finding. This determination shall include findings of fact and conclusions of law. With the determination, the hearing officer shall forward to the cabinet the record consisting of all documents, exhibits and recorded testimony introduced in the hearing.

(8) The hearing officer's determination shall be the final finding of the cabinet. The cabinet shall forward this finding to the nurse aide within ten (10) days of the receipt of the determination of the hearing officer.

CLAY CESSNA, Inspector General
LEONARD E. HELLER, Secretary
APPROVED BY AGENCY: January 3, 1992
FILED WITH LRC: January 7, 1992

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) [~~(a)~~] "In-home training" which includes [~~means~~] services designed to facilitate the acquisition, retention and

improvement of language and communication, sensory-motor, social and self-help skills.

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

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

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

(7) [(5) Effective June 1, 1987,] Day habilitation services shall [may] be provided for a minimum of four (4) hours per day, five (5) days per week, twelve (12) months per year, in nonresidential noninpatient settings. Services shall [must] be age appropriate. Adult means an individual not less than eighteen (18) years of age. For children, day habilitation services shall [will] be covered only during the summer months when school is not in session. Day habilitation services may include supported employment and prevocational training for eligible persons, i.e., those participating individuals who have been deinstitutionalized.

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

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

Section 5. Patient Status Determinations. The cabinet shall make patient status determinations using the criteria specified in 907 KAR **1:022** [1:024].

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

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

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

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

ROY BUTLER, Commissioner
FONTAINE BANKS, JR. for LEONARD HELLER, Secretary
APPROVED BY AGENCY: December 31, 1991
FILED WITH LRC: January 6. 1992 at 11 a.m.

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

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

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

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

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

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

(2) In order to be covered, [The covered service elements shall be these] services shall be described and defined; and [in 907 KAR 1:140, Alternative home and community based services for the mentally retarded, and services must be] provided in accordance with the terms and conditions specified in 907 KAR 1:140, Alternative home and community based services for the mentally retarded. [described therein. Payments shall not exceed the limits specified in Section 3 of this regulation.]

Section 2. Payment Amounts. (1) Participating in-state AIS/MR case management, in-home training, homemaker and home health aide, personal care, residential care, day habilitation, habilitation, respite care and multiservice providers certified in accordance with 907 KAR 1:140 shall be reim-

bursed a prospective rate per unit of service during the first year of participation based on a budgeted cost report **in accordance with the "Alternative Intermediate Service/Mental Retardation Reimbursement Manual," dated November 1, 1991 which is incorporated by reference in the regulation. The Alternative Intermediate Service/Mental Retardation Reimbursement Manual may be reviewed during working hours (8 a.m. to 4:30 p.m.) in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621. Copies may also be obtained from that office.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) The cost of room and board;

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

(2) No payment shall be made to:

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

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

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

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

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

~~[(2) Under this system, an AIS/MR cluster shall receive a total of Medicaid payments during the year in the amount of the established rates for services rendered Medicaid eligible recipients, so long as such payments (on a cumulative basis)~~

~~do not exceed the annualized upper limits (total payment amount) which has been set for the cluster. Each cluster shall also be required to maintain average expenditures per recipient (on a cumulative basis) as described by the Health Care Financing Administration, 42 CFR 441.303(d)(1), and interpreted for the AIS/MR cluster by the Cabinet for Human Resources.]~~

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

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

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

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

ROY BUTLER, Commissioner
FONTAINE BANKS, JR., for LEONARD HELLER, Secretary
APPROVED BY AGENCY: December 31, 1991
FILED WITH LRC: January 6, 1992 at 11 a.m.

CABINET FOR HUMAN RESOURCES
Department for Mental Health
and Mental Retardation Services
(Amended After Hearing)

908 KAR 1:310. Administrative procedures for DUI facilities and programs.

RELATES TO: KRS Chapter 189A
STATUTORY AUTHORITY: KRS 189A.040(6), 194.030(9)
NECESSITY AND FUNCTION: KRS Chapter 189A requires the Cabinet for Human Resources to promulgate administrative regulations to prescribe standards for the licensing and operation of education and treatment facilities and programs, for offenders receiving assessment, education, or treatment under the driving while impaired law.

Section 1. Definitions. As pertaining to the cabinet's regulations regarding DUI programs unless the content otherwise requires:

(1) "Cabinet" means the Cabinet for Human Resources, Office of the Inspector General, Division of Licensing and Regulation, 275 East Main Street, Frankfort, Kentucky 40621.

(2) "Division" means the Cabinet for Human Resources, Department for Mental Health and Mental Retardation Services, Division of Substance Abuse, 275 East Main Street, Frankfort, Kentucky 40621.

(3) "DUI" means driving while under the influence of alcohol, drugs or intoxicating substances.

(4) "Program" means any public, private or government entity eligible to deliver DUI assessment, education and treatment services.

(5) "Certification" means the process by which the Division of Substance Abuse recognizes and authorizes any program, assessor or instructor to provide DUI services.

(6) "Services" means the level of care appropriate for a client based on an evaluation of the client's needs.

(7) "Licensee" means the individual or entity approved and licensed by the Cabinet for Human Resources, Office of Inspector General, Division of Licensing and Regulation.

(8) "Assessment" means the procedure used to obtain information about a client's use of alcohol and other drugs and to determine the problems and needs of a client in order to recommend appropriate services.

(9) "Education" means a course which delivers factual information about alcohol and other drugs to increase awareness, knowledge, and change a client's attitude and behavior in relation to substance abuse.

(10) "Treatment" means outpatient, intensive outpatient, inpatient, residential, or detoxification services provided to clients in need of substance abuse services.

(11) "Program survey form" means a form issued by the division to the program to collect all necessary program information.

(12) "Program code" means a three (3) digit number issued to a program by the division when certification is granted.

(13) "Survey report of change form" means a form used by a program when submitting any new or revised information to the division.

(14) "Program administrator" means the person responsible for the services provided in a program and who has responsibility for determining if a client satisfactorily completes all required services.

(15) "Memorandum of understanding (MOU)" means a written communication between programs outlining the duties and responsibilities of each program.

(16) "Certified assessor" means a person who has been trained and approved by the division to evaluate the needs of clients and to recommend appropriate services.

(17) "Certified instructor" means a person who has been trained and approved by the division to provide education services in a DUI program.

(18) "Approved curriculum" means "talking about alcohol driving unimpaired nine (9) hour," "talking about alcohol driving unimpaired twenty (20) hour," "Kentucky alcohol and other drug education program nine (9) hour," and "Kentucky alcohol and other drug education program twenty (20) hour."

(19) "Individual" means a person certified by the division to conduct assessment and education services.

(20) "Uniform citation" means the citation given to the defendant when the defendant is arrested for driving under the influence.

(21) "Administrative Office of the Courts (AOC) Form 494" means the form completed by the circuit clerk on the day of the defendant's conviction and which is sent to the program where the defendant is referred for assessment.

(22) "Cabinet for Human Resources (CHR) Form PAM MHMR 052" means the form completed by the program which conducts the client's assessment, and which is then used to notify the court, the client, Department of Transportation (DOT), and the division when a client has satisfactorily completed any required services.

(23) "Computerized screening instrument" means the Kentucky driver risk inventory (DRI).

(24) "Completion notice" means the client's copy (pink) of CHR Form PAM MHMR 052.

(25) "Case management" means an administrative function to insure coordination of client services and continuity of care.

(26) "Court" means the court where a client is convicted of DUI.

(27) "Department of Transportation (DOT)" means the Commonwealth of Kentucky, Transportation Cabinet, Department of Vehicle Regulation, Division of Driver Licensing, State Office Building, Frankfort, Kentucky 40622.

(28) "Nine (9) hour basic education course" means an education service for low risk first-time offenders consisting of a minimum of nine (9) hours of instruction and group interac-

tion.

(29) "Twenty (20) hour early intervention education course" means an education service for first or multiple offenders consisting of a minimum of twenty (20) hours of instruction and group interaction.

(30) "Client" means any individual receiving services in a DUI program.

(31) "First offender" means a person convicted of DUI for the first time within a five (5) year period.

(32) "Multiple offender" means a person convicted of a second or subsequent DUI within a five (5) year period.

(33) "Low risk" means a client who has been assessed as not having an alcohol or substance abuse problem requiring treatment.

(34) "Medium risk" means a client who has been assessed as having an alcohol or substance abuse problem but is not chemically dependent.

(35) "Satisfactorily completed" means a client has fulfilled all requirements of the program and has received maximum benefits from the services received.

(36) "Negative certification action" means an action by the division to revoke, modify, suspend, or deny certification or recertification of a DUI program, assessor or instructor.

(37) "Hearing officer" means the person designated by the division to conduct a hearing and make a recommendation to the division on any appeal of negative certification action.

(38) "DUI services" means assessment, education, or treatment services provided by an eligible DUI program.

(39) "Applicant" means any individual or entity who has been licensed by the cabinet, and is making application for certification to the division.

(40) "Facility" means the physical area, including the grounds and buildings where program functions take place.

(41) "Release of information" means a client's written authorization for a program to release information from that client's case file.

(42) "Clinical services supervisor" means a person who meets the qualifications pursuant to the definition in 908 KAR 1:190.

Section 2. Licensing Requirements. (1) An individual or entity desiring to provide DUI services as an assessment facility and program, education facility and program, or treatment facility and program shall first obtain a license from the cabinet in accordance with the drug abuse treatment and education center (DATE center) regulations, 908 KAR 1:150 through 908 KAR 1:260; and the nonmedical alcohol treatment and education center (NATE center) regulations, 908 KAR 1:010 through 908 KAR 1:140.

(2) Programs conducted in a facility established and maintained by a licensed federal hospital shall be exempt from state licensing requirements, as such facilities are created subject to federal licensure and regulatory requirements, in accordance with 38 USC 201, 38 USC 620A, 38 USC 4133, and 38 USC 4134.

(3) Programs conducted in a facility established and maintained by a hospital licensed by the cabinet shall be exempt from obtaining a DATE or NATE center license in accordance with 908 KAR 1:160(1)(c).

(4) The cabinet shall notify the division in writing when an individual or entity:

(a) Is granted a license as a DATE or NATE center;

(b) Has stated in its application that it desires to provide DUI services; and

(c) If its license has been renewed, suspended or revoked.

Section 3. Certification Requirements. (1) An individual or entity, properly licensed, and desiring to provide DUI assessment or education services, shall obtain program certification from the division. A properly licensed treatment facility may provide DUI treatment services without receiving program certification from the division. A certified program may operate statewide if it is properly licensed in all service locations. All service locations shall be subject to the same qualifications as the central office location. A program may be certified to provide assessment, or education services. A program shall have at least one (1) individual on staff who has been certified by the division, to be a certified program.

(2) Any individual or entity eligible to be certified as a program shall make application in writing to the division. The division shall provide an application for program certification along with a program survey form to be completed by the applicant and returned to the division. The applicant shall be required to submit to the division a separate program survey form for each location where the applicant is licensed, and where the applicant desires to provide DUI assessment or education services. The applicant shall designate on the program survey form the types of services that will be provided, the fees charged for such services, and the names and titles of all certified staff providing assessment or education services. The division shall issue a program code to the program when certification is granted and include the name and location of the program on any published list of certified programs.

(a) The division shall publish, on an annual basis, on July 1, a directory listing all programs certified to provide assessment services, the fees charged for such services, and the program service location addresses. The division shall issue the directory to all district court judges, district court clerks, and certified programs, and shall make it available to the public upon request.

(b) The division shall issue directory additions, revisions and corrections on October 1, January 1, and April 1 each year. A program shall submit all additions, revisions and corrections, in writing, on a program survey report of change form at least thirty (30) days prior to the publication dates.

(3) The program certification shall remain in effect for the period of licensure not to exceed one (1) year, is renewable for a like period, and shall expire simultaneously with the expiration of the program's license, unless earlier suspended or revoked. The program shall request recertification, in writing, forty-five (45) days prior to the expiration of certification. If certification has lapsed for more than sixty (60) days, programs shall submit a new application and will be considered as a new applicant. The division shall notify the program, in writing, when certification is issued, renewed, suspended or revoked.

(4) The program certification shall apply only to the program so certified and is not transferable. The program shall be responsible for notifying the division, in writing, when there is a change in ownership or control, a change in location, a change in the types of services provided, or a change in fees charged for such services. In the event of a change of ownership, a new application for certification shall be made to the division in the same manner as if the owner were applying for a new program.

(5) A program shall accept referrals from other programs or from the courts. **A program may refuse a client referral because of inadequate staff, lack of an appropriate service, or because of a client waiting list. With proper release of information forms signed by the client, copies of the DUI assessment and other client records pertinent to the client's treatment shall be released by the referring agency.** ~~[A program making a referral shall require a client to sign a release of information form, and such form shall be sent to the program receiving the referral. Copies of any other client records available in the client's file including, but not limited to, the assessment results may be sent to the program receiving the referral.]~~ The assessment results and any interview notes or other information pertaining to the assessment shall be confidential and shall remain in the client's file.

(6) A program making or receiving client referrals shall execute a written memorandum of understanding (MOU) with all other programs involved in the referrals. The MOU shall fully outline the duties and responsibilities of the programs to

each other and the terms of agreement in the MOU shall remain in effect until one (1) of the programs terminates the agreement.

(7) The division shall conduct at least one (1) unannounced inspection of the program's facility annually to determine whether the program is in compliance with the applicable certification standards. In their discretion, the division may conduct more than one (1) inspection annually. The inspection may be at any of the program's locations. The division shall notify the program, in writing, within thirty (30) days of the results of the inspection.

(8) The division shall have the right to inspect any office, files, client records or other materials of any certified program to insure compliance. The division shall have the right to attend and observe any assessment or education session conducted by the program. During these inspections **a** program ~~[administrators, office managers, employees, or agents of the program]~~ shall cooperate with the division's representatives and shall provide such records or materials requested. The client record shall contain all information pertinent to the provision of services. Program records shall be confidential and shall not be released without written consent of the client, unless court ordered or requested by the division, as part of a compliance review. A program shall maintain client records for a minimum of five (5) years. When records are discarded they shall be burned or shredded.

(9) The division shall suspend or revoke the certification of any program that is not in compliance with the applicable certification standards. The division shall notify the program, in writing, of any pending certification action, and shall provide written reports citing observed deficiencies as they relate to the certification standards. The program must submit an acceptable plan of correction for cited deficiencies to the division within ten (10) working days. The revocation or suspension of program certification shall be effective on the date stated in the notice sent to the program by the division. Programs shall have the right to appeal any suspension or revocation of their program certification. Hearing procedures involving certification shall be conducted in accordance with this regulation.

(10) All individuals desiring to provide assessment or education services shall meet the requirements for certification and receive certification from the division. A program shall employ ~~[only]~~ individuals who hold valid certification from the division to provide DUI assessment and DUI education services. It shall be the duty and responsibility of the program to insure that any individual in their employ providing DUI assessment services or DUI education services complete all training required by the division. Only training approved by the division shall suffice as proper training for DUI assessment and DUI education services. An individual shall make application for DUI assessor or DUI instructor certification by submitting an application for DUI assessor or DUI instructor training. The application shall be accompanied by a copy of any required transcript, diploma, certificate, certification, or proof of work experience. An individual certified by the division shall not provide DUI assessment services or DUI education services except in a program that is certified by the division.

(a) An individual providing DUI assessment or DUI education services for a program shall be considered an agent of the program and the program shall share the responsibility for all acts performed by the individual within the scope of employment.

(b) If a certified DUI assessor or DUI instructor terminates association with a program, the program shall notify the division in writing.

(11) The division shall notify the program and the individual, in writing, within thirty (30) days after completion of a DUI assessor or DUI instructor training session that the individual has satisfactorily completed the training, has met all of the requirements for certification, and has been certified. The division shall notify the program and the individual, in writing, of any observed deficiencies, as they relate to DUI assessor and DUI instructor certification, within thirty (30) days after completion of a training session. The division shall state the reasons for withholding DUI assessor or DUI instructor certification and shall notify the program and the individual of any required corrective plan of action.

(12) An individual desiring certification as a DUI assessor shall demonstrate minimum competency in order to successfully complete the requirements for DUI assessor certification.

(a) An individual desiring DUI certification as an assessor shall have the following education or training:

1. **Bachelor level degree in Human Services with** certified chemical dependency counselor (CCDC) **trainee status**; or

~~[2. Certified chemical dependency counselor (CCDC) trainee, working under the supervision of a clinical services supervisor; or]~~

2. ~~[3.]~~ Qualified mental health professional defined as:

a. Psychiatrist - board certified or board eligible;

b. Psychologist - licensed clinical psychologist, certified psychologist, or a psychological associate;

c. Psychiatric nurse - or registered nurse with one (1) of the following combinations of education and experience:

(i) Master of science in nursing (MSN) with specialty in psychiatric or mental health nursing;

(ii) Bachelor of science in nursing (BSN) and a minimum of one (1) year of work experience in a mental health setting;

(iii) Three (3) year educational program diploma with two (2) years of work experience in a mental health setting;

(iv) Associate degree in nursing (ADN) with three (3) years of work experience in a mental health setting; or

d. Psychiatric social worker - MSW or MSSW; or

e. Professional equivalent as defined by the Division of Substance Abuse; or

f. Mental health associate - an individual with a bachelor's degree in a mental health related field, working under the supervision of a clinical services supervisor**; or**

3. Certified chemical dependency counselor (CCDC); or

4. Certified chemical dependency counselor (CCDC) trainee, with two (2) years clinical work experience in the substance abuse treatment field, working under weekly clinical supervision of a CCDC, an individual with a bachelor's degree in the human services field, or a qualified mental health professional as defined in this regulation. An individual holding CCDC trainee status who was certified by the division prior to January 1, 1992 has until January 1, 1995 to become a CCDC.

(b) An individual desiring certification as a DUI assessor shall complete the following training requirements:

1. Attend and participate in all sessions of the assessor training;

2. Obtain an eighty (80) percent or above overall score on performance in the following areas:

a. A written pretest and posttest on general course content;

b. A written pretest and posttest on the computerized assessment instrument;

c. A demonstration of ability to conduct an assessment interview; and

d. A demonstration of ability to make a client referral based on a case study.

3. Receive the recommendation of the trainer(s) and the division's representative.

4. Sign a statement agreeing to abide by a code of ethical practice**, contained on the DUI assessor application,** and the standards stated in these regulations.

(13) An individual desiring certification as a DUI instructor shall demonstrate minimum competency in order to successfully complete the requirements for instructor certification.

(a) An individual desiring certification as a DUI instructor shall have the following education or training:

1. Bachelors degree in a related field - social work, psychology, sociology, counseling, or education; or

2. Associate degree and two (2) years of work experience in the substance abuse field; or

3. High school diploma or a general education development (GED) equivalency certificate and four (4) years of work experience in the substance abuse field**; or**

4. Professional equivalent as defined by the Division of Substance Abuse.

(b) An individual desiring certification as a DUI instructor shall successfully complete DUI instructor training in one (1) of the curricula approved by the division. The individual shall attend and participate in all sessions of the training; take a pretest and obtain a score of eighty (80) out of a possible 100 points on a written posttest; demonstrate ability to make an oral presentation of assigned material; demonstrate group facilitation skills; **[**~~and~~**]** receive the recommendation of the trainer(s) and the division's representative**; and sign a statement agreeing to abide by a code of ethical practice, contained on the DUI instructor application, and the standards stated in these regulations**.

(14) Certification for DUI assessors and DUI instructors shall be for a period of five (5) years, is renewable for a like period, and shall expire on the anniversary date of certification, unless earlier suspended or revoked. It shall be the duty and responsibility of the individual, to submit to the division, a completed recertification application and all other required forms, at least sixty (60) days prior to the date of expiration of the DUI assessor or DUI instructor certification. An individual shall attend any recertification training required by the division, during the previous sixty (60) month period. If certification has lapsed for more than one (1) year, an individual's recertification application shall be processed as a new application, and the individual shall attend all additional training required by the division. An individual shall have the right to appeal any suspension or revocation of their DUI assessor or DUI instructor certification. Hearing procedures involving certification shall be conducted in accordance with this regulation.

(15) All complaints relating to a certified program, a certified DUI assessor, or a certified DUI instructor**, that are not resolved by the program through their agency grievance procedures,** shall be sent to the division, in writing, and signed by the complainant. The division shall investigate the complaint and notify the complainant, in writing, within thirty (30) days, of the action taken.

Section 4. Assessment Requirements. (1) The courts shall refer all convicted first and multiple DUI offenders for an assessment to a certified program, listed in a directory, provided to the courts by the division. The court clerk, shall on the day of conviction, send a copy of the client's uniform citation, attached to the Administrative Office of the Courts (AOC) Form 494, to the program which will conduct the client's assessment.

(2) AOC Form 494 is hereby incorporated by reference. Copies of the form may be inspected or obtained at the Department for Mental Health and Mental Retardation Services, Division of Substance Abuse, 801 Schenkel Lane, Frankfort, Kentucky 40601 between the hours of 8 a.m. through 4:30 p.m., Eastern time, Monday through Friday.

(3) A program providing DUI assessment services shall use only the computerized screening instrument approved by the division. The DUI assessment shall be conducted by an assessor holding valid certification from the division. The computerized screening instrument portion of the assessment may be administered individually or in groups. A program shall arrange for the oral reading of the assessment questions and instructions for clients who are unable to read the written instructions. A program shall maintain a roster of all clients assessed, in a format approved by the division, and a copy of such roster shall be maintained in the program files and made available to the division upon request.

(4) An assessment shall include the administration of the approved computerized screening instrument; a structured private clinical interview between the certified DUI assessor and the client; a discussion of referral options and client resources; **a determination of the severity of a client's problem; [**~~the determination of a diagnostic impression;~~**]** and referral to a program offering services at the level of care needed by the client. A client shall pay all required fees for the assessment to the program. **[**~~A program may reduce or waive the assessment fee as deemed necessary by that program.~~**]**

(5) An assessor shall refer any client assessed as needing education or treatment services to any program eligible to provide substance abuse or chemical dependency education or treatment services. The assessor shall refer a client to receive the type of service appropriate to the client's needs at their own program or to any other eligible program. The client shall choose the program where the client desires to receive education or treatment services but the client shall not choose the level of care or type of service that the client is to receive.

(6) A program shall identify any client with special needs at the time of assessment in order to make an appropriate referral. Specifically, the computerized screening instrument shall contain a set of questions designed to identify whether or not a client is pregnant, and if so, the stage of pregnancy, at the time of assessment. This information shall be used to determine the type and level of treatment or education services needed by the client. The assessor shall consider the special needs of the client when making the referral.

(7) [~~(6)~~**]** A program shall maintain a case file on each client assessed. The assessment results and any interview notes or other information pertaining to the assessment shall be maintained in the client's file. There shall be written documentation in each client's case file of all actions related to any referral to education or treatment services. Each client file shall contain the Cabinet for Human Resources (CHR) Form PAM MHMR 052 and this form shall be used as a referral notice and as a completion notice.

(8) [~~(7)~~**]** CHR Form PAM MHMR 052 is hereby incorporated by reference. Copies of the form may be inspected or obtained at the Department for Mental Health and Mental Retardation Services, Division of Substance Abuse, 801 Schenkel Lane, Frankfort, Kentucky 40621 between the hours of 8 a.m. through 4:30 p.m. Eastern time, Monday through Friday.

(9) [~~(8)~~**]** A program providing assessment services, shall maintain case management responsibilities, for every client the program assesses, whether the client receives DUI education or treatment services at the program conducting the assessment, or at another eligible program. The case management process shall include the coordination of services provided to each client; the responsibility of communicating with the court such information as the court requests on each client; the responsibility of notifying the court when a client is noncompliant; and the responsibility of notifying the Department of Transportation (DOT), the courts, and the division when a client has satisfactorily completed the required services. The program shall issue to each client, who has successfully completed the required services, a copy of their completion notice contained in CHR Form PAM MHMR 052, as referred to in subsection (6) of this section.

(10) [~~(9)~~**]** Program discontinuing operations while still maintaining case management responsibility for a client, shall notify the client in writing, and shall transfer the client's case file to the division. The division shall then maintain case management responsibility for the client until the client satisfactorily completes any required services.

Section 5. Education Requirements. (1) A program desiring to provide DUI education services, shall use a curriculum approved by the division, and instruction shall be provided by an instructor holding valid certification from the division. Two (2) levels of DUI education services; a nine (9) hour basic education course, and a twenty (20) hour early

intervention education course shall be provided. Two (2) nine (9) hour curricula and two (2) twenty (20) hour curricula have been approved by the division. A program may provide any or all levels of DUI education courses, and may use any or all of the approved curricula. The maximum number of clients in a class shall be no more than twenty-five (25). An instruction session shall not exceed three (3) hours per day.

(a) The nine (9) hour DUI basic education course shall be for first offenders only. Those first offenders assessed as low risk shall be enrolled in a nine (9) hour education course.

(b) The twenty (20) hour DUI early intervention education course shall be for first offenders or multiple offenders. A program may enroll first offenders and multiple offenders in the same session.

(2) The approved curricula are hereby incorporated by reference. Copies of the curricula may be inspected or obtained at the Department for Mental Health and Mental Retardation Services, Division of Substance Abuse, 801 Schenkel Lane, Frankfort, Kentucky 40621 between the hours of 8 a.m. through 4:30 p.m., Eastern time, Monday through Friday.

(3) A client shall attend and complete all sessions of class instruction, in the required sequence, and shall comply with all standards of behavior required by the program to satisfactorily complete a DUI education service. **If a client cannot attend a session of class instruction, due to an emergency, the client may be permitted to attend that session of class instruction when the missed class session is repeated.** If a client demonstrates a need for services at a different level of care, the program administrator shall refer the client to any eligible program for the required services, and notify the program, which conducted the assessment of such action. The program administrator shall make the determination as to whether a client has satisfactorily completed the DUI education service, and shall be responsible for notifying the program, which conducted the client's assessment, when a client has satisfactorily completed the required DUI education services, or when a client is noncompliant.

(4) All required fees for an education service shall be paid to the program by the client and such fees shall cover the cost of all course materials. [~~A program may reduce or waive fees for a client as deemed necessary by that program.~~]

(5) A client not residing in the state may receive DUI education services in an out-of-state program that is licensed and eligible as determined by the division, based on the standards in this regulation, to provide comparable services at the level of care determined necessary to meet the client's individual needs.

Section 6. Treatment Requirements. (1) A program desiring to provide treatment services shall be licensed by the cabinet to provide the services offered, shall conform to the state licensure standards for treatment facilities, and shall employ qualified staff members, who have training and experience in dealing with the physical and psychological complications of alcohol and drug dependence. A program may provide outpatient, intensive outpatient, inpatient, residential or detoxification chemical dependency or substance abuse treatment services.

(a) **The service a DUI client is assigned depends on the severity of symptoms, available support resources, and individual dynamics to be determined by the assessment. A client may be referred to outpatient, intensive outpatient, inpatient, residential, or detoxification services.** [~~A client assessed as having an alcohol or drug abuse problem, who is chemically dependent and who is not at risk for problems with withdrawal symptoms is eligible to receive outpatient or intensive outpatient treatment services. A client may also be referred to outpatient or intensive outpatient treatment services after receiving inpatient, residential or detoxification services.~~]

1. A program may provide outpatient or intensive outpatient treatment services to a client individually or in a group. A group may include first and multiple offenders in the same session. The maximum number of clients in a group shall be no more than fifteen (15).

a. A client shall receive a minimum of one (1) hour of individual outpatient treatment each week or a minimum of **one and one-half (1 1/2)** [~~two (2)~~] hours of group outpatient treatment each week. If a client receives outpatient treatment services less than one (1) time each week, to meet the individual clinical needs of the client, the program administrator shall maintain proper documentation in the client's case file to show cause.

b. A client may receive intensive outpatient treatment services, more often, and in longer sessions, each week to meet the individual clinical needs of the client.

2. A client may be referred to a self-help group to supplement but not to replace the outpatient or intensive outpatient treatment services.

(b) **A client needing more restrictive services than paragraph (a)1a or b of this subsection shall be referred to detoxification, inpatient, residential or transitional living services.** [~~A client assessed as having a severe alcohol or drug abuse problem, who is chemically dependent, who exhibits symptoms of withdrawal, and who has not been able to maintain sobriety while receiving outpatient treatment is eligible for referral to inpatient, residential, or detoxification treatment services. First or multiple offenders may be referred to receive inpatient, residential, or detoxification services.~~]

(2) A program providing DUI treatment services shall be responsible for developing a treatment plan for each client accepted for treatment services. The treatment plan shall be individualized for the needs of each client and shall include a written statement of treatment goals and measurable objectives together with a realistic time schedule for achieving them. A client's treatment plan shall be reviewed at least once every **180** [~~ninety (90)~~] days and all changes shall be recorded in the client's case file.

(3) A client shall comply with all attendance requirements of the treatment plan to satisfactorily complete a required treatment service. If a client demonstrates a need for service at a different level of care the program administrator shall refer the client to any eligible program for the required services, and notify the program which conducted the client's assessment of such action. The program administrator shall make the determination as to whether a client has satisfactorily completed the treatment service, and shall be responsible for notifying the program, which conducted the client's assessment, when a client has satisfactorily completed the required treatment services, or when a client is noncompliant.

(4) All required fees for treatment services shall be paid to the program by the client. [~~A program may reduce or waive fees for a client as deemed necessary by that program.~~]

(5) Any client may receive treatment services at an out-of-state program that is licensed, and eligible, as determined by the division, based on the standards in this regulation, to provide comparable services at the level of care determined necessary to meet the client's individual needs.

Section 7. Hearing Requirements. (1) Any program or individual may appeal negative certification action taken by the division by notifying the division in writing within twenty (20) days of the issuance of notice of negative certification action. Upon receipt of notice of appeal, the director of the division shall designate a hearing officer.

(2) Notice of hearing shall be mailed to the program or individual not less than ten (10) days prior to the commencement of the hearing. The notice of hearing shall contain the reasons for negative certification action. The notice of hearing shall be mailed by certified mail, return receipt requested to the parties.

(3) The program, individual and the division may be represented by counsel and make oral or written argument, offer testimony, cross-examine witnesses, or take any combination of such actions. No depositions shall be permit-

ted for the purpose of discovery, however, the hearing officer may authorize depositions or witnesses, who for good cause shown, cannot be present at the hearing. A hearing officer shall reside at the hearing, shall keep order, administer oaths, may issue subpoenas and may admit relevant and probative evidence and shall conduct the hearing in accordance with reasonable administrative practice.

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

(5) The hearing officer may place reasonable time limits upon the presentation of testimony, evidence and argument and may terminate or exclude irrelevant or redundant evidence, testimony or argument.

(6) The hearing officer shall send a written determination to the division including findings of fact and conclusion of law. With the determination, the hearing officer shall forward to the division the record consisting of all documents, exhibits, and recorded testimony introduced in the hearing.

(7) The division shall issue the hearing officer's final determination of certification status within ten (10) days of receipt of the determination from the hearing officer.

(8) No hearing officer shall participate in any hearing involving a program or individual with which the hearing officer has had in the past twelve (12) months preceding the hearing, any ownership, in whole or in part, employment, staff, fiduciary, contractual, creditor or consultative relationship.

(9) The division shall retain all records related to a hearing for a period of five (5) years.

DENNIS D. BOYD, Commissioner
LEONARD E. HELLER, Secretary
APPROVED BY AGENCY: January 3, 1992
FILED WITH LRC: January 7, 1992 at 11 a.m.

PROPOSED AMENDMENTS RECEIVED THROUGH NOON, JANUARY 15, 1992

GENERAL GOVERNMENT CABINET
Kentucky Real Estate Commission
(Proposed Amendment)

201 KAR 11:230. Mandatory continuing education.

RELATES TO: KRS 324.410(3)
STATUTORY AUTHORITY: KRS 324.281(5), 324.282
NECESSITY AND FUNCTION: To inform and set certain standards for the licensees and to protect the public.

Section 1. (1) Beginning with the calendar year January 1, 1992, actively licensed agents shall be required to attend annually six (6) hours of continuing education courses sponsored or approved by the commission. Of this six (6) hours, two (2) hours shall be in courses on real estate law.

(2) In order for an education course to be approved by the commission, the sponsor of the course shall provide to the commission annually and for renewal of approval, on or before November 1 of the year before the course will be offered:

(a) An outline of the course in such detail that all the pertinent material to be taught is disclosed; and

(b) The work experience, credentials and educational background of the instructors of the course.

(3) To receive approval, an education course shall consist of topics that will:

(a) Enable a student to better understand the brokerage business;

(b) serve the public.

(4) Courses that are self-motivational in nature shall not be approved.

(5) A course instructor shall be reasonably competent by educational background or work experience and have adequate knowledge of the course material. He shall be an "approved instructor" under the prelicensure education requirements established in 201 KAR 11:175.

(6) An education course shall be sponsored by an accredited real estate school, or by a school that has been given a certificate of approval by the Kentucky Board of Proprietary Education, other appropriate governmental regulatory body, or by an approved real estate school.

(7) A sponsor shall:

(a) Provide:

1. Attendance records to the commission;

2. Course evaluation forms to students for submission to the commission;

(b) Permit monitoring and inspection by the commission;

(c) Sign a written agreement relating to compliance with commission requirements, on a form prescribed by the commission; and

(d) Make the course available to all licensed agents, subject to space limitations.

(8) The forms required in subsection (5) of this section are incorporated by reference, and may be reviewed or obtained at the Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, Monday through Friday from 8 a.m. to 4:30 p.m.

(9) An education course shall consist of a minimum of two (2) hours. One (1) hour of continuing education shall be allowed for each fifty (50) minutes of actual attendance.

(10) An escrowed licensee shall not be required to attend continuing education courses. Before a license is changed from escrow to active, a licensee shall provide the commission with documentation of the completion of current continuing education requirements.

(11) A sales associate licensee shall not be required to attend continuing education courses during the first year in which he is licensed.

(12) Beginning April 1, 1993, an active license shall not be renewed unless the licensee has complied with the provisions of this administrative regulation.

(13)(a) A licensee shall complete the mandatory continuing education requirements of this regulation by December 31 of each calendar year.

(b) Proof of completion of the mandatory continuing education requirements shall be submitted to the commission on or before January 15 of the following calendar year.

(c) If a licensee fails to comply with the provisions of paragraphs (a) and (b) of this subsection, the executive director shall notify him as soon as practicable on or after January 31 of the following calendar year.

(d) A license shall not be cancelled if a licensee:

1. Places his license in escrow; or

2. Completes the requirements of a delinquency plan that complies with subsection (14) of this regulation.

(14)(a) On or before February 15 of the following calendar year, a licensee shall submit a written delinquency plan to complete the continuing education requirements for the previous calendar year.

(b) The delinquency plan shall include a list of approved or sponsored education courses that the licensee agrees to attend.

(c) The delinquency plan shall provide that the continuing education requirements for the previous calendar year shall be completed on or before June 15.

(d) The licensee shall submit a fee of $200 with his delinquency plan.

(e) If a licensee fails to complete an approved delinquency plan, his license shall be suspended for two (2) years.

(f) A licensee who places his license in escrow under the provisions of subsection (13)(d) of this section shall not be permitted to reactivate his license unless he has:

1. Completed mandatory continuing education requirements; and

2. Paid the fee provided for by paragraph (d) of this subsection.

(15) The time requirements provided in this regulation may be extended by the commission if:

(a) A true hardship or other good cause clearly warrants relief; and

(b) The request for extension is requested in writing on or before January 15 of the following calendar year.

(16) A licensee who teaches an approved mandatory education course shall be entitled to one (1) hour of credit for each hour of instruction he teaches plus two (2) hours credit for preparation for each course he teaches.

(17) Hours of instruction in prelicense education courses shall be credited to the mandatory continuing education requirements.

(18) Hours of mandatory continuing education exceeding the amount required shall not be carried forward to the next year's requirements.

(19) Education courses offered by the commission shall be available at no charge to a licensee.

(20) The provisions of this administrative regulation shall not apply to any person licensed by the commission prior to June 19, 1976.

Section 2. This administrative regulation shall expire on adjournment of the next regular session of the General Assembly.

BOB ROBERTS, Chairman
APPROVED BY AGENCY: November 21, 1991
FILED WITH LRC: December 16, 1991 at 9 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 25, 1992, at 10 a.m. at the Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223. Individuals

interested in being heard at this hearing shall notify this agency in writing by February 20, 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 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 the contact person: John L. Ackman, Jr., Kentucky Real Estate Commission, 10200 Linn Station Road, Ste. 201, Louisville, Kentucky 40223.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: John Ackman, Jr.

(1) Type and number of entities affected: Section 1(2) - There are 120 instructors teaching in 20 accredited and 11 approved schools. Section 1(20) - Approximately 4000-5000 actively licensed agents will be exempt from the continuing education requirement.

(a) Direct and indirect costs or savings to those affected: Section 1(2) - There will be no costs or savings. Section 1(20) - Agents so exempt will not be required to pay for continuing education classes - there are no costs due to this amendment.

1. First year: Section 1(2) - There will be no costs or savings. Section 1(20) - The same savings will apply.

2. Continuing costs or savings: Section 1(2) - There will be no costs or savings. Section 1(20) - The same savings will apply.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors. There is no effect upon competition.

(b) Reporting and paperwork requirements: Section 1(2) - Each year a continuing education provider must renew his approval. Section 1(20) - Agents exempt under this amendment will have no reporting or paperwork requirement.

(2) Effects on the promulgating administrative body: Section 1(2) - Staff must review annual renewals of continuing education providers. Section 1(20) - Additional staff time must be devoted to identifying the files of exempt agents.

(a) Direct and indirect costs or savings: Section 1(2) - There are no costs or savings.

1. First year: Section 1(2) - There are no costs or savings. Section 1(20) - Approximately $2000 will be spent to program the computer to identify exempt agents.

2. Continuing costs or savings: Section 1(2) - There are no costs or savings. Section 1(20) - Additional staff time will be needed to identify and exempt the agents exempt.

3. Additional factors increasing or decreasing costs: There are no additional factors.

(b) Reporting and paperwork requirements: Section 1(2) - Staff must review annual renewals of continuing education providers. Section 1(20) - The exempt agents will not need to have their files updated annually to document continuing education compliance.

(3) Assessment of anticipated effect on state and local revenues: There are no effects.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered.

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

(a) Necessity of proposed regulation if in conflict: There is no such conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no conflict.

(6) Any additional information or comments: There is no additional information or comment.

TIERING: Was tiering applied? No. Tiering is not appropriate.

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

301 KAR 2:047. Specified areas; seasons, limits for upland game birds, furbearers and small game.

RELATES TO: KRS 150.010, 150.025, 150.092, 150.170, 150.175, 150.180, 150.300, 150.340, 150.360, 150.370, 150.399, 150.400, 150.410, 150.415, 150.416, 150.417, 150.990

STATUTORY AUTHORITY: KRS 13A.350, 150.025

NECESSITY AND FUNCTION: This regulation pertains to the hunting seasons, bag and possession limits for upland game birds, furbearers and animals on specified wildlife management areas and refuges. This regulation is necessary for the continued protection of these species and to insure a permanent and continued supply of wildlife resources for present and future residents of the state. The function of this regulation is to provide for the prudent taking of upland game birds, furbearers and small game [~~animals~~] within reasonable limits based upon an adequate supply. This amendment is necessary because of changes in season dates and the opening or closure of certain wildlife management areas to hunting.

Section 1. All provisions of 301 KAR 2:250 apply to wildlife management areas and refuges unless exceptions are listed.

Section 2. Any person, except waterfowl hunters, using a wildlife management area during periods when firearms are allowed for deer hunting shall wear hunter orange garments of a solid unbroken pattern as outer coverings on at least the head, chest and back. Any mesh weave opening shall not exceed one-fourth (1/4) inch by any measurement. Garments may display a small section of another color provided the section does not significantly obscure the hunter orange color of the garment. Camouflage pattern hunter orange garments do not meet these requirements.

Section 3. [~~2.~~] Exceptions to 301 KAR 2:250 for Wildlife Management Areas and Refuges. (1) West Kentucky Wildlife Management Area located in McCracken County.

(a) Quail and rabbit: November 1 through January 31 on Tracts 2, 3, 6 and 7; January 1 through 10 or January 1 until maximum acceptable harvest levels have been reached as determined from hunter use data on Tracts 1, 4 and 5. Signs announcing closure will be posted at the hunter check station at least twenty-four (24) hours prior to the closure.

(b) Squirrel (gray and fox): from the third Saturday in August [~~opening of Western zone squirrel season~~] through December 31 [~~October 31~~] on Tracts 1 through 7. [~~6. November 1 through December 31 on Tract 6 only.~~]

(c) Raccoon and opossum: tracts 1 through 7 [~~6 only~~]. [~~There is no~~] Shakeout season is closed on this area.

(d) All hunters and dog trainers shall check in and out daily at the designated check station.

(e) Hunting is prohibited on all tracts designated by numbers followed by the letter "A". [~~All tracts designated by numbers followed by the letter "A" are closed to hunting.~~]

(f) [~~No~~] Rifles or ball or slug ammunition of any type [~~shall be allowed~~] for taking small game is prohibited.

(g) Unleashed dogs are prohibited April 1 until [~~through~~] the third Saturday in August [~~opening of Western Zone~~

~~squirrel season~~], except during permitted field trials.

(h) [~~Tract 6 is closed to~~] Vehicular traffic on Tract 6 is prohibited February 1 through April 16.

(i) [~~There shall be no~~] Upland game bird, small game or furbearer hunting, trapping or unleashed dogs are prohibited [~~allowed~~] during periods when breech-loading firearms are allowed for deer hunting [~~the deer quota hunts~~].

(2) Land Between the Lakes Wildlife Management Area (LBL) located in Trigg and Lyon Counties. Areas open to hunting for the following species are located north of the state line to Barkley Canal, except that [~~no~~] hunting is prohibited [~~allowed~~] in developed public use areas, safety zones and posted areas unless otherwise noted:

(a) Squirrel (gray and fox): from the third Saturday in August [~~opening of Western Zone squirrel season~~] through the fourth Friday in September [~~27~~], December 1 through January 31; and during deer archery season only by legally licensed and equipped deer archery hunters.

(b) Quail and rabbit: December 1 through the third Sunday in February [~~last day of February~~].

[~~(c) Rabbit: December 1 through the last day of February.~~]

(c) [~~(d)~~] Raccoon and opossum: Tuesday, Thursday, Friday and Saturday nights only during the period December 1 through January 31. Daily bag limit one (1) person per night. Raccoon and opossum hunters shall check in and out nightly at designated check station. Harvest report cards shall be displayed in vehicle windshield while hunting and submitted at the check station upon completion of each night's hunt. Season shall be closed in some hunt areas as posted at designated hunter check stations.

(d) [~~(e)~~] Field trials: September 1 through March 31. Scheduled basis only. Written requests shall be received by LBL at least ten (10) days prior to the proposed hunt date. Approval shall be obtained from LBL and the Department of Fish and Wildlife Resources First District Captain [~~Supervisor~~]. Field trials shall be recognized club hunts and each participant shall be on a club roster for that hunt.

(e) [~~(f)~~] Fox chasing: from sunset to sunrise; third Saturday in August through the third Saturday in September south of Highway 68 to state line.

(f) [~~(g)~~] Fox (gray and red) and bobcat taking: gun and archery on December 1 through January 31.

(g) [~~(h)~~] Groundhog: daylight hours only. March 15 through March 31 and during the LBL deer archery season only by legally licensed and equipped deer archery hunters. All harvested animals shall be removed from the area. Gun hunting is prohibited in Hunt Area 8 and in that portion of Hunt Area 9 designated as the ORV area.

(h) [~~(i)~~] Coyote: daylight hours only by legally licensed hunters during any LBL open season with weapons specified for that season.

(i) [~~(j)~~] Bird dog, beagle and raccoon hound training season: during the entire month of October only in areas designated in the LBL Hunting and Angling Guide.

(j) [~~(k)~~] All dogs shall wear a collar bearing the owner's name, address, and telephone number. Dogs shall not be used for hunting October 1 through November 11, except in authorized field trials and designated dog training hunt areas.

(k) [~~(l)~~]Trapping for furbearers (including bobcats).

1. No person [~~Only those persons issued trapping permits~~] shall trap furbearers on LBL without a trapping permit. Permits shall be issued by public drawing, with unissued permits made available on a first-come first-served basis.

2. Authorized trappers shall trap in assigned areas only and shall report their harvest in accordance with LBL instructions.

3. Trapping season: January 4 [~~7~~] through January 17 [~~20~~] for all furbearers.

4. Trapping devices. No. 3 or smaller foothold traps, padded foothold traps and snares without self-locking devices are permitted. The jaws of No. 1 1/2 and larger foothold traps used on land shall be offset three-sixteenths (3/16) inch or be padded foothold traps. Water sets are restricted to No. 3 or smaller foothold traps, padded foothold traps, No. 330 or smaller Conibear-type traps, and nonlocking snares.

(l) [~~(m)~~] Bobcat: bobcats may [~~shall~~] be taken only by gun, archery or trapping.

1. The limit is two (2) bobcats per person per season by any legal method.

2. The bobcat harvest quota is twenty-four (24). Should it be determined that the quota of twenty-four (24) bobcats will [~~shall~~] be filled prior to January 31, the season shall close. [~~Notice shall be given~~] A minimum of twenty-four (24) hours notice of the time and date of closure shall be given [~~in advance of the time and date of closing~~].

3. All bobcats shall be tagged before leaving LBL and within forty-eight (48) hours of harvest. Bobcats shall be tagged by LBL personnel upon presentation of the entire animal, skinned or unskinned, at LBL check stations, Golden Pond Administrative Office, or Patrol Office.

4. Bobcats shall be taken by hunting or by calling during daylight hours only. Callers shall use only hand or mouth operated calls.

(m) [~~(n)~~] Weapons restrictions. The use of crossbows, center-fire rifles, center-fire handguns, and shotguns with slugs or shot larger than BBs is prohibited for the taking of all species listed in this subsection except that groundhogs may be taken with center-fire rifles during the specified spring season.

(3) Reelfoot National Wildlife Refuge located in Fulton County.

(a) Squirrel (gray and fox): fourth Saturday in August through October 15 only in areas designated by signs as open to public hunting.

(b) Raccoon: four (4) consecutive nights beginning on the last Wednesday in September and four (4) consecutive nights beginning on the first Wednesday in October on the Long Point Refuge unit, with hunting allowed only during the hours of 7:30 p.m. to 12 midnight. No bag or possession limits.

(c) Hunters shall check in and out at designated check stations.

(4) Ballard Wildlife Management Area located in Ballard County. Areas designated by signs are closed to hunting.

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

(a) This area is closed to all upland game bird, furbearer and small game hunting except squirrel.

(b) Unleashed dogs are prohibited April 1 until [~~through~~] the third Saturday in August [~~opening of the Western Zone squirrel season~~], except during permitted field trials. In addition, unleashed dogs are limited to Tuesdays, Thursdays, Saturdays and Sundays, except for permitted field trials.

(c) Furbearers shall be taken by trapping only. All trappers shall obtain written permission from the area manager.

(d) All hunters and dog trainers shall check in and out daily at the designated check station.

(6) Curtis Gates Lloyd/Mullins Wildlife and Recreation Area located in Grant and Kenton Counties.

(a) Areas closed to hunting are designated by refuge signs.

(b) Quail and rabbit: November 1 through January 31 except during periods when breech-loading firearms are allowed for deer hunting [~~the deer gun season~~].

(c) Unleashed dogs are prohibited April 1 until [~~through~~] the third Saturday in August [~~opening of the Western Zone squirrel season~~], except during permitted field trials.

(d) All hunters and dog trainers shall check in and out daily at the designated check station.

(7) Pioneer Weapons Wildlife Management Area located in Bath and Menifee Counties. Hunters on this area shall use [~~are restricted to~~] pioneer weapons only. These include muzzle-loading rifles, muzzle-loading pistols, muzzle-loading shotguns, longbows, recurve bows or compound bows and crossbows. Muzzle-loading shotguns for taking squirrels, quail, grouse and rabbits shall not be used with shot larger than No. 2.

(a) Unleashed dogs are prohibited March 1 through August 31 except during permitted field trials.

(b) Breech-loading firearms shall be unloaded in both the chamber and magazine unless possessed by authorized personnel.

(8) Fort Campbell Wildlife Management Area located in Christian and Trigg Counties. There shall be no hunting on Tuesdays or Wednesdays except when Tuesday or Wednesday is a federal holiday or as follows: December 18-19 and 26. There shall be no hunting on December 25 and January 1.

(a) Seasons, bag and possession limits.

1. Squirrel (gray and fox): third Saturday in August through the last day in January. [~~August 17 through September 27, November 28 through December 13, December 14 through 31 on selected areas; January 2 through January 31.~~]

2. Quail: Thanksgiving day through the last day of February [~~November 28 through December 13, December 14 through 31 on selected areas; January 2 through February 29~~].

3. Rabbit: Thanksgiving day through the last day of February; [~~November 28 through December 13, December 14 through 31 on selected areas; January 2 through February 29;~~] bag limit five (5); possession limit ten (10).

4. Raccoon, foxes and opossum: taking with gun or dogs, Thanksgiving day through the last day of January; [~~November 28 through December 13, December 14 through 31 on selected areas. January 2 through February 29;~~] limit one (1) per person.

5. Coyote and groundhog: May 13 through August 17 and during any other authorized hunt.

(b) Permission shall be obtained for each hunt at building #6645 and hunters shall stay within their assigned area. Hunters shall obtain a hunting permit costing fifteen (15) dollars [~~is required~~].

(c) All hunters between the ages of twelve (12) and eighteen (18) shall possess a valid hunter safety certificate.

(9) Clay Wildlife Management Area located in Nicholas County.

(a) Quail and rabbit: November 1 through December 31.

(b) Grouse: October 1 through December 31.

(c) Squirrel (gray and fox): Saturday preceding Labor Day [~~First Saturday in September~~] through December 31.

(d) All hunters and dog trainers shall check in and out daily at the designated check station.

(e) Unleashed dogs are prohibited March 1 through August 31 except during permitted field trials.

(f) [~~There shall be no~~] Upland game bird, small game or furbearer hunting, trapping or unleashed dogs are prohibited during periods when breech-loading firearms are permitted for deer hunting. [~~allowed during deer quota hunts.~~]

(10) Pine Mountain Wildlife Management Area located in Letcher County. Unleashed dogs are prohibited March 1 through August 31 except during permitted field trials.

(11) Dewey Lake Wildlife Management Area in Floyd County, Paintsville Lake Wildlife Management Area in Johnson and Morgan Counties, Fishtrap Lake Wildlife Management Area in Pike County and Redbird Wildlife Management Area in Clay and Leslie Counties.

(a) Squirrel (gray and fox): Saturday preceding Labor Day [~~First Saturday in September~~] through December 31.

(b) Grouse: October 1 through December 31.

(c) Quail and rabbit: November 1 through December 31.

(d) Furbearer: the tenth day after the second Saturday in November through [~~Closes~~] December 31.

(e) [~~There shall be no~~] Upland game bird, small game or furbearer hunting or trapping or unleashed dogs are prohibited during periods when breech-loading firearms are permitted for deer hunting. [~~allowed when these areas are open to deer gun hunting.~~]

(f) Unleashed dogs are prohibited March 1, through August 31 except during permitted field trials.

(g) Shotguns only.

(h) Shakeout season is closed on these areas.

(12) Beaver Creek Wildlife Management Area located in McCreary and Pulaski Counties, Mill Creek Wildlife Management Area in Jackson County and Cane Creek Wildlife Management Area in Laurel County and all private in-holdings within these areas.

(a) Squirrel (gray and fox): Saturday preceding Labor Day [~~First Saturday in September~~] through December 31.

(b) Grouse: October 1 through December 31.

(c) Quail and rabbit: November 1 through December 31.

(d) Furbearer: December 5 through December 31. All trappers shall obtain and complete a harvest survey form obtained from the area manager.

(e) [~~There shall be no~~] Upland game bird, small game or furbearer hunting or trapping or unleashed dogs are prohibited during periods when breech-loading firearms are permitted for deer hunting. [~~allowed when these areas are open to deer gun hunting.~~]

(f) Unleashed dogs are prohibited March 1 through August 31 except during permitted field trials.

(g) Shakeout season is closed on these areas.

(13) Higginson-Henry Wildlife Management Area located in Union County.

(a) Quail and rabbit: November 1 through January 31.

(b) Unleashed dogs are prohibited April 1 until [~~through~~] the third Saturday in August, [~~opening of the Western Zone squirrel season~~] except during permitted field trials.

(c) All hunters and dog trainers shall check in and out daily at the designated check station.

(d) [~~There shall be no~~] Upland game bird, small game or furbearer hunting, trapping or unleashed dogs are prohibited during periods when breech-loading firearms are permitted for deer hunting. [~~allowed during deer quota hunts.~~]

(14) Yellowbank Wildlife Management Area located in Breckinridge County.

(a) Quail and rabbit: November 1 through January 31.

(b) All hunters and dog trainers shall check in and out daily at the designated check station.

(c) Unleashed dogs are prohibited April 1 until [~~through~~] the third Saturday in August, [~~opening of the Western Zone squirrel season~~] except during permitted field trials.

(d) [~~There shall be no~~] Upland game bird, small game or furbearer hunting, trapping or unleashed dogs are prohibited during periods when breech-loading firearms are permitted for deer hunting. [~~allowed during deer quota hunts.~~]

(e) Areas within Tract 1 designated by signs are closed to all hunting, fishing, boating and trespassing from October 15 through March 15.

(15) Kleber Wildlife Management Area located in Owen and Franklin Counties.

(a) Quail and rabbit: November 1 through January 31.

(b) All hunters and dog trainers shall check in and out daily at the designated check station.

(c) Unleashed dogs are prohibited April 1 until [~~through~~] the third Saturday in August, [~~opening of the Western Zone squirrel season~~] except during permitted field trials.

(d) [~~There shall be no~~] Upland game bird, small game or furbearer hunting, trapping or unleashed dogs are prohibited during periods when breech-loading firearms are permitted for deer hunting. [~~allowed during deer quota hunts.~~]

(16) Westvaco Public Hunting Areas. Persons hunting on Westvaco Public Hunting Areas shall possess a valid Westvaco Hunting Permit.

(17) Sloughs Wildlife Management Area located in Henderson and Union Counties. Frank Sauerheber Unit: areas designated by signs are closed to all hunting, fishing, boating and trespassing from October 15 through March 15.

(18) Peal Wildlife Management Area located in Ballard County.

(a) Squirrel (gray and fox): third Saturday in August through the Friday before the second Saturday in November [~~deer gun season~~] and the tenth day after the second Saturday in November [~~the day following the deer gun season~~]

through December 31.

(b) Furbearer hunting: twenty (20) day taking season commencing the tenth day after the second Saturday in November. [~~day following the deer gun season. There is no~~] Shakeout season is closed on this area.

(c) Furbearer trapping: December 1 through 10; water sets only; trappers selected by drawing conducted by the area manager.

(d) Quail and rabbit: November 1 through January 31.

(e) [~~There shall be no~~] Upland game bird, small game or furbearer hunting or trapping or unleashed dogs are prohibited during periods when breech-loading firearms are permitted for deer hunting. [~~allowed during the deer gun season.~~]

(19) Big South Fork National River and Recreation Area located in McCreary County.

(a) Squirrel (gray and fox): Saturday preceding Labor Day [~~first Saturday in September~~] through December 31.

(b) Grouse: October 1 through December 31.

(c) Quail and rabbit: November 1 through December 31.

(d) Unleashed dogs are prohibited March 1 through August 31 except during permitted field trials.

(e) [~~There shall be no~~] Upland game bird, small game or furbearer hunting or trapping or unleashed dogs are prohibited during periods when breech-loading firearms are permitted for deer hunting. [~~allowed during the deer gun season.~~]

(20) Taylorsville Lake Wildlife Management Area in Spencer, Anderson and Nelson Counties.

(a) East of Van Buren Boat Ramp. Areas closed to all hunting, fishing, boating and trespassing the day after the deer quota hunt through March 15 are designated by refuge signs.

(b) Quail and rabbit: November 1 through January 31.

(c) [~~There shall be no~~] Upland game bird, small game or furbearer hunting or trapping or unleashed dogs are prohibited during periods when breech-loading firearms are permitted for deer hunting. [~~allowed during the deer quota hunts.~~]

(21) Fleming Wildlife Management Area located in Fleming County.

(a) Quail and rabbit: November 1 through December 31.

(b) Grouse: October 1 through December 31.

(c) Squirrel (gray and fox): Saturday preceding Labor Day [~~first Saturday in September~~] through December 31.

(d) Unleashed dogs are prohibited March 1 through August 31 except during permitted field trials.

(e) [~~There shall be no~~] Upland game bird, small game or furbearer hunting or trapping or unleashed dogs are prohibited during periods when breech-loading firearms are permitted for deer hunting. [~~allowed during the deer gun season.~~]

(22) Grayson Lake Wildlife Management Area in Carter and Elliott Counties.

(a) Areas designated by signs are closed to hunting.

(b) Quail and rabbit: November 1 through December 31.

(c) Grouse: October 1 through December 31.

(d) Squirrel (gray and fox): Saturday preceding Labor Day [~~first Saturday in September~~] through December 31.

(e) Unleashed dogs are prohibited March 1 through August 31 except during permitted field trials.

(f) [~~There shall be no~~] Upland game bird, small game or furbearer hunting or trapping or unleashed dogs are prohibited during periods when breech-loading firearms are permitted for deer hunting. [~~allowed during deer quota hunts.~~]

(g) All hunters and dog trainers shall check in and out daily at a designated check station.

(23) Robinson Forest Wildlife Management Area located in Breathitt, Perry and Knott Counties is closed to all hunting.

(24) Lake Cumberland Wildlife Management Area - All Kentucky Department of Fish and Wildlife Resources managed lands on the north side of Lake Cumberland.

(a) Grouse: October 1 through December 31.

(b) Quail and rabbit: November 1 through December 31.

(c) Unleashed dogs are prohibited March 1 through August 31 except during permitted field trials.

(d) [~~There shall be no~~] Upland game bird, small game or furbearer hunting or trapping or unleashed dogs are prohibited during periods when breech-loading firearms are permitted for deer hunting. [~~allowed during deer gun season.~~]

(25) Green River Lake Wildlife Management Area in Taylor and Adair Counties.

(a) Quail and rabbit: November 1 through January 31.

(b) Grouse: closed to hunting.

(c) Unleashed dogs are prohibited March 1 through August 31 except during permitted field trials.

(d) [~~There shall be no~~] Upland game bird, small game or furbearer hunting or trapping or unleashed dogs are prohibited during periods when breech-loading firearms are permitted for deer hunting. [~~allowed during deer gun season.~~]

(26) Barren River Wildlife Management Area in Allen and Barren Counties [~~and Nolin Reservoir Wildlife Management Area in Edmonson, Grayson and Hart Counties~~].

(a) Quail and rabbit: November 1 through January 31.

(b) [~~There shall be no~~] Upland game bird, small game or furbearer hunting or trapping or unleashed dogs are prohibited during periods when breech-loading firearms are permitted for deer hunting. [~~allowed during deer gun season.~~]

(27) Yatesville Wildlife Management Area located in Lawrence County.

(a) All hunters and dog trainers shall check in and out daily at a designated check station.

(b) Areas designated by signs are closed to all hunting, fishing, boating and trespassing.

(28) Daviess County Wildlife Management Area located in Daviess County.

(a) Area closed to hunting and trapping for upland game birds, small game and furbearers.

(b) Unleashed dogs are prohibited April 1 until [~~through~~] the third Saturday in August [~~opening of the Western Zone squirrel season~~] except during permitted field trials.

(29) Fort Knox Wildlife Management Area located in Bullitt, Meade and Hardin Counties.

(a) Furbearer: trapping is prohibited.

(b) Unleashed dogs are prohibited April 1 until [~~through~~] the third Saturday in August [~~opening of the Western Zone squirrel season~~] except during permitted field trials.

(c) Area requirements.

1. Permission to hunt shall be obtained for each hunt at the hunt control office.

2. [~~There shall be no~~] Upland game bird, small game or furbearer hunting or trapping or unleashed dogs are prohibited during periods when breech-loading firearms are permitted for deer hunting. [~~allowed during deer gun hunts.~~]

3. Hunters shall stay in their assigned areas.

4. All hunters thirty-seven (37) years of age and younger shall possess a valid hunter safety certificate.

5. Pistols, center fire rifles and crossbows are prohibited.

6. Vehicles are prohibited off maintained roads, except as otherwise authorized.

7. All firearms shall be unloaded while in a vehicle, being carried in a nonhunting area, during nonhunting hours or after a hunter has taken the legal game bag limit.

(30) Pennyrile Forest Wildlife Management Area located in Christian, Caldwell and Hopkins Counties and Tradewater Wildlife Management Area located in Christian and Hopkins Counties. [~~There shall be no~~] Upland game bird, small game or furbearer hunting, trapping or unleashed dogs are prohibited during periods when breech-loading firearms are permitted for deer hunting. [~~allowed during deer quota hunts.~~]

(31) Nolin Reservoir Wildlife Management Area in Edmonson, Grayson, and Hart Counties.

(a) Quail and rabbit: November 1 through January 31.

(b) Upland game bird, small game or furbearer hunting, trapping or unleashed dogs are prohibited during periods when breech-loading firearms are permitted for deer hunting.

DON R. McCORMICK, Commissioner
DAVID H. GODBY, Chairman
BRENDA FRANK, Acting Secretary

APPROVED BY AGENCY: December 3, 1991
FILED WITH LRC: January 14, 1992 at 3 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 26, 1992 at 1 p.m. at the Wildlife Annex, Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by February 21, 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. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. Lauren E. Schaaf, Director of Wildlife, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Don R. McCormick
(1) Type and number of entities affected: Approximately 340,000 small game hunters and 7,000 trappers are expected to participate in the 1992-93 statewide hunting and trapping seasons. About 14,000 of these can be expected to avail themselves of the opportunity to participate in seasons on the special areas designated in this regulation.
(a) Direct and indirect costs or savings to those affected: Direct costs involve the purchase of a state hunting license and/ or a state trapping license. Indirect costs are determined by the individual, depending upon his level of participation.
1. First year: Persons participating in the hunting or trapping seasons proposed by this regulation would be required to possess a valid hunting license ($8.50 for residents) or a valid trapping license ($11.50 resident, $6 resident, landowner/tenant), respectively. A $15 hunting permit is required by Fort Campbell authorities.
2. Continuing costs or savings: Same as first year.
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: Hunters are required to check in and/or out at some of the management areas specified in this regulation. Trappers on Mill Creek, Cane Creek and Beaver Creek Wildlife Management Areas are required to complete a harvest survey.
(2) Effects on the promulgating administrative body: Requires time and effort in developing, publishing, reporting on, and enforcing the proposed regulation.
(a) Direct and indirect costs or savings: Primary costs are associated with enforcing the regulation.
1. First year: The estimated cost associated with establishing and carrying out the provisions of this regulation is $2500.
2. Continuing costs or savings: Same as first year.
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: 14,000 small game hunters and 140 trappers may be expected to expend money for equipment, transportation, food and lodging. The annual expenditure for these items by Kentucky small game hunters is $147 according to the 1985 National Hunting and Fishing Survey. The average seasons expenditure for Kentucky trappers during the 1981-82 trapping season was $209.32. State and local revenues can be expected to be positively affected due to necessary expenditures by small game hunters and trappers for the required licenses and due to taxes levied upon items purchased.
(4) Assessment of alternative methods; reasons why alternatives were rejected: The only available alternative to regulated hunting is closure of the season. This alternative was rejected as contrary to the conservation ethic which is based upon the wise use of renewable resources and the fact that small game and furbearer populations are at levels which can sustain a regulated harvest by Kentucky sportsmen.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None known.
(a) Necessity of proposed regulation if in conflict: N/A
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A
(6) Any additional information or comments: None
TIERING: Was tiering applied? Yes. Variations in habitat, hunting conditions and hunting pressure are recognized at public wildlife management areas. Seasons and limits are set accordingly.

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. Only parts of local government will be affected.
3. State the aspect or service of local government to which this administrative regulation relates. The County Clerk's office serves as a distribution system for the hunting licenses required by this regulation. The county circuit courts are where violators of these regulations are prosecuted.
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.
Revenues (+/-):
Expenditures (+/-):
Other Explanation: The County Clerk's office personnel are involved in the sale of hunting licenses. This office receives a $.75/license fee for selling the licenses. The county circuit Courts are utilized for prosecution of cases made against violators of these regulations and recover their costs as the court cost portion of any levied fines.

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

301 KAR 2:250. Seasons and limits for upland game birds, furbearers and small game.

RELATES TO: KRS 150.010, 150.025, 150.092, 150.170, 150.175, 150.180, 150.300, 150.305, 150.340, 150.360, 150.365, 150.370, 150.390, 150.399, 150.400, 150.410, 150.415, 150.416, 150.417, 150.990
STATUTORY AUTHORITY: KRS 13A.350, 150.025
NECESSITY AND FUNCTION: This regulation pertains to the hunting season, bag and possession limits for upland game birds, furbearers and small game and trapping season for furbearers. This regulation is necessary for the continued protection of the species listed and to insure a permanent and continued supply of wildlife resources for present and future residents of the state. The function of this regulation is to provide for the prudent taking of upland game birds, furbearers and small game within reasonable limits based upon an adequate supply.

Section 1. Definitions. (1) "Trap" means deadfall, wire cage or box trap, foothold trap, padded foothold trap, Conibear-type trap or nonlocking snare.

(2) "Foothold trap" means a spring-loaded trap with smooth, metallic jaws designed to capture an animal by closing upon one of its feet.

(3) "Padded foothold trap" means a spring-loaded trap with offset jaws designed to capture an animal by closing upon one of its feet and which is commercially constructed so the edges designed to touch the animal are composed of a nonmetallic substance.

(4) "Conibear-type trap" means a spring-loaded trap with opposing jaws designed to capture an animal around the neck or body and quickly render that animal unconscious or dead.

(5) "Nonlocking snare" means a wire, cable or string which forms a loop to capture an animal and which is constructed without a device to prevent the loop from loosening.

(6) "Furbearer" means mink, muskrat, beaver, opossum, gray fox, red fox, raccoon, weasel, striped skunk and bobcat.

Section 2. Hunting and Trapping Seasons. (1) Squirrel (gray and fox): Eastern zone - Saturday preceding Labor Day ~~[first Saturday in September]~~ through the Friday before the second Saturday in November and the tenth day after the second Saturday in November ~~[day following the ten (10) day deer gun season]~~ through December 31. The Eastern zone includes the following counties: Bell, Breathitt, Clay, Clinton, Elliott, Estill, Floyd, Harlan, Jackson, Johnson, Knott, Knox, Laurel, Lawrence, Lee, Leslie, Letcher, McCreary, Magoffin, Martin, Owsley, Perry, Pike, Powell, Pulaski, Rockcastle, Russell, Wayne, and Whitley. Western zone - third Saturday in August through October 31, and the tenth day after the second Saturday in November [day following the ten (10) day deer gun season] through December 31. The Western zone includes all counties not in the Eastern zone.

(2) Rabbits and quail: Zone A - November 1 through the Friday before the second Saturday in November and the tenth day after the second Saturday in November ~~[day following the ten (10) day deer gun season]~~ through January 31. Zone A includes the following counties: Bell, Boyd, Breathitt, Carter, Clay, Elliott, Estill, Floyd, Greenup, Harlan, Jackson, Johnson, Knott, Knox, Laurel, Lawrence, Lee, Leslie, Letcher, Lewis, McCreary, Magoffin, Martin, Menifee, Morgan, Owsley, Perry, Pike, Powell, Pulaski, Rockcastle, Rowan, Russell, Wayne, Whitley and Wolfe.

Zone B - the tenth day after the second Saturday in November ~~[day following the ten (10) day deer gun season]~~ through the third Sunday in February. Zone B includes all counties not listed in Zone A above.

(3) Grouse: the tenth day after the second Saturday in November ~~[day following the ten (10) day deer gun season]~~ through the last day in February. Grouse hunting is permitted in the following counties: Adair, Bath, Bell, Boyd, Bracken, Breathitt, Campbell, Carter, Clark, Clay, Clinton, Cumberland, Elliott, Estill, Fleming, Floyd, Garrard, Greenup, Harlan, Harrison, Jackson, Johnson, Knott, Knox, Laurel, Lawrence, Lee, Leslie, Letcher, Lewis, Lincoln, McCreary, Madison, Magoffin, Martin, Mason, Menifee, Montgomery, Morgan, Nicholas, Owsley, Pendleton, Perry, Pike, Powell, Pulaski, Robertson, Rockcastle, Rowan, Russell, Wayne, Whitley and Wolfe.

(4) Furbearers: the tenth day after the second Saturday in November ~~[day following the ten (10) day deer gun season]~~ through January 31. Bobcats shall be taken only according to provisions of 301 KAR 2:240.

(5) Extended beaver season: the entire month of February.

(6) Falconry hunting: squirrels, rabbits, quail, ruffed grouse and furbearers may be taken by falconry from September 1 through February 15.

Section 3. Legal Trapping Devices and Hunting Restrictions. (1) Traps. All traps set on dry land are limited to deadfalls, wire cage or box traps, No. 2 or smaller foothold traps, padded foothold traps having a jaw spread of six (6) inches or less, No. 220 or smaller Conibear-type traps and snares without self-locking devices. Traps shall not be set closer than ten (10) feet apart and shall not be set in trails or paths commonly used by humans or domestic animals. All traps are legal for water sets except during the extended beaver season as stipulated in subsection (2) of this section.

(2) Extended beaver season: trap restrictions. Traps of size No. 3 and larger, padded foothold traps having a jaw spread of five and one-half (5 1/2) inches or larger, Conibear-type traps, with jaw spread eight (8) inches or larger and nonlocking snares. Only water sets are permitted.

(3) The wildlife listed in this section may be taken by the use of hand or mouth operated calling or attracting devices.

(4) Taking raccoon and opossum. Raccoon and opossum shall not be taken from a vehicle or boat with the aid of artificial light at any time or any place except by trapping.

(5) Prohibited ammunition. No person hunting any species listed in this regulation shall have in his or her possession any buckshot or shotgun slugs.

(6) Shooting hours. Daylight hours only, except for raccoon and opossum which may be taken any time during day or night.

Section 4. Bag and Possession Limits.

Game Limits	Bag Limits	Possession
Squirrel (gray and fox)	6	12
Rabbit	4	8
Quail	8	16
Grouse	4	8
Furbearers (except raccoon by means other than trapping)	No limits	No limits
Raccoon (by means other than trapping)	1	No limits*
Falconry	During portions of this season which occur outside of seasons specified in Section 3(1), (2), (3) and (4) of this regulation, the daily falconry bag limit shall not exceed two (2) of any of these species, singly or in the aggregate, per falconer.	

*No possession limit on raccoons, except that no hunter shall take more than the daily bag limit within a twenty-four (24) hour period from noon to noon.

~~[Section 5. Trapping Licenses. An appropriate trapping license is required.]~~

~~[(1) Resident landowner or tenant trapping license. This license authorizes the licensee to take wild animals by trapping upon owned farmlands. The landowner's or tenant's dependent children or spouses may also purchase such a license. Either the tenant or his dependent children residing upon the owner's lands have the same privilege.]~~

~~[(2) Resident statewide trapping license. This license authorizes the holder to take wild animals by trapping upon his lands or lands of another person with written consent of the landowner.]~~

~~[(3) Nonresident statewide trapping license. This license authorizes the holder to take wild animals by trapping upon his lands or lands or another person with written consent of the landowner.]~~

DON R. McCORMICK, Commissioner
DAVID H. GODBY, Chairman
BRENDA FRANK, Acting Secretary

APPROVED BY AGENCY: December 3, 1991

FILED WITH LRC: January 14, 1992 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 26, 1992 at 9 a.m. at the Wildlife Annex, Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by February 21, 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. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. Lauren E. Schaaf, Director of Wildlife, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Don R. McCormick

(1) Type and number of entities affected: 340,000 small game hunters and 7,000 trappers are expected to participate in the hunting and trapping seasons proposed by this regulation.

(a) Direct and indirect costs or savings to those affected: Direct costs involve the purchase of a state hunting license and/or a state trapping license. Indirect costs are determined by the individual, depending on his level of participation.

1. First year: Persons participating in the hunting or trapping seasons proposed by this regulation would be required to possess a valid hunting license ($8.50 for residents) or a valid trapping license ($11.50 resident, $6 resident landowner/tenant), respectively.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body: Requires time and effort in developing, publishing, reporting on, and enforcing the proposed regulation.

(a) Direct and indirect costs or savings: Primary costs are associated with enforcing the regulation.

1. First year: The estimated cost associated with establishing and carrying out the provisions of this regulation is $900,000.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: 340,000 small game hunters may be expected to expend money for equipment, transportation, food and lodging. The average annual expenditure for these items by Kentucky small game hunters in $147 according to the 1985 National Hunting and Fishing Survey. The average season expenditure for Kentucky trappers during the 1981-82 trapping season was $209.32. State and local revenues can be expected to be positively affected due to the necessary expenditures by small game hunters and trappers for the required licenses and due to taxes levied upon items purchased.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The only available alternative to regulated hunting is closure of the season. This alternative was rejected as contrary to the conservation ethic which is based on the wise use of renewable resources and the fact that small game and furbearer populations are at levels which can sustain a regulated harvest by Kentucky sportsmen.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None known.

(a) Necessity of proposed regulation if in conflict: N/A

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

(6) Any additional information or comments: None

TIERING: Was tiering applied? Yes. The state is zoned for rabbit, squirrel and quail hunting to account for variances in habitat and hunting conditions.

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. Only parts of local government will be affected.

3. State the aspect or service of local government to which this administrative regulation relates. The County Clerk's office serves as a distribution system for the hunting licenses required by this regulation. The County Circuit Courts are where violators of these regulations are prosecuted.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: The County Clerk's office personnel are involved in the sale of hunting licenses. This office receives a $.75/license fee for selling licenses. The County Circuit Courts are utilized for prosecution of cases made against violators of these regulations and recover their costs as the court cost portion of any levied fines.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(Proposed Amendment)

401 KAR 50:010. Definitions and abbreviations of terms used in Title 401, Chapters 50, 51, 53, 55, 57, 59, 61, 63, and 65.

RELATES TO: KRS 224.20-100, 224.20-110, 224.20-120 [~~224.320, 224.330, 224.340~~]

STATUTORY AUTHORITY: KRS 224.10-100 [~~224.033~~]

NECESSITY AND FUNCTION: KRS 224.10-100 [~~224.033~~] requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides for the defining of terms to be used in Title 401, Chapters 50 to 65.

Section 1. Definitions. All terms not defined in this regulation or in subsequent regulations, shall have the meaning given them in KRS 224.01-010 [~~224.005~~] or by commonly accepted usage. As used in the regulations of the Division for Air Quality, unless the content clearly indicates otherwise, the following words shall have the following meanings:

(1) "Affected facility" means an apparatus, building, operation, road, or other entity or series of entities which emits or may emit an air contaminant into the outdoor atmosphere.

(2) "Air contaminant" has the meaning given it in KRS 224.01-010 [~~224.005~~].

(3) "Air pollutant" means an air contaminant.

(4) "Air pollution" has the meaning given it in KRS 224.01-010 [~~224.005~~].

(5) "Air pollution control equipment" means a mechanism, device or contrivance used to control or prevent air pollution, which is not, aside from air pollution control laws and regulations, vital to production of the normal product of the source or to its normal operation.

(6) "Alteration" means:

(a) The installation or replacement of air pollution control equipment at a source;

(b) A physical change in or change in the method of operation of an affected facility which increases the potential to emit of a pollutant (to which a standard applies) emitted by the facility or which results in the emission of an air pollutant (to which a standard applies) not previously emitted.

(7) "Alternative method" means a method of sampling and analyzing for an air pollutant which is not a reference or equivalent method but which has been demonstrated to the cabinet's and the U.S. EPA's satisfaction to, in specific cases, produce results adequate for its determination of compliance.

(8) "Ambient air" means that portion of the atmosphere, external to buildings, to which the general public has access.

(9) "Ambient air quality standard" means a numerical expression of a specified concentration level for a particular air contaminant and the time averaging interval over which that concentration level is measured and is a goal to be achieved in a stated time through the application of appropriate preventive or control measures.

(10) "Cabinet" has the meaning given it in KRS 224.01-010 [~~224.005~~].

(11) "Commence" means that an owner or operator has undertaken a continuous program of construction, modification, or reconstruction of an affected facility, or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction, modification, or reconstruction of an affected facility.

(12) "Compliance schedule" means a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with a limitation or standard.

(13) "Construction" means fabrication, erection, installation or modification of an air contaminant source.

(14) "Continuous monitoring system" means the total equipment, required under the applicable regulations used to sample, to condition (if applicable), to analyze and to provide a permanent record of emissions or process parameters.

(15) "Director" means Director of the Division for Air Quality of the Natural Resources and Environmental Protection Cabinet.

(16) "District" has the meaning given it in KRS 224.01-010 [~~224.005~~].

(17) "Emission standard" means that numerical limit which fixes the amount of an air contaminant or air contaminants that may be vented into the atmosphere (open air) from an affected facility or from air pollution control equipment installed in an affected facility.

(18) "Equivalent method" means a method of sampling and analyzing for an air pollutant which has been demonstrated to the cabinet's and the U.S. EPA's satisfaction to have a consistent and quantitatively known relationship to the reference method, under specified conditions.

(19) "Exempt solvent" means an organic compound listed in the definition of volatile organic compound as not participating in atmospheric photochemical reactions.

(20) "Existing source" means a source which is not a new source.

(21) "Extreme nonattainment county" or "extreme nonattainment area" means a county or portion of a county designated extreme nonattainment in 401 KAR 51:010.

(22) [~~(21)~~] "Fixed capital cost" means the capital needed to provide all the depreciable components.

(23) [~~(22)~~] "Fuel" means natural gas, petroleum, coal, wood, and any form of solid, liquid, or gaseous fuel derived from these materials for the purpose of creating useful heat.

(24) [~~(23)~~] "Fugitive emissions" means the emissions of an air contaminant into the open air other than from a stack or air pollution control equipment exhaust.

(25) [~~(24)~~] "Hydrocarbon" means an organic compound consisting predominantly of carbon and hydrogen.

(26) [~~(25)~~] "Incineration" means the process of igniting and burning solid, semisolid, liquid, or gaseous combustible wastes.

(27) [~~(26)~~] "Intermittent emissions" means emissions of particulate matter into the open air from a process which operates for less than any six (6) consecutive minutes.

[~~(27) "Malfunction" means a failure of air pollution control equipment, or process equipment, or of a process to operate in a normal or usual manner.~~]

(28) "Major source" means a source of which the potential emission rate is equal to or greater than 100 tons per year of any one (1) of the following pollutants: particulate matter, sulfur oxides, nitrogen oxides, volatile organic compounds or carbon monoxide.

(29) "Malfunction" means a failure of air pollution control equipment, or process equipment, or of a process to operate in a normal or usual manner.

(30) "Marginal nonattainment county" or "marginal nonattainment area" means a county or portion of a county designated marginal nonattainment in 401 KAR 51:010.

(31) "Moderate nonattainment county" or "moderate nonattainment area" means a county or portion of a county designated moderate nonattainment in 401 KAR 51:010.

(32) [~~(29)~~] "Modification" means a physical change in, or change in the method of operation of an affected facility which increases the potential to emit of an air pollutant (to which a standard applies) emitted by the facility, or which results in the emission of an air pollutant (to which a standard applies) not previously emitted, except that:

(a) Routine maintenance, repair, and replacement of component parts shall not be considered physical changes;

(b) The following shall not be considered a change in the method of operation:

1. An increase in the production rate, if the increase does not exceed the operating design capacity of the affected facility, or the maximum operating capacity specified as a condition to a permit issued by the cabinet;

2. An increase in hours of operation;

3. Use of an alternative fuel or raw material if, prior to the date a standard becomes applicable to the facility, the affected facility is designed to accommodate the alternative use.

(33) [~~(30)~~] "Monitoring device" means the total equipment, required in applicable regulations, used to measure and record (if applicable) process parameters.

(34) [~~(31)~~] "New source" means a source, the construction, reconstruction, or modification of which commenced on or after the classification date as defined in the applicable regulation. A source, upon reconstruction, becomes a new source, irrespective of a change in emission rate.

(35) [~~(32)~~] "Nitrogen oxides" means all oxides of nitrogen except nitrous oxide, as measured by test methods specified by the cabinet.

(36) [~~(33)~~] "Opacity" means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.

(37) [~~(34)~~] "Owner or operator" means a person who owns, leases, operates, controls, or supervises an affected facility or a source to which an affected facility is a part.

(38) [~~(35)~~] "Particulate matter" means a material, except uncombined water, which exists in a finely divided form as a liquid or a solid as measured by the appropriate approved test method.

(39) [~~(36)~~] "Particulate matter emissions" means, except as used in 40 CFR 60, all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by applicable reference methods, or an equivalent or alternative method specified in 40 CFR Chapter I, or by a test method specified in the approved state implementation plan.

(40) [~~(37)~~] "Person" means an individual, public or private corporation, political subdivision, government agency, municipality, industry, copartnership, association, firm, trust, estate, or other entity.

(41) [~~(38)~~] "PM_{10}" means particulate matter with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers as measured by a reference method based on Appendix J to 40 CFR 50, which has been incorporated by reference in 401 KAR 50:015, and designated in accordance with 40 CFR 53, or by an equivalent method designated in accordance with 40 CFR 53.

(42) [~~(39)~~] "PM_{10} emissions" means finely divided solid or liquid material, with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternative method, specified in 40 CFR Chapter I, or by a test method specified in the approved state implementation plan.

(43) [~~(40)~~] "Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. A physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions shall not count in determining the potential to emit of a stationary source.

(44) [~~(41)~~] "Reconstruction" means the replacement of components of an existing affected facility to the extent that the fixed capital cost of the new components exceeds fifty (50) percent of the fixed capital cost that would be required to construct a comparable entirely new affected facility, and it is technologically and economically feasible to meet the applicable new source standards. Individual sections of these regulations may include specific provisions which refine and delimit the concept of reconstruction set forth in this subsection. The cabinet's determination as to whether the proposed replacement constitutes reconstruction shall be based on:

(a) The fixed capital cost of the replacements in comparison to the fixed capital cost that would be required to construct a comparable entirely new facility;

(b) The estimated life of the affected facility after the replacements compared to the life of a comparable entirely new affected facility;

(c) The extent to which the components being replaced cause or contribute to the emissions from the affected facility; and

(d) Economic or technical limitations on compliance with applicable standards of performance which are inherent in the proposed replacements.

(45) [~~(42)~~] "Reference method" means a method of sampling and analyzing for an air pollutant as prescribed by Appendices A through K to 40 CFR 50, Appendices A and B to 40 CFR 60, and Appendix B to 40 CFR 61. This term may be more narrowly defined within a specific regulation or chapter.

(46) [~~(43)~~] "Run" means the net period of time during which an emission sample is collected. Unless otherwise specified, a run may be either intermittent or continuous within the limits of good engineering practice.

(47) [~~(44)~~] "Secondary emissions" means emissions which occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. Secondary emissions shall be specific, well defined, quantifiable, and shall impact the same general area as does the stationary source modification which causes the secondary emissions. Secondary emissions may include, but are not limited to emissions from an off-site support facility which would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include emissions which come directly from a mobile source, such as the emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

(48) "Serious nonattainment county" or "serious nonattainment area" means a county or portion of a county designated serious nonattainment in 401 KAR 51:010.

(49) "Severe nonattainment county" or "severe nonattainment area" means a county or portion of a county designated severe nonattainment in 401 KAR 51:010.

(50) [~~(45)~~] "Shutdown" means the cessation of an operation.

(51) [~~(46)~~] "Source" means one (1) or more affected facilities contained within a given contiguous property line. The property shall be considered contiguous if separated only by a public thoroughfare, stream, or other right of way.

(52) [~~(47)~~] "Stack or chimney" means a flue, conduit, or duct arranged to conduct emissions to the atmosphere.

(53) [~~(48)~~] "Standard" means an emission standard, a standard of performance, or an ambient air quality standard as promulgated under the regulations of the Division for Air Quality or the emission control requirements necessary to comply with Title 401, Chapter 51, of the regulations of the Division for Air Quality.

(54) [~~(49)~~] "Standard conditions:"

(a) For source measurements means twenty (20) degrees Celsius (sixty-eight (68)) degrees Fahrenheit) and a pressure of 760 mm Hg (29.92 in. of Hg);

(b) For the purpose of air quality determinations means twenty-five (25) degrees Celsius and a reference pressure of 760 mm Hg.

(55) [~~(50)~~] "Start-up" means the setting in operation of an affected facility.

(56) [~~(51)~~] "State implementation plan" means the most recently prepared plan or revision required by Section 110 of the Clean Air Act which has been approved by the U.S. EPA.

(57) [~~(52)~~] "Total suspended particulate" means particulate matter as measured by the method described in Appendix B of 40 CFR 50, which has been incorporated by reference in 401 KAR 50:015.

(58) [~~(53)~~] "Uncombined water" means water which can be separated from a compound by ordinary physical means and which is not bound to a compound by internal molecular forces.

(59) [~~(54)~~] "Urban county" means a county which is a part of an urbanized area with a population of greater than 200,000 based upon the 1980 census. If a portion of a county is a part of an urbanized area, then the entire county shall be classified as urban with respect to the regulations of the Division for Air Quality.

(60) [~~(55)~~] "Urbanized area" means an area defined as such by the U.S. Department of Commerce, Bureau of Census.

(61) [~~(56)~~] "Volatile organic compound" or "VOC" means an organic compound which participates in atmospheric photochemical reactions. This includes an organic compound other than the following compounds: methane; ethane; carbon monoxide; carbon dioxide; carbonic acid; metallic carbides; ammonium carbonates; methylene chloride; 1,1,1,-trichloroethane (methyl chloroform); trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12); chlorodifluoromethane (CFC-22); trifluoromethane (FC-23); trichlorotrifluoroethane (CFC-113); dichlorotetrafluoroethane (CFC-114); chloropentafluoroethane (CFC-115); dichlorotrifluoroethane (HCFC-123); tetrafluoroethane (HFC-134a); dichlorofluoroethane (HCFC-141b); chlorodifluoroethane (HCFC-142b); 2-chloro--1,1,1,2-tetrafluoroethane (HCFC-124); pentafluoroethane (HFC-125); 1,1,2,2-tetrafluoroethane (HFC-134); 1,1,1-trifluoroethane (HFC-143a); 1,1-difluoroethane (HFC-152a); and perfluorocarbon compounds which fall into these classes:

(a) Cyclic, branched, or linear, completely fluorinated alkanes;

(b) Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;

(c) Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and

(d) Sulfur containing perfluorocarbons with no unsatura-

tions and with sulfur bonds only to carbon and fluorine. These compounds have been determined to have negligible photochemical reactivity. For purposes of determining compliance with emission limits, VOCs shall be measured by test methods that have been approved by the cabinet. Approval by the cabinet shall not constitute or imply approval by the U.S. EPA. The cabinet will not approve a test method that has been disapproved for use by the U.S. EPA. If a method used also inadvertently measures compounds with negligible photochemical reactivity, an owner or operator may exclude these negligibly reactive compounds when determining compliance with an emissions standard.

Section 2. Abbreviations. The abbreviations used in the regulations of Title 401, Chapters 50 to 65, shall have the following meanings:

AOAC - Association of Official Analytical Chemists
ANSI - American National Standards Institute
ASTM - American Society for Testing and Materials
BOD - Biochemical oxidant demand
BTU - British Thermal Unit
°C - Degree Celsius (centigrade)
Cal - calorie
cfm - Cubic feet per minute
CFR - Code of Federal Regulations
CH_4 - methane
CO - Carbon monoxide
CO_2 - Carbon dioxide
COD - Chemical oxidant demand
dscf - dry cubic feet at standard conditions
dscm - dry cubic meter at standard conditions
°F - Degree Fahrenheit
ft - feet
g - gram[~~(s)~~]
gal - gallon[~~(s)~~]
gr - grain[~~(s)~~]
hr - hour[~~(s)~~]
HCl - Hydrochloric acid
Hg - mercury
HF - Hydrogen fluoride
H_2O - water
H_2S - Hydrogen sulfide
H_2SO_4 - Sulfuric acid
in - inch[~~(es)~~]
J - joule
KAR - Kentucky Administrative Regulations
kg - kilogram[~~(s)~~]
KRS - Kentucky Revised Statutes
l - liter[~~(s)~~]
lb - pound[~~(s)~~]
m - meter[~~(s)~~]
m^3 - cubic meter
min - minute[~~(s)~~]
mg - milligram[~~(s)~~]
MJ - megajoules
MM - million
mm - millimeter[~~(s)~~]
mo - month
Ng - nanograms
N_2 - Nitrogen
NO - Nitric oxide
NO_2 - Nitrogen dioxide
NO_x - Nitrogen oxides
oz - ounce
O_2 - oxygen
O_3 - ozone
ppb - parts per billion
ppm - parts per million
ppm (w/w) - parts per million (weight by weight)
ug - microgram
psia - pounds per square inch absolute
psig - pounds per square inch gage
S - at standard conditions
sec - second
SIP - State implementation plan
SO_2 - Sulfur dioxide
sq - square
TAPPI - Technical Association of the Pulp and Paper Industry
TSP - Total suspended particulates
TSS - Total suspended solids
U.S. EPA - United States Environmental Protection Agency
UTM - Universal Transverse Mercator
VOC - Volatile organic compound
yd - yard.

Section 3. 401 KAR 50:047 Definitions. As used in 401 KAR 50:047, unless the content clearly indicates otherwise, the following terms shall have the following meanings:

(1) "Capture" means the containment or recovery of emissions from a process for direction into a duct which may be exhausted through a stack or sent to a control device.

(2) "Capture system" means all equipment (including, but not limited to, hoods, ducts, fans, booths, ovens, dryers, etc.) that contains, collects, and transports an air pollutant to a control device.

(3) "Capture efficiency" means the weight per unit time of volatile organic compounds (VOCs) entering a capture system and delivered to a control device divided by the weight per unit time of total VOCs generated by a source of VOCs, expressed as a percentage.

(4) "Control device" means equipment such as an incinerator or carbon adsorber used to reduce, by destruction or removal, the amount of air pollutants in an air stream prior to discharge to the ambient air.

(5) "Control system" means a combination of one (1) or more capture systems and control devices working in concert to reduce discharges of pollutants to the ambient air.

(6) "Destruction or removal efficiency" means the efficiency, expressed as a decimal fraction, of a control device in destroying or removing contaminants. It is calculated as one (1) minus the quotient of the amount of VOCs exiting the control device divided by the amount of VOCs entering the control device, i.e., 1-((VOC exiting)/(VOC entering)).

(7) "Gas-gas method" means either of two (2) methods for determining capture of emissions which rely on only gas phase measurements. One (1) method requires construction of a total temporary enclosure to assure all would-be fugitive emissions are measured; the other method uses the room or building which houses the emission source as an enclosure.

(8) "Hood" means a partial enclosure or canopy for capturing and exhausting, by means of a draft, the organic vapors or other fumes rising from a coating process or other source.

(9) "Liquid-gas method" means either of two (2) methods for determining capture of emissions which require both gas phase and liquid phase measurements and analysis. One (1) liquid-gas method requires construction of a temporary enclosure; the other uses the building or room which houses the facility as an enclosure.

(10) "Overall emission reduction efficiency" means the weight per unit time of VOC removed by a control device divided by the weight per unit time of VOC emitted by an emission source, expressed as a percentage. With the efficiencies expressed as decimal fractions, the overall emission reduction efficiency is the product of the capture efficiency and the control equipment destruction or removal efficiency.

(11) "PTE" means a permanent total enclosure which contains a process that emits VOC and meets the specifications given in Procedure T.

(12) "TTE" means a temporary total enclosure which is built around a process that emits VOC and meets the specifications given in Procedure T.

(13) "BE" means a building or room enclosure that

contains a process that emits VOC. If a BE is to serve as a PTE or TTE, the appropriate requirements given in Procedure T shall be met.

(14) "Procedure F.1" means Procedure F.1 in "VOM Measurement Techniques for Capture Efficiency", which has been incorporated by reference in Section 5 of this regulation.

(15) "Procedure F.2" means Procedure F.2 in "VOM Measurement Techniques for Capture Efficiency", which has been incorporated by reference in Section 5 of this regulation.

(16) "Procedure G.2" means Procedure G.2 in "VOM Measurement Techniques for Capture Efficiency", which has been incorporated by reference in Section 5 of this regulation.

(17) "Procedure L" means Procedure L in "VOM Measurement Techniques for Capture Efficiency", which has been incorporated by reference in Section 5 of this regulation.

(18) "Procedure T" means Procedure T in "VOM Measurement Techniques for Capture Efficiency", which has been incorporated by reference in Section 5 of this regulation.

PHILLIP J. SHEPHERD, Secretary
RONALD P. MILLS, Acting Commissioner
APPROVED BY AGENCY: January 7, 1992
FILED WITH LRC: January 15, 1992 at noon

PUBLIC HEARING: A public hearing to receive comments on this proposed regulation and proposed amendments will be conducted on February 28, 1992, at 10 a.m. (ET) in the Auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact in writing, at least five days prior to the hearing: Kenneth M. Hines, Manager, Program Planning and Administration Branch, Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Hisham M. Saaid

(1) Type and number of entities affected: Effects of amendments made to 401 KAR 50:010, a regulation defining terms used in the regulations of the Division for Air Quality, will depend upon the use of the amended terms within a specific regulation. This regulation imposes no separate requirements. Therefore, effects are described in the RIA for the affected regulations.

(a) Direct and indirect costs or savings to those affected: There will be no additional costs or savings due to these amendments.

1. First year: There are no direct or indirect costs or savings in the first year.

2. Continuing costs or savings: There are no continuing costs or savings.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There are no reporting and paperwork requirements.

(2) Effects on the promulgating administrative body: There are none due to the amendments to this regulation. Any impact is due to the changes in the individual regulations.

(a) Direct and indirect costs or savings:

1. First year: There are no direct or indirect costs or savings in the first year.

2. Continuing costs or savings: There are no continuing costs or savings.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There are no reporting and paperwork requirements.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because these changes were required to eliminate deviations with U.S. EPA policy and to comply with the requirements of KRS Chapter 13A.

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

(a) Necessity of proposed regulation if in conflict: There is no conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no conflict.

(6) Any additional information or comments: This regulation provides the definitions and abbreviations by which all terms in the regulations of the Division for Air Quality are to be understood. It is being amended to update the definition of volatile organic compounds (VOCs) and add 5 classifications of nonattainment of national ambient air quality standards. The definition for VOC is being amended because the U.S. EPA, in the Federal Register of March 18, 1991 (56 FR 11390), has determined that additional organic compounds have negligible photochemical reactivity. In addition, the 5 classifications of nonattainment are being added to comply with the federal Clean Air Act as amended in 1990. The VOC definition is part of the changes being made to correct deviations from current U.S. EPA policy in Kentucky's State Implementation Plan (SIP) for ozone. All sources in Kentucky which emit VOCs will now use these definitions unless other definitions are specifically included in the individual chapter definition regulations or in the applicable regulation. Any impact from these amendments will be due to changes in specific regulations which use these terms. In addition to the amendments which address VOC SIP deviations, changes have also been made to this regulation to begin to address the requirements of KRS Chapter 13A which prohibit regulatory agencies from adopting a general definition regulation to define all the terms used in its administrative regulations. In response to the KRS Chapter 13A requirements, the division will promulgate definition regulations for all the chapters of the division's regulations. The division is currently proposing definition regulations for 401 KAR Chapters 51, 59, 61, and 63. Until a definition regulation is promulgated for each of the remaining chapters, 401 KAR 50:010 will continue to apply overall.

TIERING: Was tiering applied? No. Tiering is not applicable in these amendments since this regulation provides only the definitions and abbreviations for terms which are used in the other regulations for the Division for Air Quality.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Federal Register, March 18, 1991 (56 FR 11390), and Clean Air Act as amended November 15, 1990.

2. State compliance standards. 401 KAR 50:010, Section 1(21), (30), (31), (48), (49), and (61).

3. Minimum or uniform standards contained in the federal mandate. The U.S. EPA has determined that additional organic compounds have negligible photochemical reactivity. The proposed amendment to 401 KAR 50:010 excludes these compounds from the definition of VOCs. In addition, the Clean Air Act as amended November 15, 1990, requires that ambient air quality nonattainment areas be classified under one of five categories.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. The proposed regulation is being amended to eliminate deviations from U.S. EPA policy.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The proposed amendment does not impose stricter standards, or additional or different responsibilities or requirements.

ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(Proposed Amendment)

401 KAR 50:012. General application.

RELATES TO: KRS Chapter 224
STATUTORY AUTHORITY: KRS 224.10-100 [~~224.033~~]
NECESSITY AND FUNCTION: KRS 224.10-100 [~~224.033~~] requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides guidelines by which all regulations of Title 401, Chapters 50 to 65, are to be understood.

Section 1. General Application of Regulations and Standards. Regulations of the cabinet shall be construed and applied according to subsections (1) through (4) of this section, [~~in light of the considerations set forth hereinafter~~] which shall guide the cabinet in the issuance, modification, and revocation of permits.

(1) In the absence of a [~~any~~] standard specified in these regulations, all air contaminant sources shall as a minimum apply [~~such~~] control procedures that [~~as~~] are reasonable, available, and practical.

(2) Nothing in these regulations is intended to permit a [~~any~~] practice which is in violation of a [~~any~~] statute, ordinance, or regulation.

(3) These regulations shall be [~~construed as~~] complementary to each other, and to [~~such~~] other regulations [~~as have been~~] adopted [~~or shall be adopted~~] by the cabinet. If a [~~any~~] provision of these regulations or the application thereof to a [~~any~~] person or circumstance is held to be invalid, the [~~such~~] invalidity shall not affect other provisions or application of another [~~any other~~] part of these regulations and to this end each provision of these regulations and the various applications thereof are declared to be severable.

(4) Except as provided by 401 KAR 50:055, nothing in these regulations shall allow a source to remove control equipment or discontinue procedures previously required in a nonattainment area to achieve the national ambient air quality standards until a state implementation plan containing different requirements has been approved by the U.S. EPA.

PHILLIP J. SHEPHERD, Secretary
RONALD P. MILLS, Acting Commissioner
APPROVED BY AGENCY: January 7, 1992
FILED WITH LRC: January 15, 1992 at noon
PUBLIC HEARING: A public hearing to receive comments on this proposed regulation and proposed amendments will be conducted on February 28, 1992, at 10 a.m. (ET) in the Auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing: Kenneth M. Hines, Manager, Program Planning and Administration Branch, Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Hisham M. Saaid

(1) Type and number of entities affected: This amendment applies to all sources ever subject to regulation in a nonattainment area in order to achieve the National Ambient Air Quality Standards (NAAQS). This amendment assures that the control equipment and procedures required to achieve the NAAQS will not be discontinued once an area becomes attainment. These reductions were used to achieve attainment and must be continued to maintain the NAAQS. This amendment formalizes a division practice and U.S. EPA requirement.

(a) Direct and indirect costs or savings to those affected:

1. First year: This amendment does not impose first year costs or savings.

2. Continuing costs or savings: This amendment requires a source to continue control equipment and procedures used to achieve the NAAQS; therefore, this amendment sustains continuing costs or savings.

3. Additional factors increasing or decreasing costs (note any effects upon competition): This amendment applies to sources located in an area ever designated nonattainment. A source in an area never designated nonattainment could have a competitive advantage.

(b) Reporting and paperwork requirements: Any reporting and paperwork requirements required of this source would continue to be required by this amendment.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There are no first year costs or savings imposed by this amendment.

2. Continuing costs or savings: The division presently inspects all permitted sources of air pollutants and maintains plant and emissions data for emissions inventory purposes. Such activities are part of the division's normal day-to-day operations and are budgeted accordingly. Sources will continue to be inspected and the cost will be absorbed as a part of the operating budget.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The division will continue to issue reports of inspections and emissions data as in 1. and 2. above.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered since this amendment is a U.S. EPA requirement.

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

(a) Necessity of proposed regulation if in conflict: There is no conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no conflict.

(6) Any additional information or comments: There is no additional information or comment.

TIERING: Was tiering applied? No. Tiering was not applied since this amendment is a U.S. EPA requirement.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. This amendment is being made to maintain Kentucky's State Implementation Plan under the Clean Air Act as amended November 15, 1990.

2. State compliance standards. This amendment formulizes a division practice and U.S. EPA requirement by ensuring that sources required to control emissions to achieve air quality standards must continue to control those emissions to maintain those standards.

3. Minimum or uniform standards contained in the federal mandate. The Clean Air Act requires that the national ambient air quality standards continue to be maintained.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This proposed amendment will not impose stricter requirements, or additional or different responsibilities or requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The proposed amendment does not impose stricter standards, or additional or different responsibilities or requirements.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(Proposed Amendment)

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

RELATES TO: 40 CFR 51 Subpart I, Appendix S, Section IV, 51.166, 52.21, 60, 61, 81.318, 81 Subpart D, Clean Air Act (42 USC 7401 et seq.), National Environmental Policy Act (42 USC 4321) [~~KRS 224.320, 224.330, 224.340~~]

STATUTORY AUTHORITY: KRS 224.10-100, 40 CFR 51.166, 52.21, Clean Air Act (42 USC 7401 et seq.) [~~224.033~~]

NECESSITY AND FUNCTION: KRS 224.10-100 [~~224.033~~] requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement and control of air pollution. This regulation provides for the prevention of significant deterioration of ambient air quality.

~~[Section 1. Applicability. The provisions of this regulation are applicable to any major stationary source or any major modification which:]~~

~~[(1) Commenced construction after September 22, 1982;]~~

~~[(2) Emits any pollutant regulated by the Clean Air Act; and]~~

~~[(3) Is constructed in areas designated as attainment or unclassifiable for any pollutant as defined pursuant to Section 107(d)(1)(D) or (E) of the Clean Air Act. Area designations are contained in 40 CFR 81.318.]~~

Section 1. [~~2.~~] Definitions. [~~As used in this regulation~~] Terms not defined in this section [~~herein~~] shall have the meaning given them in 401 KAR 50:010.

(1)(a) "Major stationary source" means:

1. [~~(a)~~] Any of the following stationary sources of air pollutants which emits, or has the potential to emit, 100 tons per year or more of a [~~any~~] pollutant subject to regulation under the Clean Air Act (42 USC 7401 et seq.): fossil fuel-fired steam electric plants of more than 250 million BTU per hour heat input, coal cleaning plants (with thermal dryers), kraft pulp mills, portland cement plants, primary zinc smelters, iron and steel mill plants, primary aluminum ore reduction plants, primary copper smelters, municipal incinerators capable of charging more than 250 tons of refuse per day, hydrofluoric, sulfuric, and nitric acid plants, petroleum refineries, lime plants, phosphate rock processing plants, coke oven batteries, sulfur recovery plants, carbon black plants (furnace process), primary lead smelters, fuel conversion plants, sintering plants, secondary metal production plants, chemical process plants, fossil fuel boilers (or combination of fossil fuel boilers [~~thereof~~]) totaling more than 250 million BTU per hour heat input, petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels, taconite ore processing plants, glass fiber processing plants, and charcoal production plants;

2. [~~(b)~~] Notwithstanding the stationary source size specified in subparagraph 1 of this paragraph, a [~~(a) of this subsection, any~~] stationary source which emits, or has the potential to emit, 250 tons per year or more of an [~~any~~] air pollutant subject to regulation under the Clean Air Act (42 USC 7401 et seq.); or [~~; and~~]

3. [~~(c)~~] Any physical change that would occur at a stationary source not otherwise qualifying under this subsection as a major stationary source, if the changes would constitute a major stationary source by themselves.

(b) [~~(d)~~] A major stationary source that is major for volatile organic compounds shall be considered major for ozone.

(c) For the purposes of this regulation, the fugitive emissions of a stationary source shall not be included in determining if it is a major stationary source, unless the source belongs to one (1) of the following categories of stationary sources:

1. Coal cleaning plants (with thermal dryers);
2. Kraft pulp mills;
3. Portland cement plants;
4. Primary zinc smelters;
5. Iron and steel mills;
6. Primary aluminum ore reduction plants;
7. Primary copper smelters;
8. Municipal incinerators capable of charging more than 250 tons of refuse per day;
9. Hydrofluoric, sulfuric, or nitric acid plants;
10. Petroleum refineries;
11. Lime plants;
12. Phosphate rock processing plants;
13. Coke oven batteries;
14. Sulfur recovery plants;
15. Carbon black plants (furnace process);
16. Primary lead smelters;
17. Fuel conversion plants;
18. Sintering plants;
19. Secondary metal production plants;
20. Chemical process plants;
21. Fossil-fuel boilers (or combination of fossil-fuel boilers) totaling more than 250 million BTUs per hour heat input;
22. Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
23. Taconite ore processing plants;
24. Glass fiber processing plants;
25. Charcoal production plants;
26. Fossil fuel-fired steam electric plants of more than 250 million BTUs per hour heat input; and
27. Any stationary source category which, as of August 7, 1980, is being regulated under 401 KAR Chapters 57 and 59; 40 CFR Parts 60 and 61; or Section 111 or 112 of the Clean Air Act (42 USC 7401 et seq.).

(2) "Major modification" means a [~~any~~] physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the Clean Air Act (42 USC 7401 et seq.).

(a) A [~~Any~~] net emissions increase that is significant for volatile organic compounds shall be significant for ozone.

(b) A physical change or change in the method of operation shall not include:

1. Routine maintenance, repair and replacement;
2. Use of alternative fuel or raw material by reason of an order or by reason of a natural gas curtailment plan in effect under a federal act;
3. Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;
4. Use of an alternative fuel or raw material by a stationary source which:
   a. The source was capable of accommodating before January 6, 1975, unless the [~~such~~] change would be prohibited under a [~~any~~] permit condition which was established after January 6, 1975; or
   b. The source is approved to use under a [~~any~~] permit issued under this regulation or under 40 CFR 52.21;
5. An increase in the hours of operation or in the production rate, unless the [~~such~~] change would be prohibited after January 6, 1975 pursuant to 40 CFR 52.21; after June 6, 1979, pursuant to 401 KAR 51:015; after September 22, 1982, pursuant to this regulation; or under 401 KAR 50:035 and 401 KAR 51:016E; or
6. A [~~Any~~] change in ownership at a stationary source.

(3) "Net emission increase" means the amount by which the sum of paragraphs (a) and (b) of this subsection exceeds zero:

(a) An [~~Any~~] increase in actual emissions from a particular physical change or change in method of operation at a stationary source; and

(b) [~~Any~~] Other increases and decreases in actual

emissions at the source that are contemporaneous with the particular change and are otherwise creditable.

(c) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between the date which is ten (10) years before construction on the particular change commences, but not before January 6, 1975, and the date that the increase from the particular change occurs.

(d) An increase or decrease in actual emissions is creditable only if the cabinet or the U.S. EPA has not relied on it in issuing a permit for the source under this regulation or 40 CFR 52.21, if the [which] permit is in effect when the increase in actual emissions from the particular change occurs.

(e) An increase or decrease in actual emissions of sulfur dioxide, [or] particulate matter, or nitrogen oxides which occurs before the applicable minor source baseline date is creditable only if it shall [is required to] be considered in calculating the amount of maximum allowable increases remaining available.

(f) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(g) A decrease in actual emissions is creditable only to the extent that:

1. The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

2. It is state and federally enforceable from [at and after] the time that actual construction on the particular change begins; and

3. It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

(h) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. A [Any] replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

(4) "Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical or operational design. A [Any] physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is state and federally enforceable. Secondary emissions shall [do] not count in determining the potential to emit of a stationary source.

(5) "Stationary source" means a [any] building, structure, facility, or installation which emits or may emit an [any] air pollutant subject to regulation under the Clean Air Act (42 USC 7401 et seq.).

(6) "Building, structure, facility, or installation" means all of the pollutant emitting activities which belong to the same industrial grouping, are located on one (1) or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of a [any] vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same major group (i.e., which have the same two (2) digit code) as described in the Standard Industrial Classification Manual, 1987, which has been incorporated by reference in Section 21 of this regulation [1972, as amended by the 1977 supplement].

(7) "Emission unit" means a [any] part of a stationary source which emits or would have the potential to emit a [any] pollutant subject to regulation under the Clean Air Act (42 USC 7401 et seq.).

(8) "Construction" means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) which would result in a change in actual emissions.

(9) "Commence" as applied to construction of a major stationary source or major modification means that the owner or operator has all necessary preconstruction approvals or permits and either has:

(a) Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

(b) Entered into agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

(10) "Necessary preconstruction approvals or permits" means those permits or approvals required under the regulations of 401 KAR Chapters 50 to 63 and federal air quality control laws and regulations.

(11) "Begin actual construction" means[, in general,] initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Those [Such] activities include, but are not limited to, installation of building supports and foundations, laying underground pipework, and construction of permanent storage structures. With respect to a change in method of operations, this term refers to those on-site activities other than the preparatory activities which mark the initiation of the change.

(12) "Best available control technology" means an emissions limitation (including a visible emission standard) based on the maximum degree of reduction for each pollutant subject to regulation under the Clean Air Act (42 USC 7401 et seq.) which would be emitted from a [any] proposed major stationary source or major modification which the cabinet, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for that [such] source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of that [such] pollutant. [In no event shall] Application of best available control technology shall not result in emissions of a [any] pollutant which would exceed the emissions allowed by an [any] applicable standard under 401 KAR Chapters 57 and 59 or 40 CFR Parts 60 and 61. If the secretary determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, or operational standard, or combination of design, equipment, work practice, or operational standard [thereof] may be prescribed instead to satisfy the requirement for the application of best available control technology. That [Such] standard shall, to the degree possible, established [set forth] the emissions reduction achievable by implementation of the [such] design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results.

(13) "Baseline concentration" means that ambient concentration level which exists in the baseline area when [at the time of] the applicable minor source baseline date is established. A minor source baseline concentration is determined for each pollutant for which a baseline date is established and shall include:

(a) The actual emissions representative of sources in existence on the applicable minor source baseline date, except as provided in paragraph (c) of this subsection; and

(b) The allowable emissions of major stationary sources which commenced construction before the major source baseline date [January 6, 1975,] but were not in operation by the applicable minor source baseline date.

(c) The following shall [will] not be included in the baseline concentration and shall [will] affect the applicable [maximum] allowable increase[(s)]:

1. Actual emissions from a [any] major stationary source on which construction commenced after the major source

baseline date [~~January 6, 1975~~]; and

2. Actual emissions increases and decreases at a [~~any~~] stationary source occurring after the minor source baseline date.

(14)(a) "Major source baseline date" means:

1. For particulate matter and sulfur dioxide, January 6, 1975; and

2. For nitrogen dioxide, February 8, 1988.

(b) "Minor source baseline date" means the earliest date after the trigger date on which a major stationary source or a major modification subject to 40 CFR 52.21 or to regulations approved pursuant to 40 CFR 51.166 submits a complete application under the relevant regulations. The trigger date shall be:

1. For particulate matter and sulfur dioxide, August 7, 1977; and

2. For nitrogen dioxide, February 8, 1988.

(c) [~~(14) "Baseline date" means the earliest date after August 7, 1977, on which the first complete application is submitted by a major stationary source or major modification subject to the requirements of federal or state prevention of significant deterioration regulations.~~] The baseline date is established for each pollutant for which increments or other equivalent measures have been established if:

1. [~~(a)~~] The area in which the proposed source or modification would construct is designated as attainment or unclassifiable pursuant to Section 107(d)(1)(D) or (E) of the Clean Air Act (42 USC 7401 et seq.) for the pollutant on the date of its complete application; and

2. For [~~(b) In the case of~~] a major stationary source, the pollutant would be emitted in significant amounts, or, for [~~in the case of~~] a major modification, there would be a significant net emissions increase of the pollutant.

(15) "Baseline area" means an intrastate [~~any~~] area (and every part of that area [~~thereof~~]) designated as attainment or unclassifiable pursuant to Section 107(d)(1)(D) or (E) of the Clean Air Ac (42 USC 7401 et seq.) in which the major source or major modification establishing the minor source baseline date would construct or would have an air quality impact equal to or greater than one (1) ug/m^3 (annual average) of the pollutant for which the minor source baseline date is established. Area redesignations under Section 107(d)(1)(D)or (E) of the Clean Air Act (42 USC 7401 et seq.) cannot intersect or be smaller than the area of impact of a [~~any~~] major stationary source or major modification which:

(a) Establishes a minor source baseline date; or

(b) Is subject to this regulation and would be constructed in the Commonwealth of Kentucky.

(16) "Allowable emissions" means the emissions rate of a stationary source which is calculated using the maximum rated capacity of the source (unless the source is subject to state and federally enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

(a) The applicable standards [~~as set forth~~[in 401 KAR Chapters 57 and 59, or 40 CFR 60 and 61;

(b) The applicable state and federally approved regulatory emissions limitation, including those with a future compliance date; or

(c) The emissions rate specified as a state and federally enforceable permit condition, including those with a future compliance date.

(17) "Federally enforceable" means all limitations and conditions which are enforceable by the U.S. EPA, including those requirements developed pursuant to 40 CFR 60 and 61, requirements within any applicable state implementation plan and any permit requirement established pursuant to 40 CFR 52.21, or under regulations approved pursuant to 40 CFR Part 51, Subpart I, including operating permits issued under an EPA-approved program incorporated into the state implementation plan, which expressly requires adherence to a permit issued under the program. [~~40 CFR 51.18 or 40 CFR 51.24.~~]

(18) "Secondary emissions" means emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of this regulation, secondary emissions shall be specific, well defined, quantifiable, and impact the same general area as the stationary source or modification which causes the secondary emissions. Secondary emissions include emissions from an [~~any~~] off-site support facility which would not [~~otherwise~~] be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions shall [~~do~~] not include [~~any~~] emissions which come [~~directly~~] from a mobile source, (e.g., [~~such as~~] the emissions from the tailpipe of a motor vehicle, from a train, or from a vessel).

(19) "Innovative control technology" means a [~~any~~] system of air pollution control that has not been adequately demonstrated in practice, but would have a substantial likelihood of achieving greater continuous emissions reduction than a [~~any~~] control system in current practice or of achieving at least comparable reductions at lower cost in terms of energy, economics, or nonair quality environmental impacts.

(20) "Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

(21)(a) "Actual emissions" means the actual rate of emissions of a pollutant from an emissions unit, as determined in accordance with paragraphs (b) to (d) of this subsection.

(b) [~~In general,~~] Actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during the [a] two (2) year period which precedes the particular date and [~~which~~] is representative of normal source operation. The cabinet may [~~shall~~] allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(c) The cabinet may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(d) For an [~~any~~] emissions unit which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

(22) "Complete" means, in reference to an application for a permit, that the application contains [~~all of~~] the information necessary for processing the application.

(23) "Significant" means:

(a) In reference to a net emissions increase or the potential of a source to emit a pollutant listed in Section 22 of this regulation [~~any of the following pollutants~~], a rate of emissions that would equal or exceed a rate [~~any of the rates~~] given in Section 22 [~~Appendix A~~] of this regulation.

(b) In reference to a net emissions increase or the potential of a source to emit a pollutant subject to regulation under the Clean Air Act (42 USC 7401 et seq.), that is not listed in Section 22 of [~~Appendix A to~~] this regulation, any emissions rate.

(c) Notwithstanding paragraph (b) of this subsection and Section 22 of [~~Appendix A to~~] this regulation, "significant" means an [~~any~~] emissions rate or [~~any~~] net emissions increase associated with a major stationary source or major modification which is to be constructed [~~would construct~~] within ten (10) kilometers of a Class I area and have an impact on that [~~such~~] area equal to or greater than one (1) ug/m^3 (twenty-four (24) hour average).

(24) "Federal land manager" means, with respect to [~~any~~] lands in the United States, the secretary of the department with authority over those [~~such~~] lands.

(25) "High terrain" means an [~~any~~] area having an elevation of 900 feet or more above the base of the stack of a source.

(26) "Low terrain" means an [any] area other than high terrain.

(27) "Adverse impact on visibility" means visibility impairment which interferes with the management, protection, preservation or enjoyment of the visitor's visual experience of the Class I area. This determination shall be made on a case-by-case basis and shall consider [taking into account] the geographic extent, intensity, duration, frequency and time of visibility impairment, and how these factors correlate with the times of visitor use of the Class I area, and the frequency and timing of natural conditions that reduce visibility.

[(28) "State implementation plan" means the most recently prepared plan or revision thereof required by Section 110 of the Clean Air Act which has been approved by the U.S. EPA.]

(28) [(29)] "Mandatory Class I federal area" means an [any area identified in 40 CFR 81, Subpart D, where the administrator of the U.S. EPA, in consultation with the Secretary of the United States Department of Interior, has determined visibility to be an important value.

(29) [(30)] "Natural conditions" means those naturally occurring phenomena that reduce visibility as measured in terms of visual range, contrast, or coloration.

(30) [(31)] "Visibility impairment" means a [any] humanly perceptible change in visibility (visual range, contrast, coloration) from that which would have existed under natural conditions.

Section 2. Applicability. This regulation shall apply to a major stationary source or a major modification which:

(1) Commenced construction after September 22, 1982;

(2) Emits a pollutant regulated by the Clean Air Act (42 USC 7401 et seq.); and

(3) Is constructed in an area designated as attainment or unclassifiable for a pollutant as defined pursuant to Section 107(d)(1)(D) or (E) of the Clean Air Act (42 USC 7401 et seq.). Area designations are contained in 40 CFR 81.318.

Section 3. Ambient Air Increments. In areas designated as Class I or II, increases in pollutant concentration over the baseline concentration shall be limited to the levels specified in Section 23 [Appendix B] of this regulation. For a [any] period other than an annual period, the applicable maximum allowable increase may be exceeded during one (1) such period per year at any one (1) location.

Section 4. Ambient Air Ceilings. No concentration of a pollutant specified in Section 2 [1] of this regulation shall exceed:

(1) The concentration permitted under the national secondary ambient air quality standard; or

(2) The concentration permitted under the national primary ambient air quality standard, whichever concentration is lower for the pollutant for a period of exposure.

Section 5. Area Classifications. (1) The following areas which were in existence on August 7, 1977, shall be Class I areas and shall [may] not be redesignated:

(a) International parks;

(b) National wilderness areas and national memorial parks which exceed 5,000 acres in size; and

(c) National parks which exceed 6,000 acres in size.

(2) Any other area, unless otherwise specified in the legislation creating the [such an] area, is designated Class II but may be redesignated as provided in 40 CFR 51.166(g) [51.24(g)].

(3) The visibility protection requirements [provisions] of this regulation [relating to visibility protection] shall apply only to sources which may impact a mandatory Class I federal area.

(4) The following areas may be redesignated only as Class I or II:

(a) An area which as of August 7, 1977, exceeded 10,000 acres in size and was a national monument, a national primitive area, a national preserve, a national recreational area, a national wild and scenic river, a national wildlife refuge, a national lakeshore or seashore; and

(b) A national park or national wilderness area established after August 7, 1977, which exceeds 10,000 acres in size.

Section 6. Exclusions from Increment Consumption. (1) The cabinet may, after notice and opportunity for at least one (1) public hearing to be held in accordance with procedures established in 401 KAR 50:035, exclude the following concentrations in determining compliance with a maximum allowable increase:

(a) Concentrations attributable to the increase in emissions from stationary sources which have been converted from the use of petroleum products, natural gas, or both by reason of an order in effect under a federal statute or regulation over the emissions from the [such] sources before the effective date of the [such an] order;

(b) Concentrations attributable to the increase in emissions from sources which have converted from using natural gas by reason of a natural gas curtailment plan in effect pursuant to the federal statute over the emissions from those [such] sources before the effective date of the [such] plan;

(c) Concentrations of particulate matter attributable to the increase in emissions from construction or other temporary emission-related activities of new or modified sources; and

(d) Concentrations attributable to the temporary increase in emissions of sulfur dioxide, [or] particulate matter, or nitrogen oxides from stationary sources which are affected by plan revisions approved by the Administrator of the U.S. EPA as meeting the criteria specified in subsection (4) of this section.

(2) No exclusion of [such] concentrations shall apply more than five (5) years after the effective date of the order to which subsection (1)(a) of this section refers or the plan to which subsection (1)(b) of this section refers, whichever is applicable. If both an [such] order and plan are applicable, no [such] exclusion shall apply more than five (5) years after the later of the two (2) [such] effective dates.

(3) No exclusion under this section shall occur after May 7, 1981, unless a State Implementation Plan revision meeting the requirements of 40 CFR 51.166 [51.24] has been approved by the U.S. EPA.

(4) For purposes of excluding concentrations pursuant to subsection (1)(d) of this section, the plan revision referred to in subsection (3) of this section shall specify the following provisions:

(a) The time over which the temporary emission increase of sulfur dioxide, [or] particulate matter, or nitrogen oxides would occur. The [Such] time period shall not exceed two (2) years in duration unless a longer time is approved by the U.S. EPA;

(b) [That] The time period for excluding certain contributions in accordance with paragraph (a) of this subsection is not renewable;

(c) [That] No emissions increase will occur from a stationary source which would:

1. Impact a Class I area or an area where an applicable increment is known to be violated; or

2. Cause or contribute to the violation of a national ambient air quality standard; and

(d) Limitations shall [will] be in effect at the end of the time period established in [specified in accordance with] paragraph (a) of this subsection which [would] ensure that the emissions levels from stationary sources affected by the plan revision will [would] not exceed those levels occurring from those [such] sources before the plan revision was approved.

Section 7. Stack Heights. (1) The degree of emission limitation required for control of an [any] air pollutant under this regulation shall not be affected [in any manner] by:

(a) So much of the stack height of a [any] source as exceeds good engineering practice; or

(b) Another [~~Any other~~] dispersion technique.

(2) Subsection (1) of this section shall not apply [~~with respect~~] to stack heights in existence before December 31, 1970, or to dispersion techniques implemented before then.

Section 8. Review of Major Stationary Sources and Major Modifications; Source Applicability and Exemptions. (1) No major stationary source or major modifications to which [~~the requirements of~~] Sections 9 to 17 of this regulation apply shall begin actual construction without a permit which states that the stationary source or modification will comply with Sections 9 to 17 of this regulation [~~would meet those requirements~~].

(2) [~~The requirements of~~] Sections 9 to 17 of this regulation shall apply to a [~~any~~] major stationary source and [any] major modification for [~~with respect to~~] each pollutant that it would emit which is subject to regulation under the Clean Air Act (42 USC 7401 et seq.) [~~that it would emit~~], except as required [~~otherwise provided~~] in Section 2 [~~1~~] of this regulation.

(3) [~~The requirements of~~] Sections 9 to 17 of this regulation shall apply only to a [~~any~~] major stationary source or major modification that will [~~would~~] be constructed in an area designated as attainment or unclassifiable pursuant to Section 107(d)(1)(D) or (E) of the Clean Air Act (42 USC 7401 et seq.).

(4) [~~The requirements of~~] Sections 9 to 17 of this regulation shall not apply to a particular major stationary source or major modification if:

(a) The owner or operator:

1. Obtained the necessary [~~a~~] federal, state, and [~~or~~] local preconstruction approval effective before September 22, 1982;

2. Commenced construction before September 22, 1982; and

3. Did not discontinue construction for a period of eighteen (18) months or more; or

(b) The source or modification would be a nonprofit health or nonprofit educational institution, or a major modification would occur at the [~~such an~~] institution, and the Governor of the Commonwealth of Kentucky requests that it be exempt from those requirements;

(c) The source or modification would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification and the source does not belong to any of the following categories:

1. Coal cleaning plants (with thermal dryers);
2. Kraft pulp mills;
3. Portland cement plants;
4. Primary zinc smelters;
5. Iron and steel mills;
6. Primary aluminum ore reduction plants;
7. Primary copper smelters;
8. Municipal incinerators capable of charging more than 250 tons of refuse per day;
9. Hydrofluoric, sulfuric, or nitric acid plants;
10. Petroleum refineries;
11. Lime plants;
12. Phosphate rock processing plants;
13. Coke oven batteries;
14. Sulfur recovery plants;
15. Carbon black plants (furnace process);
16. Primary lead smelters;
17. Fuel conversion plants;
18. Sintering plants;
19. Secondary metal production plants;
20. Chemical process plants;
21. Fossil-fuel boilers (or combination of fossil-fuel boilers [~~thereof~~]) totaling more than 250 million BTUs per hour heat input;
22. Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
23. Taconite ore processing plants;
24. Glass fiber processing plants;
25. Charcoal production plants;
26. Fossil fuel-fired steam electric plants of more than 250 million BTUs per hour heat input; or
27. Another [~~Any other~~] stationary source category which, as of August 7, 1980, is being regulated under [~~Title~~] 401 KAR Chapters 57 and 59 or 40 CFR Parts 60 and 61; or

(d) The source is a portable stationary source which has previously received a permit under this regulation; and:

1. The owner or operator proposes to relocate the source and emissions of the source at the new location would be temporary;

2. The emissions from the source would not exceed its allowable emissions;

3. The emissions from the source would not impact a [~~no~~] Class I area or an [~~and no~~] area where an applicable increment is known to be violated; and

4. Reasonable notice is given to the cabinet prior to the relocation identifying the proposed new location and the probable duration of operation at the new location. [~~Such~~] Notice shall be given to the cabinet not less than ten (10) days in advance of the proposed relocation unless a different time duration is previously approved by the cabinet.

(e) The source or modification was not subject to this regulation with respect to particulate matter requirements [~~, as~~] in effect before July 31, 1987, and the owner or operator:

1. Obtained all final federal, state, and local preconstruction approvals or permits necessary under the applicable state implementation plan before July 31, 1987;

2. Commenced construction within eighteen (18) months after July 31, 1987; and

3. Did not discontinue construction for a period of eighteen (18) months or more and completed construction within a reasonable period of time.

(f) The source or modification was subject to this regulation with respect to particulate matter requirements, as in effect before July 31, 1987, and the owner or operator submitted an application for a permit under this regulation before that date, and the cabinet subsequently determined that the application as submitted was complete with respect to the particulate matter requirements then in effect in this regulation. If not [~~Instead~~], the requirements of Sections 9 to 17 of this regulation that were in effect before July 31, 1987, shall apply to the [~~such~~] source or modification.

(5) [~~The requirements of~~] Sections 9 to 17 of this regulation shall not apply to a major stationary source or major modification with respect to a particular pollutant if the owner or operator demonstrates that, for [~~relative to~~] that pollutant, the source or modification is located in an area designated as nonattainment pursuant to Section 107(d)(1)(A), (B), or (C) of the Clean Air Act (42 USC 7401 et seq.).

(6) [~~The requirements of~~] Sections 10, 12 and 14 of this regulation shall not apply to a major stationary source or major modification with respect to a particular pollutant, if the allowable emissions of that pollutant from the source, or the net emissions increase of that pollutant from the modifications:

(a) Will not impact a [~~Would impact no~~] Class I area or an [~~and no~~] area where an applicable increment is known to be violated; and

(b) Will [~~Would~~] be temporary.

(7) [~~The requirements of~~] Sections 10, 12 and 14 of this regulation as they apply to a [~~relate to any~~] maximum allowable increase for a Class II area shall not apply to a major modification at a stationary source that was in existence on March 1, 1978, if the net increase in allowable emissions of each pollutant subject to regulation under the Clean Air Act (42 USC 7401 et seq.), from the modification after the application of best available control technology will [~~would~~] be less than fifty (50) tons per year.

(8) The cabinet may exempt a stationary source or modification from the monitoring requirements of Section 12 of this regulation [~~with respect to monitoring~~] for a particular pollutant if:

(a) The emissions increase of the pollutant from the new

source or the net emissions increase of the pollutant from the modification will [would] cause[, in any area,] air quality impacts in an area which are less than the amounts given in Section 24 of [Appendix C to] this regulation; or

(b) The concentrations of the pollutant in the area that the source or modification would affect are less than the concentrations listed in Section 24 of [Appendix C to] this regulation, or the pollutant is not listed in Section 24 of [Appendix C to] this regulation.

(9)(a) At the discretion of the cabinet, the requirements for air quality monitoring of PM_{10} in Section 12 of this regulation may not apply to a particular source or modification if [when] the owner or operator of the source or modification submitted [submits] an application for a permit under this section on or before June 1, 1988, and the cabinet subsequently determines that the application as submitted before that date was complete, except for [with respect to] the requirements for monitoring particulate matter specified in Section 12 of this regulation.

(b) The requirements for air quality monitoring of PM_{10} in Section 12 of this regulation shall apply to a particular source or modification if the owner or operator of the source or modification submitted [submits] an application for a permit under 40 CFR 52.21 or this regulation [this section] after June 1, 1988, and no later than December 1, 1988. The data shall have been gathered over at least the period from February 1, 1988, to the date the application becomes [otherwise] complete in accordance with [the provisions set forth under] Section 12 of this regulation, unless [except that if] the cabinet determines that a complete and adequate analysis can be accomplished with monitoring data over a shorter period (not to be less than four (4) months), the data that Section 12 of this regulation requires shall have been gathered over that shorter period.

Section 9. Control Technology Review. (1) A major stationary source or major modification shall meet each applicable emissions limitation under [Title] 401 KAR Chapters 50 to 63, and each applicable emission standard and standard of performance under [pursuant to] 40 CFR 60 and 61.

(2) A new major stationary source shall apply best available control technology for each pollutant subject to regulation under the Clean Air Act (42 USC 7401 et seq.), that it will [would] have the potential to emit in significant amounts.

(3) A major modification shall apply best available control technology for each pollutant subject to regulation under Clean Air Act (42 USC 7401 et seq.), for which it will [would] result in a significant net emissions increase at the source. This requirement applies to each proposed emissions unit at which a net emissions increase in the pollutant will [would] occur as a result of a physical change or change in the method of operation of [in] the unit.

(4) For phased construction projects, the determination of best available control technology shall be reviewed and modified as appropriate at the latest reasonable time which occurs no later than eighteen (18) months prior to commencement of construction of each independent phase of the project. [At such time,] The owner or operator of the applicable stationary source may then be required to demonstrate the adequacy of a [any] previous determination of best available control technology for the source.

Section 10. Source Impact Analysis. The owner or operator of the proposed source or modification shall demonstrate that allowable emission increases from the proposed source or modification, in conjunction with all other applicable emissions increases or reductions (including secondary emissions), will [would] not cause or contribute to air pollution in violation of:

(1) A [Any] national ambient air quality standard in an [any] air quality control region; or

(2) An [Any] applicable maximum allowable increase over the baseline concentration in an [any] area.

Section 11. Air Quality Models. (1) [All] Estimates of ambient concentrations [required under this regulation] shall be based on the applicable air quality models, data bases, and other requirements specified in 401 KAR 50:040 [the "Guideline on Air Quality Models," filed by reference in 401 KAR 50:015].

(2) If the applicable [Where an] air quality impact model [specified in the "Guideline on Air Quality Models"] is inappropriate, the model may be modified or another model substituted. This [Such a] change shall [will] be subject to notice and opportunity for public comment under Section 16 [17] of this regulation. Written approval of the U.S. EPA shall [must] be obtained for a [any] modification or substitution. Methods similar to [like] those outlined in the "Workbook for the Comparison of Air Quality Models," specified in 401 KAR 50:040, Section 1(3), shall [filed by reference in 401 KAR 50:015, should] be used to determine the comparability of air quality models.

Section 12. Air Quality Analysis. (1) Preapplication analysis.

(a) An [Any] application for a permit under this regulation shall contain an analysis of ambient air quality in the area that the major stationary source or major modification will [would] affect for each of the following pollutants:

1. For a [the] source, each pollutant that it will [would] have the potential to emit in a significant amount as defined in Section 1 [2](23) of this regulation;

2. For a [the] modification, each pollutant for which it will [would] result in a significant net emissions increase.

(b) With respect to a [any such] pollutant for which no national ambient air quality standard exists, the analysis shall contain the [such] air quality monitoring data [as] the cabinet determines [are] necessary to assess ambient air quality for that pollutant in an [any] area that the emissions of that pollutant will [would] affect.

(c) For pollutants [With respect to any such pollutant] (other than nonmethane hydrocarbons) for which [such] a standard does exist, the analysis shall contain continuous air quality monitoring data gathered to determine if [for purposes of determining whether] emissions of that pollutant will [would] cause or contribute to a violation of the standard or a [any] maximum allowable increase.

(d) The required [In general, the] continuous air quality monitoring data [that are required] shall have been gathered over a period of at least one (1) year and shall represent at least the year preceding receipt of the application, except that, if the cabinet determines [applicant demonstrates through historical data or dispersion models] that the monitoring data gathered over a period shorter than one (1) year (but not to be less than four (4) months) will be obtained during a time period when maximum air quality levels can be expected, the required data [that are required] shall have been gathered over at least that shorter period.

(e) The owner or operator of a proposed stationary source or modification of volatile organic compounds who satisfies all conditions of 40 CFR Part 51, Appendix S, section IV may provide postapproval monitoring data for ozone in lieu of providing preconstruction data [as] required under paragraphs (a) to (d) of this subsection.

(f) For an [any] application that is [becomes] complete, except for [as to] the requirements of paragraphs (c) and (d) of this subsection pertaining to PM_{10}, after December 1, 1988, and no later than August 1, 1989, the data that paragraph (c) of this subsection requires shall have been gathered over at least the period from August 1, 1988, to the date the application becomes otherwise complete, unless [except that if] the cabinet determines that a complete and adequate analysis can be accomplished with monitoring data over a shorter period (not to be less than four (4) months), the data that paragraph (c) of this subsection requires shall have been gathered over that shorter period.

(g) [With respect to any requirements] For air quality

monitoring of PM_{10} under Section 8(9)(a) and (b) of this regulation, the owner or operator of the source or modification shall use a monitoring method approved by the cabinet and shall estimate the ambient concentrations of PM_{10} using the data collected by that [~~such~~] approved monitoring method in accordance with estimating procedures approved by the cabinet.

(2) Postconstruction monitoring. The owner or operator of a major stationary source or major modification [~~shall~~], after construction of the stationary source or modification, shall conduct the [~~such~~] ambient monitoring which [~~as~~] the cabinet determines is necessary to determine the effect emissions from the stationary source or modification may have, or are having, on air quality in an [~~any~~] area.

(3) Operation of monitoring stations. The owner or operator of a major stationary source or major modification shall meet the requirements of Appendix B to 40 CFR 58, which has been incorporated [~~filed~~] by reference in 401 KAR 50:015, during the operation of monitoring stations to satisfy [~~for purposes of satisfying~~] subsections (1) and (2) of this section.

Section 13. Source Information. The owner or operator of a proposed source or modification shall submit all information necessary to perform an [~~any~~] analysis or make a [~~any~~] determination required under this regulation.

(1) For [~~With respect to~~] a major source or major modification to which Sections 9, 11, 13 and 15 of this regulation apply, the [~~such~~] information shall include:

(a) A description of the nature, location, design capacity, and typical operating schedule of the source or modification, including specifications and drawings showing its design and plant layout;

(b) A detailed schedule for construction of the source or modification;

(c) A detailed description of the [~~as to what~~] system of continuous emission reduction [~~is~~] planned for the source or modification, emission estimates, and [~~any~~] other information necessary to determine that best available control technology will [~~would~~] be applied.

(2) Upon request of the cabinet, the owner or operator shall also provide information on:

(a) The air quality impact of the source or modification, including meteorological and topographical data necessary to estimate the [~~such~~] impact; and

(b) The air quality impacts and the nature and extent of [~~any or all~~] general commercial, residential, industrial, and other growth which has occurred since August 7, 1977, in the area the source or modification will [~~would~~] affect.

Section 14. Additional Impact Analysis. (1) The owner or operator shall provide an analysis of the impairment to visibility, soils and vegetation that would occur as a result of the source or modification and general commercial, residential, industrial and other growth associated with the source or modification. The owner or operator is not required to [~~need not~~] provide an analysis of the impact on vegetation having no significant commercial or recreational value.

(2) The owner or operator shall provide an analysis of the air quality impact projected for the area as a result of general commercial, residential, industrial and other growth associated with the source or modification.

(3) Visibility monitoring. The cabinet may require monitoring of visibility in a [~~any~~] Class I area impacted by the proposed new stationary source or major modification using human observations, teleradiometers, photographic cameras, nephelometers, fine particulate monitors, or other appropriate methods as specified by the U.S. EPA. The method selected shall be determined on a case-by-case basis by the cabinet. [~~Any~~] Visibility monitoring required by the cabinet in a Class I area shall [~~will~~] be approved by the federal land manager. Data obtained from [~~any~~] visibility monitoring shall be made available to the cabinet, U.S. EPA, and the federal land manager, upon request.

Section 15. Sources Impacting Class I Areas; Additional Requirements. (1) Notice to U.S. EPA and federal land managers. The cabinet shall provide written notice to the U.S. EPA, the federal land manager, and the federal official charged with direct responsibility for management of lands within a Class I area of a [~~of any~~] permit application for a proposed major stationary source or major modification the emissions from which may affect the [~~a~~] Class I area [~~to the U.S. EPA, the federal land manager, and the federal official charged with direct responsibility for management of any lands within any such area~~]. The cabinet shall provide [~~such~~] notice promptly after receiving the application. The notice [~~Such notification~~] shall include a copy of all information relevant to the permit application and shall be given within thirty (30) days of receipt and at least sixty (60) days prior to the [~~any~~] public hearing on the application for a permit to construct. The notice [~~Such notification~~] shall include an analysis of the proposed source's anticipated impacts on visibility in the Class I area. The cabinet shall also provide the federal land manager and other [~~such~~] federal officials with a copy of the preliminary determination required under Section 16 [~~17~~] of this regulation, and shall make available to them the [~~any~~] materials used in making that determination, promptly after the cabinet makes it. [~~Finally,~~] The cabinet shall also notify all affected federal land managers within thirty (30) days of receipt of an [~~any~~] advanced notification of the [~~any such~~] permit application.

(2) Federal land manager. The federal land manager and the federal official charged with direct responsibility for management of [~~such~~] lands located in a Class I area have an affirmative responsibility to protect the air quality related values (including visibility) of the [~~such~~] lands and to consider, in consultation with the cabinet, whether a proposed source or modification will have an adverse impact on those [~~such~~] values.

(3) Visibility analysis. The cabinet shall consider an [~~any~~] analysis performed by the federal land manager, provided within thirty (30) days of the notice [~~notification~~] and analysis required by subsection (1) of this section, that shows that a proposed new major stationary source or major modification may have an adverse impact on visibility in a [~~any~~] Class I area. If [~~Where~~] the cabinet finds that [~~such~~] analysis does not demonstrate to the satisfaction of the cabinet that an adverse impact on visibility will result in the Class I area, the cabinet shall, in the public notice required in 401 KAR 50:035, Section 4, either explain that decision or give notice as to where the explanation can be explained.

(4) Denial; impact on air quality related values. The federal land manager of [~~any such~~] lands located in a Class I area may demonstrate to the cabinet that the emissions from a proposed source or modification will [~~would~~] have an adverse impact on the air quality related values (~~including visibility~~) of those lands, notwithstanding that the change in air quality resulting from emissions from the proposed [~~such~~] source or modification will [~~would~~] not cause or contribute to concentrations which would exceed the maximum allowable increases for a Class I area as defined in Section 23 of [~~Appendix B to~~] this regulation. If the cabinet concurs with the [~~such~~] demonstration then the cabinet shall not issue the permit.

(5) Class I variances. The owner or operator of a proposed source or modification may demonstrate to the federal land manager that the emissions from the [~~such~~] source or modification will [~~would~~] have no adverse impact on the air quality related values of [~~any such~~] lands located in a Class I area (including visibility), notwithstanding that the change in air quality resulting from emissions from the [~~such~~] source or modification will [~~would~~] cause or contribute to concentrations which would exceed the maximum allowable increases for a Class I area. If the federal land manager concurs with the [~~such~~] demonstration and he so certifies, the cabinet may, if

the other [~~provided that the~~] applicable requirements of this regulation are [~~otherwise~~] met, issue the permit with the [~~such~~] emission limitations that are [~~as may be~~] necessary to assure that emissions of sulfur dioxide, [~~and~~] particulate matter, and nitrogen oxides will [~~would~~] not exceed the maximum allowable increases over minor source baseline concentration for the [~~such~~] pollutants specified in Section 25 of [~~Appendix D to~~] this regulation.

(6) Sulfur dioxide variance by governor with federal land manager's concurrence. The owner or operator of a proposed source or modification which cannot be approved under subsection (5) of this section because the source cannot be constructed without exceeding a maximum allowable increase in sulfur dioxide applicable to a Class I area for a period of twenty-four (24) hours or less, may demonstrate to the Governor of the Commonwealth of Kentucky that [~~the source cannot be constructed by reason of any maximum allowable increase in sulfur dioxide for a period of twenty four (24) hours or less applicable to any Class I area and that~~] a variance under this clause will [~~would~~] not adversely affect the air quality related values of the area (including visibility). The governor, after consideration of the federal land manager's recommendation (if applicable [~~any~~]) and subject to his concurrence, may, after notice and public hearing, grant a variance from the [~~such~~] maximum allowable increase. If a [~~such~~] variance is granted, the cabinet shall issue a permit to the [~~such~~] source or modification under [~~pursuant to~~] the requirements of subsection (8) of this section, if the other [~~provided that the~~] applicable requirements of this regulation are [~~otherwise~~] met.

(7) Variance by the governor with the President's concurrence. If [~~In any case where~~] the Governor of the Commonwealth of Kentucky recommends a variance in which the federal land manager does not concur, the recommendations of the governor and the federal land manager shall be transmitted to the President of the United States of America. If the variance is approved by the President, the cabinet shall issue a permit pursuant to the requirements of subsection (8) of this section, if the other [~~provided that the~~] applicable requirements of this regulation are [~~otherwise~~] met.

(8) Emission limitations for presidential or gubernatorial variance. For [~~In the case of~~] a permit issued pursuant to subsections (6) or (7) of this section the source or modification shall comply with those [~~such~~] emission limitations [~~as may be~~] necessary to assure that emissions of sulfur dioxide from the source or modification will [~~would~~] not (during a [~~any~~] day on which the other[~~wise~~] applicable maximum allowable increases are exceeded) cause or contribute to concentrations which will [~~would~~] exceed the maximum allowable increases over the baseline concentration as specified in Section 26 [~~Appendix E~~] of this regulation and to assure that the [~~such~~] emissions will [~~would~~] not cause or contribute to concentrations which exceed the other[~~wise~~] applicable maximum allowable increases for periods of exposure of twenty-four (24) hours or less for more than a total of eighteen (18) days, not necessarily consecutive, during an [~~any~~] annual period.

Section 16. Public Participation. The cabinet shall follow the applicable procedures of 401 KAR 50:035 in processing applications under this regulation.

Section 17. Source Obligation. (1) An [~~Any~~] owner or operator who constructs or operates a source or modification not in accordance with the application submitted to the cabinet under [~~pursuant to~~] this regulation or under [~~with~~] the terms of an [~~any~~] approval to construct; or an [~~any~~] owner or operator of a source or modification subject to this regulation who begins actual construction after September 22, 1982 without applying for and receiving approval [~~hereunder~~], shall be subject to appropriate enforcement action.

(2) Approval to construct shall become invalid if construction is not commenced within eighteen (18) months after receipt of the [~~such~~] approval, if construction is discontinued for a period of eighteen (18) months or more, or if construction is not completed within a reasonable time. The cabinet may extend the eighteen (18) month period upon a satisfactory showing that an extension is justified. This provision shall [~~does~~] not apply to the time period between construction of the approved phases of a phased construction project; each phase shall [~~must~~] commence construction within eighteen (18) months of the projected and approved commencement date.

(3) Approval to construct shall not relieve an [~~any~~] owner or operator of the responsibility to comply fully with [~~applicable provisions of Title~~] 401 KAR Chapters 50 to 63, and [~~any~~] other requirements of [~~under~~] local, state, or federal law.

(4) When [~~At such time that~~] a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in an [~~any~~] enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification [~~otherwise~~] to emit a pollutant, such as a restriction on hours of operation, then [~~the requirements of~~] Sections 9 to 18 of this regulation shall apply to the source or modification as though construction had not yet commenced on the source or modification.

Section 18. Environmental Impact Statements. If a [~~Whenever any~~] proposed source or modification is subject to action by a federal agency which might necessitate preparation of an environmental impact statement pursuant to the National Environmental Policy Act, 42 USC 4321, review by the cabinet conducted pursuant to this regulation shall be coordinated with the broad environmental reviews under that Act and under Section 309 of the Clean Air Act (42 USC 7401 et seq.), to the maximum extent feasible and reasonable.

Section 19. Innovative Control Technology. (1) An owner or operator of a proposed major stationary source or major modification may request the cabinet in writing to approve a system of innovative control technology.

(2) The cabinet shall, with the consent of the governors [~~governor(s)~~] of other affected states [~~state(s)~~], determine that the source or modification may employ a system of innovative control technology if:

(a) The proposed control system will [~~would~~] not cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation or function;

(b) The owner or operator agrees to achieve a level of continuous emissions reduction equivalent to that which would have been required under Section 9(2) of this regulation by a date specified by the cabinet. The [~~Such~~] date shall not be later than four (4) years from the time of start-up or seven (7) years from permit issuance.

(c) The source or modification will [~~would~~] meet [~~the requirements of~~] Sections 9 and 10 of this regulation based on the emissions rate that the stationary source employing the system of innovative control technology will [~~would~~] be required to meet on the date specified by the cabinet;

(d) The source or modification will [~~would~~] not before the date specified by the cabinet:

1. Cause or contribute to a violation of an applicable national ambient air quality standard; or

[~~2. Impact any Class I area; or~~]

2. [~~3.~~] Impact an [~~any~~] area where an applicable increment is known to be violated; [~~and~~]

(e) Section 15 of this regulation (relating to Class I areas) has been satisfied for all periods during the life of the source or modification; and

(f) [~~(c)~~] All other applicable requirements including those for public participation have been met.

(3) The cabinet shall withdraw [~~any~~] approval to employ a system of innovative control technology [~~made under this regulation~~] if:

(a) The proposed system fails by the specified date to achieve the required continuous emissions reduction rate;

(b) The proposed system fails before the specified date so

as to contribute to an unreasonable risk to public health, welfare, or safety; or

(c) The cabinet decides [at any time] that the proposed system is unlikely to achieve the required level of control or to protect the public health, welfare, or safety.

(4) If a source or modification fails to meet the required level of continuous emission reduction within the specified time period or the approval is withdrawn in accordance with subsection (3) of this section, the cabinet may allow the source or modification up to an additional three (3) years to meet the requirement for the application of best available control technology through use of a demonstrated system of control.

Section 20. Permit Condition Rescission. (1)(a) An [~~Any~~] owner or operator holding a permit for a stationary source or modification which contains conditions pursuant to 401 KAR 51:015 or 401 KAR 51:016E may request that the cabinet rescind the applicable conditions.

(b) An [~~Any~~] owner or operator of a stationary source or modification who holds a permit for the source or modification which was issued under this regulation as in effect on July 30, 1987, or an [~~any~~] earlier version of this regulation, may request that the cabinet rescind the permit or a particular portion of the permit.

(2) The cabinet shall rescind a permit condition if [~~so~~] requested and if the applicant can demonstrate to the satisfaction of the cabinet that this regulation does [~~would~~] not apply to the source or modification or to a portion of the source or modification [~~thereof~~].

Section 21. Reference Material. (1) Incorporation by Reference. The following document is incorporated by reference: the Standard Industrial Classification Manual, 1987, available from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia, 22161, Order No. PB 87-100012.

(2) The document incorporated by reference in subsection (1) of this section is available for public inspection and copying (subject to copyright law) at the following main and regional offices of the Kentucky Division for Air Quality during the normal working hours of 8 a.m. to 4:30 p.m., local time:

(a) Kentucky Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky 40601, (502) 564-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky 41101, (606) 325-8569;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky 42104, (502) 843-5475;

(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky 41042, (606) 292-6411;

(e) Hazard Regional Office, 233 Birch Street, Hazard, Kentucky 41701, (606) 439-2391;

(f) Owensboro Regional Office, 311 West Second Street, Owensboro, Kentucky 42301, (502) 686-3304; and

(g) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky 42003, (502) 898-8468.

Section 22. [~~APPENDIX A TO 401 KAR 51:017~~] Significant Net Emissions Rates.

POLLUTANT	EMISSIONS RATE
Carbon monoxide (tpy)	100 tons per year
Nitrogen oxides	40 tpy
Sulfur dioxide	40 tpy
Particulate matter	25 tpy of particulate matter emissions
	15 tpy of PM_{10} emissions
Ozone	40 tpy of volatile organic compounds
Lead	0.6 tpy
Asbestos	0.007 tpy
Beryllium	0.0004 tpy
Mercury	0.1 tpy
Vinyl chloride	1 tpy
Fluorides	3 tpy
Sulfuric acid mist	7 tpy
Hydrogen sulfide (H_2S)	10 tpy
Total reduced sulfur (including H_2S)	10 tpy
Reduced sulfur compounds (including H_2S)	10 tpy

Section 23. [~~APPENDIX B TO 401 KAR 51:017~~] Ambient Air Increments.

Pollutant	Maximum Allowable Increase (Micrograms per cubic meter)
Class I	
Particulate Matter:	
TSP, Annual geometric mean	5
TSP, 24-hour maximum	10
Sulfur Dioxide:	
Annual arithmetic mean	2
24-hour maximum	5
3-hour maximum	25
Nitrogen Dioxide:	
Annual arithmetic mean	2.5
Class II	
Particulate Matter:	
TSP, Annual geometric mean	19
TSP, 24-hour maximum	37
Sulfur Dioxide:	
Annual arithmetic mean	20
24-hour maximum	91
3-hour maximum	512
Nitrogen Dioxide:	
Annual arithmetic mean	25

Section 24. [~~APPENDIX C TO 401 KAR 51:017~~] Significant Air Quality Impact.

Pollutant	Air Quality Level	Averaging Time
Carbon monoxide	575 ug/m^3	8-hour average
Nitrogen dioxide	14 ug/m^3	annual average
Particulate matter	10 ug/m^3 of TSP	24-hour average
	10 ug/m^3 of PM_{10}	24-hour average
Sulfur dioxide	13 ug/m^3	24-hour average
Ozone	No de minimis air quality level is provided for ozone. However, a [any] net increase of 100 tons per year or more of volatile organic compounds subject to this regulation is [would be] required to perform an ambient impact analysis including the gathering of ambient air quality data.	
Lead	0.1 ug/m^3	3 - month average
Mercury	0.25 ug/m^3	24-hour average
Beryllium	0.001 ug/m^3	24-hour average
Fluorides	0.25 ug/m^3	24-hour average
Vinyl chloride	15 ug/m^3	24-hour average
Hydrogen sulfide	0.2 ug/m^3	1-hour average
Total reduced sulfur	10 ug/m^3	1-hour average
Reduced sulfur compounds	10 ug/m^3	1-hour average

Section 25. [~~APPENDIX D TO 401 KAR 51:017~~] Ambient Air Increments for Class I Variances.

Maximum Allowable

	Increase (micrograms per cubic meter)
Particulate Matter:	
TSP, Annual geometric mean	19
TSP, 24-hour maximum	37
Sulfur Dioxide:	
Annual arithmetic mean	20
24-hour maximum	91
3-hour maximum	325
Nitrogen Dioxide:	
Annual arithmetic mean	25

Section 26. [~~APPENDIX E TO 401 KAR 51:017~~] Ambient Air Increments for Presidential or Gubernatorial SO_2 Variances.

Maximum Allowable Increase
(Micrograms per cubic meter)

Period of Exposure	Terrain areas Low	High
24-hour maximum	36	62
3-hour maximum	130	221

PHILLIP J. SHEPHERD, Secretary
RONALD P. MILLS, Acting Commissioner
APPROVED BY AGENCY: January 7, 1991
FILED WITH LRC: January 15, 1992 at noon
PUBLIC HEARING: A public hearing to receive comments on this proposed regulation and proposed amendments will be conducted on February 28, 1992, at 10 a.m. (ET) in the Auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing: Kenneth M. Hines, Manager, Program Planning and Administration Branch, Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Hisham M. Saaid

(1) Type and number of entities affected: This regulation provides for the prevention of significant deterioration of ambient air quality. It applies to major stationary sources and major modifications constructing in areas that are designated as attainment or unclassified for the specified pollutants. It is being amended to incorporate the amendments to the federal Prevention of Significant Deterioration (PSD) regulation relating to nitrogen dioxide (NO_2) increment, as promulgated by the U.S. EPA in the Federal Register of October 17, 1988, (53 FR 40656). Any new major stationary sources or major modifications of NO_2 locating in the Commonwealth after that date would consume NO_2 increment. The amendment provides that the application date of the first major source in each PSD area also sets the minor source baseline date for that area. From the minor source baseline date onward, growth in minor source emissions would also consume increment. The amendment to the PSD regulations for NO_2 adds the requirements for NO_2 increments analyses to those for sulfur dioxide (SO_2) and particulate matter (PM). The NO_2 air quality modeling analyses prepared for major source permit applications must also consider minor source emissions growth since the minor source baseline date. This amendment would not require increment analysis for sources of NO_2 that have already filed a complete application, including any source that has already received a permit, before the effective date of the amendments to the federal regulation (October 17, 1989), but such source would consume increment. The source types most likely to be affected by the NO_2 increment amendment are: chemical processing plants, natural gas and crude oil pumping stations, steam electric generating plants (including cogeneration facilities), petroleum refineries, kraft pulp mills, natural gas processing plants, and municipal solid waste incineration facilities. The U.S. EPA has mandated that these revisions be made in order for Kentucky's SIP for the prevention of significant deterioration to be fully approvable. No additional requirements are affected by the KRS Chapter 13A amendments. (Also, see discussion in (6), any additional information or comments on page 3.)

(a) Direct and indirect costs or savings to those affected: There are no costs or savings associated with KRS Chapter 13A amendments. If Kentucky does not make the federally required amendments to this regulation, the U.S. EPA will enforce the requirements of the federal regulations. There are no additional costs associated with complying with the state's regulation over complying with the same requirements in a federal regulation. There may be, in fact, some savings for sources to deal with a regulatory agency located in Kentucky rather that in Atlanta.

1. First year: There are no additional costs associated with complying with the state's amendments over complying with the same requirements in the federal regulation. The amendment associated with the nitrogen oxide increment will bring sources who construct after the baseline date (October 17, 1989) under nitrogen oxide provisions of this regulation for the first time. The number and size of those future constructing entities, of course, is not known; however, the nitrogen dioxide emissions reduction to achieve an increment for a Class II area (25 ug m^3) is estimated by the U.S. EPA to have an average cost of $1,106 per ton.

2. Continuing costs or savings: Please see discussion under first year, 1. above.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional known factors.

(b) Reporting and paperwork requirements: A proposed source of nitrogen dioxide must submit all information necessary to perform the analysis for increment consumption required by the PSD regulation. The time typically required for a source to prepare the NO_2 increment consumption analysis associated with each PSD permit application has been determined by the U.S. EPA to be approximately 60 hours, when a mobile source emissions analysis is needed. The actual hours may be more or less than this estimate, depending on the complexity of the sources and the nature of the area in which the source is located.

(2) Effects on the promulgating administrative body: The cabinet will examine each PSD permit application for compliance with the NO_2 increment regulation, and continue to issue permits and inspect sources that are subject to these provisions. Since most sources subject to the PSD regulation for nitrogen oxide are also expected to be subject to the increment requirements for PM or SO_2, the administration costs of implementing the nitrogen dioxide increment requirements should be relatively minor.

(a) Direct and indirect costs or savings: The cost to the division for administering the nitrogen dioxide increment program is estimated to be $3,000 per year, assuming that PSD applications are received for that year.

1. First year: The division will review and process permits for any newly affected sources. Costs will be recovered by a permit fee.

2. Continuing costs or savings: The division presently inspects all permitted sources of air pollutants and maintains plant emissions data for emissions inventory purposes. Such activities are part of the division's normal day-to-day operations and are budgeted accordingly. Any newly affected source will be inspected and the cost will be absorbed as a part of the operation budget.

3. Additional factors increasing or decreasing costs: There are no known additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There are

currently no entities affected by these amendments; therefore, reporting and paperwork requirements are not applicable. The division will review and issue permits for newly affected sources and will issue reports of inspections and emissions data as in 1. and 2. above.

(3) Assessment of anticipated effect on state and local revenues: The amendment to this regulation is not expected to have a significant impact on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were considered since these amendments are the same as those made by the U.S. EPA to its PSD regulation.

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

(a) Necessity of proposed regulation if in conflict: There is no conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no conflict.

(6) Any additional information or comments: Most of the proposed changes to this regulation are being made in order to bring the state regulation into conformance with the corresponding federal regulatory revisions for the PSD nitrogen dioxide increment. The intended effect of the NO_2 increment amendment is to require all applicants for major new stationary sources and major modifications emitting nitrogen oxides to account for and, if necessary, restrict emissions so as not to cause or contribute to exceedances of the nitrogen dioxide increment established by the Federal Register of October 17, 1988, (53 FR 40656). The NO_2 amendment also provides that the application date of the first major source in each PSD area sets the minor source baseline date for that area. From the minor source baseline date onward, growth in minor source emissions would also consume increment. Some minor language changes have been made to the state PSD regulation so that it will agree with amendments, reaffirmations, and clarifications to the federal PSD regulation concerning the definitions of "federally enforceable" and "significant" in Class I areas, on innovative control technology waiver for sources impacting Class I areas, secondary emissions, and the requirement for health and welfare equivalence for netting. The amendments to the federal regulation concerning these issues were published by the U.S. EPA in the Federal Register of June 28, 1989 (54 FR 27274). That Federal Register notice constituted final action on the terms of a settlement agreement between the U.S. EPA and the Chemical Manufacturers Association (CMA). These minor changes in language will have no effect on the regulated community since they merely clarify or reaffirm existing requirements. Additional text changes have been made so that this regulation will agree with the requirements of KRS Chapter 13A. The changes will not change the applicability or requirements of the existing state PSD regulation.

TIERING: Was tiering applied? Yes. This regulation applies to major stationary sources or major modifications, which are defined to be sources or modifications which have a potential to emit of 100 or 250 tons per year or more of any pollutant regulated under the Clean Air Act, depending on the type of source. The amendment relating to nitrogen dioxide increment consumption is also tiered in that the increments provide greater protection of air quality in Class I areas than in Class II areas by providing more stringent limits on increases in ambient concentrations of nitrogen dioxide for Class I areas. Tiering was not considered for the CMA Settlement and KRS Chapter 13A revisions because there was no basis for including tiering in these revisions.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The amendments to this regulation are the same as those made by the U.S. EPA to its regulation for the prevention of significant deterioration, 40 CFR 52, and in the federal regulation for the requirements of State Implementation Plan, 40 CFR 51. These amendments were promulgated in the Federal Register of October 17, 1988 (53 FR 40656). Some minor language changes have been made to the state PSD regulation so that it will agree with amendments, reaffirmations, and clarifications to the federal PSD regulation published by the U.S. EPA in the Federal Register of June 28, 1989 (54 FR 27274).

2. State compliance standards. The state compliance standards are identical to those promulgated by the U.S. EPA.

3. Minimum or uniform standards contained in the federal mandate. The regulations for nitrogen oxides promulgated in 53 FR 40656 (October 17, 1988) are based on an ambient increment requirement for nitrogen dioxide as the numerical measure of significant deterioration in air quality. The federal regulation establishes nitrogen dioxide increments of 2.5 ug m^3 for Class I areas and 25 ug^3 for Class II areas. The averaging time for the nitrogen dioxide increments is an annual average, based on the averaging period of the NAAQS for nitrogen dioxide. There is no short-term nitrogen dioxide NAAQS. The amendment to the federal regulation established February 8, 1988, as the major source baseline date. After this date, emissions of nitrogen oxides, in addition to particulate matter and sulfur dioxide, from all new or modified major stationary sources in a PSD area consume increment. A minor source baseline date is also established as the earliest date after a complete application for a major source or modification is submitted for approval to a reviewing authority. After this date all new or modified sources consume (or expand) increment. The amendments, reaffirmations, and clarifications to the federal PSD regulation, published by the U.S. EPA in the Federal Register of June 28, 1989 (54 FR 27274) concern the definitions of "federally enforceable" and "significant" in Class I areas; innovative control technology waiver for sources impacting Class I areas; secondary emissions; and the requirement for health and welfare equivalence for netting. These amendments constituted final action on the terms of a settlement agreement between the U.S. EPA and the Chemical Manufacturers Association (CMA). These minor changes in language will have no effect on the regulated community since they merely clarify or reaffirm existing requirements.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. The amendments to the state PSD regulation are identical to the amendments to the federal regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The proposed amendments do not impose stricter standards, or additional or different responsibilities or requirements.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government?
Yes__ No X (If yes, complete questions 2-4)

2. State what unit, part or division of local government this administrative regulation will affect. The amendment to this regulation concerning nitrogen dioxide increments could affect those parts of local governments responsible for the operation of incinerators in which solid waste is combusted.

3. State the aspect or service of local government to which this administrative regulation relates. The operation of incinerators in which solid waste is combusted.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): This regulation is not expected to affect revenues.

Expenditures (+/-): This regulation is not expected to increase expenditures.

Other Explanation: This regulation is not expected to have a significant impact on incinerators operated by any local government. Generally, a solid waste incinerator operates on a fees-for-services-rendered basis. Any increase in operating costs resulting from the nitrogen dioxide amendments to this regulation would be passed along to the consumer.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(Proposed Amendment)

401 KAR 59:185. New solvent metal cleaning equipment.

RELATES TO: KRS 224.20-100, 224.20-110, 224.20-120 [~~Chapter 224~~]

STATUTORY AUTHORITY: KRS 224.10-100 [~~224.033~~]

NECESSITY AND FUNCTION: KRS 224.10-100 [~~224.033~~] requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides for the control of volatile organic compound emissions from new solvent metal cleaning equipment.

[~~Section 1. Applicability. The provisions of this regulation shall apply to each affected facility commenced on or after the classification date defined below which is located:~~]

[~~(1) In an urban county designated nonattainment for ozone under 401 KAR 51:010; or~~]

[~~(2) In any other county and is a part of a major source of volatile organic compounds.~~]

Section 1. [~~2.~~] Definitions. As used in this regulation, all terms not defined in this section [~~herein~~] shall have the meaning given to them in 401 KAR 50:010.

(1) "Affected facility" means cold cleaners, open top vapor degreasers, and conveyorized degreasers which utilize volatile organic compounds (VOCs) to remove soluble impurities from metal surfaces.

[~~(2) "Volatile organic compounds" means chemical compounds of carbon (excluding methane, ethane, carbon monoxide, carbon dioxide, carbonic acid, metallic carbides, and ammonium carbonate) which have a vapor pressure greater than one tenth (0.1) mm Hg at conditions of twenty (20) degrees Celsius and 760 mm Hg.~~]

(2) [~~(3)~~] "Classification date" means June 29, 1979.

(3) [~~(4)~~] "Freeboard height" means, for a cold cleaner, the distance from the liquid solvent level in the degreaser tank to the lip of the tank. For a vapor degreaser it is the distance from the solvent vapor level in the tank to the lip of the tank.

(4) [~~(5)~~] "Freeboard ratio" means the freeboard height divided by the width of the degreaser.

(5) [~~(6)~~] "Refrigerated chiller" means a second set of freeboard condenser coils located slightly above the primary condenser coils which create a cold air blanket above the vapor zone.

(6) [~~(7)~~] "Cold cleaner" means a batch-loaded degreaser whose solvent is kept below its boiling point.

(7) [~~(8)~~] "Open top vapor degreaser" means a batch-loaded degreaser whose solvent is heated to its boiling point creating a solvent vapor zone.

(8) [~~(9)~~] "Conveyorized degreasers" means a degreaser which is continuously loaded by means of a conveyor system. Its solvent may be boiling or nonboiling.

(9) [~~(10)~~] "Solvent" means, in this regulation, VOCs [~~volatile organic compounds~~].

Section 2. Applicability. (1) This regulation shall apply to:

(a) Each affected facility commenced on or after the classification date defined in Section 1 of this regulation and located in a county or portion of a county designated as nonattainment for ozone in 401 KAR 51:010, for any classification except marginal; and

(b) Each affected facility commenced on or after the effective date of this regulation which is part of a major source located in a county or portion of a county designated attainment or marginal nonattainment for ozone in 401 KAR 51:010.

(2) Each affected facility commenced on or after the classification date defined in Section 1 of this regulation but prior to the effective date of this regulation which is part of a major source located in a county or portion of a county designated attainment or marginally nonattainment for ozone in 401 KAR 51:010 shall be exempt from this regulation except that control devices and procedures required at the time it commenced shall continue to be maintained.

Section 3. Standard for VOCs [~~Volatile Organic Compounds~~]. The owner or operator of an affected facility to which this regulation applies shall install, maintain and operate the control equipment and observe at all times the operating requirements which apply to this type of degreaser as specified in Sections 4, 5, and 6 of this regulation.

Section 4. Cold Cleaners. (1) Control equipment:

(a) The cleaner shall be equipped with a cover. If the solvent volatility is greater than fifteen (15) mm Hg measured at 100°F or if the solvent is agitated or heated, then the cover shall be designed so that it can be easily operated with one (1) hand.

(b) The cleaner shall be equipped with a drainage facility so [~~such~~] that solvent that drains off parts removed from the cleaner will return to the cleaner. If the solvent volatility is greater than thirty-two (32) mm Hg measured at 100°F then the drainage facility shall be internal so that parts are enclosed under the cover while draining. The drainage facility may be external if the cabinet determines that an internal type cannot fit into the cleaning system.

(c) A permanent, conspicuous label, summarizing the operating requirements specified in subsection (2) of this section shall be installed on or near the cleaner.

(d) If used, the solvent spray shall be a fluid stream (not a fine, atomized or shower type spray) and at a pressure which does not cause excessive splashing.

(e) If the solvent volatility is greater than thirty-two (32) mm Hg measured at 100°F or if the solvent is heated above 120°F, then one (1) of the following control devices shall be used:

1. Freeboard that gives a freeboard ratio greater than or equal to seven-tenths (0.7).

2. Water cover (solvent shall [~~must~~] be insoluble in and heavier than water).

3. Other systems of equivalent control, such as a refrigerated chiller or carbon adsorption.

(2) Operating requirements:

(a) [~~Do not dispose of~~] Waste solvent shall not be disposed of or transferred [~~or transfer it~~] to another party so [~~, such~~] that greater than twenty (20) percent by weight of the waste solvent can evaporate into the atmosphere. [~~Store~~] Waste solvent shall be stored only in covered containers.

(b) [~~Close~~] Degreaser cover shall be closed if [~~whenever~~] not handling parts in the cleaner.

(c) [~~Drain~~] Cleaned parts shall be drained until dripping ceases (fifteen (15) seconds is usually necessary).

Section 5. Open Top Vapor Degreasers. (1) Control equipment:

(a) The degreaser shall be equipped with a cover that can be opened and closed easily without disturbing the vapor zone.

(b) The degreaser shall be equipped with the following

safety switches:

1. Condenser flow switch and thermostat to shut off sump heat if condenser coolant either is not circulating or is too warm.

2. Spray safety switch to shut off spray pump if the vapor level drops more than four (4) inches below the bottom condenser coil in order to prevent spraying above the vapor level.

3. Vapor level control thermostat which shuts off sump heat if the vapor zone rises above the design level.

4. Equivalent safety systems as approved on a case-by--case basis by the cabinet.

(c) The degreaser shall be equipped with at least one (1) of the following major control devices:

1. Freeboard ratio greater than or equal to 0.75, and if the degreaser opening is greater than ten (10) square feet, the cover shall be powered or mechanically assisted.

2. Refrigerated chiller.

3. Enclosed design so [~~such~~] that the cover or door opens only if [when] the dry part is actually entering or exiting the degreaser.

4. Carbon adsorption system, with ventilation greater than or equal to fifty (50) cfm/square foot of air- [/] vapor interface area (if [~~when~~] cover is open), and exhausting less than twenty-five (25) ppm by volume solvent averaged over one (1) complete adsorption cycle.

5. Control system demonstrated to have control efficiency equivalent to or better than any of the above.

(d) A permanent, conspicuous label, summarizing the operating procedures specified in subsection (2) of this section shall be installed on or near the degreaser.

(2) Operating requirements:

(a) [~~Keep~~] The cover shall be closed at all times unless [~~except when~~] processing work loads through the degreaser.

(b) [~~Minimize~~] Solvent carryout shall be minimized by the following measures:

1. [~~Rack~~] Parts shall be racked so that entrainment of solvent is avoided and full drainage is accomplished.

2. [~~Move~~] Parts shall be moved in and out of the degreaser at a vertical speed less than eleven (11) ft./min.

3. [~~Degrease the~~] Work load in the vapor zone shall be degreased until condensation ceases (thirty (30) seconds or more is usually necessary).

4. [~~Tip out~~] Any pools of solvent shall be tipped out on the cleaned parts before removal.

5. [~~Allow~~] Parts shall be allowed to dry within the degreaser above the vapor zone until visually dry (fifteen (15) seconds is usually necessary).

(c) [~~Do not degrease~~] Porous or absorbent materials such as cloth, leather, wood, or rope shall not be degreased.

(d) Work loads shall [~~should~~] not occupy more than half of the degreaser's open top area.

(e) [~~Never~~] Spray above the vapor level shall not be allowed.

(f) [~~Repair~~] Solvent leaks shall be repaired immediately or [~~shut down~~] the degreaser shall be shut down.

(g) [~~Do not dispose of~~] Waste solvent shall not be disposed of or transferred [~~or transfer it~~] to another party so [~~such~~] that greater than twenty (20) percent by weight of the waste solvent can evaporate into the atmosphere. [~~Store~~] Waste solvent shall be stored only in closed containers.

(h) Exhaust ventilation shall [~~should~~] not exceed sixty-five (65) cfm per square foot of degreaser area unless necessary to meet OSHA requirements or control device requirements. Ventilation fans shall [~~should~~] not be used near the degreaser opening.

(i) Water shall [~~should~~] not be visually detectable in the solvent exiting the water separator.

Section 6. Conveyorized Degreasers. (1) Control equipment:

(a) A conveyorized degreaser shall be enclosed except for work load entrances and exits.

(b) The degreaser shall be equipped with a drying tunnel or another means such as rotating baskets sufficient to prevent cleaned parts from carrying out solvent liquid or vapor.

(c) Minimized openings: entrances and exits shall silhouette work loads so that the average clearance between the largest parts and the edge of the degreaser opening is either less than four (4) inches or less than ten (10) percent of the width of the opening.

(d) Downtime covers: the degreaser shall be equipped with covers for closing off the entrance and exit during shutdown hours.

(e) If the degreaser has an air- [/] solvent interface area or an air- [/] vapor interface area equal to or greater than twenty (20) square feet [~~ft.~~], it shall be equipped with at least one (1) of the following major control devices:

1. Refrigerated chiller.

2. Carbon adsorption system with ventilation greater than or equal to fifty (50) cfm/square foot of air- [/] vapor interface area (if [~~when~~] downtime covers are open) and exhausting less than twenty-five (25) ppm of solvent by volume averaged over a complete adsorption cycle.

3. A system demonstrated to have a control efficiency equivalent to or better than either of the above.

(f) If the degreaser is a vapor type, it shall be equipped with the following safety switches:

1. Condenser flow switch and thermostat which will shut off the sump heat if coolant is either not circulating or is too warm.

2. Spray safety switch which will shut off the spray pump or conveyor if the vapor level drops more than four (4) inches below the bottom condenser coil in order to prevent spraying above the vapor level.

3. Vapor level control thermostat which will shut off sump heat if the vapor level rises above the design level.

4. Equivalent safety systems as approved on a case-by--case basis by the cabinet.

(g) A permanent, conspicuous label, summarizing the operating procedures specified in subsection (2) of this section shall be installed on or near the degreaser.

(2) Operating requirements:

(a) Exhaust ventilation shall [~~should~~] not exceed sixty-five (65) cfm per square foot of degreaser opening unless necessary to meet OSHA requirements or control device requirements. Work place fans shall [~~should~~] not be used near the degreaser opening.

(b) [~~Minimize~~] Solvent carryout shall be minimized by the following measures:

1. [~~Rack~~] Parts shall be racked so that entrainment of solvent is avoided and full drainage is accomplished.

2. [~~Maintain~~] Vertical conveyor speed shall be maintained at less than eleven (11) ft/min.

(c) [~~Do not dispose of~~] Waste solvent shall not be disposed of or transferred [~~or transfer it~~] to another party so [~~such~~] that greater than twenty (20) percent by weight of the waste solvent can evaporate into the atmosphere. [~~Store~~] Waste solvent shall be stored only in closed containers.

(d) [~~Repair~~] Solvent leaks shall be repaired immediately or [~~shut down~~] the degreaser shut down.

(e) Water shall [~~should~~] not be visually detectable in the solvent exiting the water separator.

(f) Downtime covers shall be placed over entrances and exits of the degreaser immediately after the conveyor and exhaust are shut down and removed just before they are started up.

Section 7. Compliance Timetable. (1) Affected facilities which were subject to this regulation as in effect on June 29, 1979, shall have achieved final compliance upon start-up.

(2) The owner or operator of an affected facility that, on or after the effective date of this regulation, becomes subject to this regulation for any reason other than construction, modification, or reconstruction shall be required to complete

the following:

(a) A final control plan for achieving compliance with this regulation shall be submitted no later than three (3) months after the date the affected facility becomes subject to this regulation.

(b) The control system contract shall be awarded no later than five (5) months after the date the affected facility becomes subject to this regulation.

(c) On-site construction or installation of emission control equipment shall be initiated no later than seven (7) months after the date the affected facility becomes subject to this regulation.

(d) On-site construction or installation of emission control equipment shall be completed no later than eleven (11) months after the date the affected facility becomes subject to this regulation.

(e) Final compliance shall be achieved no later than twelve (12) months after the date the affected facility becomes subject to this regulation.

(f) If an affected facility becomes subject to this regulation because it is located in a county previously designated nonurban nonattainment or redesignated in 401 KAR 51:010 after November 15, 1990, final compliance may be extended to May 31, 1995, and the schedule in paragraphs (a) through (d) of this subsection adjusted by the cabinet.

Section 8. [~~7.~~] Exemptions. Any cold cleaners shall be exempt from [~~the provisions of~~] Section 4 of this regulation if the following criteria are met:

(1) The cold cleaner shall [~~must~~] have a remote solvent reservoir;

(2) The solvent used in the cold cleaner shall [~~must~~] not have a vapor pressure that exceeds thirty-three (33) mm Hg measured at 100°F or be heated above 120°F;

(3) The sink-like work area shall [~~must~~] have an open drain area less than 100 sq. cm.; and

(4) Evidence shall be [~~is~~] provided that waste solvent shall [~~will~~] be stored or properly disposed of with minimal loss due to evaporation.

PHILLIP J. SHEPHERD, Secretary
RONALD P. MILLS, Acting Commissioner
APPROVED BY AGENCY: January 7, 1992
FILED WITH LRC: January 15, 1992 at noon

PUBLIC HEARING: A public hearing to receive comments on this proposed regulation and proposed amendments will be conducted on February 28, 1992, at 10 a.m. (ET) in the Auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing: Kenneth M. Hines, Manager, Program Planning and Administration Branch, Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Hisham M. Saaid

(1) Type and number of entities affected: A review of the division's records indicates that there are currently 10 entities under this regulation. These entities are industries with solvent metal cleaning equipment. The amendments to this regulation have been made to eliminate deviations between state regulations which are a part of the state implementation plan (SIP) and U.S. EPA policy; to update the applicability; and to comply with KRS Chapter 13A. The change in the definition of volatile organic compounds is a SIP deviation. The applicability is updated to be compatible with the requirements of the Clean Air Act as amended November 15, 1990. This amendment will not impact the 10 entities currently under this regulation. However, the Clean Air Act amendments eliminate the distinction between urban and nonurban ozone nonattainment areas. Previously, for example, minor sources in Boone, Campbell, and Kenton Counties (an urban nonattainment area) were subject to this regulation while similar sources in Boyd County (a nonurban nonattainment area) were not. The amendments will eliminate that distinction. This will make minor sources in Boyd County subject to this regulation. Further, the Clean Air Act amendments define 5 classifications of nonattainment. The redesignation of a county from attainment to any of the nonattainment classifications, except marginal nonattainment, would make additional entities subject to this regulation. Sources which become subject to this regulation because of the changes in applicability required by the Clean Air Act amendments shall achieve final compliance by May 31, 1995. The amendments made to comply with KRS Chapter 13A do not impact any sources.

(a) Direct and indirect costs or savings to those affected: If Kentucky does not make the federally required amendments to this regulation, the U.S. EPA will promulgate the requirements in federal regulations. There are no additional costs associated with complying with the state's regulation over complying with the same requirements in a federal regulation.

1. First year: There are no costs or savings associated with KRS Chapter 13A amendments. A chemical that was previously not considered a volatile organic compound because of its low vapor pressure could now be classified as a VOC or vice versa under the new definition of VOC. The applicability amendment required by the Clean Air Act will bring additional sources under this regulation for the first time. The number and size of entities will not be known until the redesignations of nonattainment status for individual counties or portions of counties have been made. A full cost analysis for the initial and continuing impact of this regulation was originally given in the U.S. EPA document EPA-450/2-77-022, pages 4-1 through 4-23, November 1977. Cost data for model facilities of cold cleaners, open top vapor degreasers, and conveyorized vapor degreasers were provided for various control techniques. For cold cleaners installed capital costs vary from $25 to $45; annualized costs vary from a savings of $29.84/year to a cost of $0.50/year; and cost effectiveness varies from a savings of $0.31/kg to a cost of 0.021/kg of solvent controlled. For open top degreasers installed capital costs vary from $230 to $7,400; net annualized costs range from a credit of $807/year to a cost of $962/year; and the cost effectiveness varies from a credit of $0.40/kg to a cost of $0.583/kg of controlled emissions. For typical conveyorized degreasers installed capital costs vary from $5,000 to $11,800; annualized costs range from a credit of $4,221/year to a cost of $520/year; and cost effectiveness varies from a credit $0.32/kg to a cost of $0.10/kg of solvent controlled. Although inflation can be taken into consideration, the size of the entities affected is not available for an accurate evaluation. A typical cost multiplier factor for 1977 to 1991 is 1.8. This means that 1977 costs should be multiplied by 1.8 to obtain 1991 costs.

2. Continuing costs or savings: Please see discussion under first year, 1, above.

3. Additional factors increasing or decreasing costs (note any effects upon competition): Minor sources in nonattainment areas (except marginal nonattainment) are subject to this regulation, while minor sources in attainment areas are not.

(b) Reporting and paperwork requirements: The amendments do not require additional reporting and paperwork requirements.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division will review and process permits for any sources newly affected. Costs will be recovered by a permit fee.

2. Continuing costs or savings: The division presently inspects all permitted sources of air pollutants and maintains plant and emissions data for emissions inventory purposes. Such activities are part of the division's normal day-to-day operations and are budgeted accordingly. Any newly affected source will be inspected and the cost will be absorbed as a part of the operating budget.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The division will review and issue permits for newly affected sources and will issue reports of inspections and emissions data as in 1 and 2 above.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered for the amendments which contain the same provisions as federal requirements.

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

(a) Necessity of proposed regulation if in conflict: There is no conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no conflict.

(6) Any additional information or comments: These amendments were made in response to the requirements discussed under (1) above.

TIERING: Was tiering applied? No. The amendments eliminate deviations between the SIP and federal requirements.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Federal policy has changed subsequent to the promulgation of this regulation. The U.S. EPA is requiring these amendments to eliminate deviations between Kentucky's state implementation plan and federal policy. The applicability of this regulation has been updated to be compatible with the Clean Air Act as amended November 15, 1990.

2. State compliance standards. There are no changes in the standards. The federal policy refers to the definition of VOCs to apply the standards.

3. Minimum or uniform standards contained in the federal mandate. The federal policy does not change the standards, but refers to procedures, definitions, etc., to apply the standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes, new sources in attainment counties will become subject to this regulation. For future construction after the effective date of the amendments to this regulation, major sources in all counties will become subject to the requirements of this regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Kentucky is required by the Clean Air Act to maintain the National Ambient Air Quality Standards in attainment areas. Part of the strategy chosen by Kentucky to accomplish that is the application of this regulation to new major sources in attainment areas.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(Proposed Amendment)

401 KAR 59:190. New insulation of magnet wire operations.

RELATES TO: KRS 224.20-100, 224.20-110, 224.20-120 [~~Chapter 224~~]

STATUTORY AUTHORITY: KRS 224.10-100 [~~224.033~~]

NECESSITY AND FUNCTION: KRS 224.10-100 [~~224.033~~] requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides for the control of volatile organic compound emissions from new insulation of magnet wire operations.

[~~Section 1. Applicability. The provisions of this regulation shall apply to each affected facility commenced on or after the classification date defined below which is located:~~]

[~~(1) In an urban county designated nonattainment for ozone under 401 KAR 51:010; or~~]

[~~(2) In any other county and is a part of a major source of volatile organic compounds.~~]

Section 1. [~~2.~~] Definitions. As used in this regulation, all terms not defined in this section [~~herein~~] shall have the meaning given to them in 401 KAR 50:010.

(1) "Affected facility" means a coating line for insulation of magnet wire.

(2) "Applicator" means the mechanism or device used to apply the coating, including but not limited to a coating bath.

(3) "Coating die" means the device, located between the applicator and the drying oven, which scrapes off excess coating and leaves a thin film of desired thickness.

(4) "Magnet wire" means wire used in [~~such~~] equipment such as electrical motors, generators, and transformers which carries an electrical current.

(5) "Coating line" means a series of equipment [~~and/~~]or operations used to apply, dry, or cure any coatings containing volatile organic compounds (VOCs). This shall include, but is not limited to:

(a) Mixing operations;

(b) Process storage;

(c) Applicators;

(d) Drying operations including coating die area evaporation, oven drying, baking, curing, and polymerization;

(e) Clean up operations;

(f) Leaks, spills and disposal of VOCs [~~volatile organic compounds~~];

(g) Processing and handling of recovered VOCs) [~~volatile organic compounds~~];

(h) For the purposes of determining compliance with this regulation, if any equipment or operation is [~~could be~~] considered to be a part of more than one (1) coating line, its VOC [~~volatile organic compound~~] emissions shall be assigned to each coating line of which it is a part proportionally to the throughput of VOC [~~volatile organic compound~~] it receives from or distributes to each coating line;

(i) If any portion of the series of equipment [~~and/~~]or operations qualifies [~~qualify~~] for an exemption according to Section 6 [~~5~~] of this regulation, then that portion shall be considered to be a separate coating line.

[~~(6) "Volatile organic compounds" means chemical compounds of carbon (excluding methane, ethane, carbon monoxide, carbon dioxide, carbonic acid, metallic carbides, and ammonium carbonate) which have a vapor pressure greater than one tenth (0.1) mm Hg at conditions of twenty (20) degrees Celsius and 760 mm Hg.~~]

(6) [~~(7)~~] "Process storage" means mixing tanks, holding tanks, and other tanks, drums, or other containers which contain surface coatings, VOCs [volatile organic compounds], or recovered VOCs [~~volatile organic compounds~~]; but does not mean storage tanks of petroleum liquids which are subject to 401 KAR 59:050, 401 KAR 59:052, or 401 KAR 61:050.

(7) [~~(8)~~] "Classification date" means June 29, 1979. [~~the effective date of this regulation.~~]

(8) "VOCs [~~(9) "Volatile organic compounds~~] net input" means the total amount of VOCs [volatile organic compounds] input to the affected facility minus the amount of VOCs [~~volatile organic compounds~~] that are not emitted into the atmosphere. VOCs [~~Volatile organic compounds~~] that are prevented from being emitted to the atmosphere by the use

of control devices shall not be subtracted from the total for the purposes of determining VOCs [~~volatile organic compounds~~] net input. If [~~When~~] the nature of any operation or design of equipment [~~is such as to~~] permits more than one (1) interpretation of this definition, the interpretation that results in the minimum value for allowable emission shall apply.

Section 2. Applicability. (1) This regulation shall apply to:

(a) Each affected facility commenced on or after the classification date defined in Section 1 of this regulation and located in a county or portion of a county designated as nonattainment for ozone in 401 KAR 51:010, for any classification except marginal; and

(b) Each affected facility commenced on or after the effective date of this regulation which is part of a major source located in a county or portion of a county designated attainment or marginal nonattainment for ozone in 401 KAR 51:010.

(2) Each affected facility commenced on or after the classification date defined in Section 1 of this regulation but prior to the effective date of this regulation which is part of a major source located in a county or portion of a county designated attainment or marginally nonattainment for ozone in 401 KAR 51:010 shall be exempt from this regulation except that control devices and procedures required at the time it commenced shall continue to be maintained.

Section 3. Standard for VOCs [~~Volatile Organic Compounds~~]. No person shall cause, allow, or permit an affected facility to discharge into the atmosphere more than fifteen (15) percent by weight of the VOCs [~~volatile organic compounds~~] net input into the affected facility.

Section 4. Compliance. (1) In all cases the design of any control system shall be [~~is~~] subject to approval by the cabinet.

(2) Compliance with the standard in Section 3 of this regulation shall be demonstrated by a material balance unless [~~except in these cases where~~] the cabinet determines that a material balance is not possible. If [~~For those cases where~~] a material balance is not possible, compliance shall [~~will~~] be determined based upon an engineering analysis by the cabinet of the control system design, control device efficiency, control system capture efficiency and any other factors that may [~~could~~] influence the performance of the system. If [~~so~~] requested by the cabinet, performance tests [~~as~~] specified by the cabinet shall be conducted [~~in order~~] to determine the efficiency of the control device. Capture efficiency shall be determined by procedures specified in 401 KAR 50:047 in all ozone nonattainment areas except marginal.

(3) With the prior approval of the cabinet, the owner or operator may elect to effect all [~~such~~] changes [~~in the affected facility as are~~] necessary to qualify for an exemption under Section 6 [~~5~~] of this regulation.

(4) If [~~Whenever~~] deemed necessary by the cabinet, the cabinet shall obtain samples of the coatings used at an affected facility to verify that the coatings meet the requirements in Section 6 [~~5~~] of this regulation. Method 24, which has been incorporated [~~The following methods of analyses, filed~~] by reference in 401 KAR 50:015[, for coatings] shall be used as applicable to determine compliance of the coatings, unless [~~except in those cases where~~] the cabinet determines that other methods would be more appropriate. Case-by-case alternatives approved by the cabinet, but not previously authorized by the U.S. EPA, shall be submitted to the U.S. EPA as a SIP revision. [~~:~~]

[~~(a) ASTM D 1644-75 Method A;~~]

[~~(b) ASTM D 1475-60(74);~~]

[~~(c) ASTM D 2369-73; or~~]

[~~(d) Federal Standard 141-a, Method 4082.1.~~]

(5) Compliance on one (1) coating line with VOC emission limits shall be based on an averaging period not to exceed twenty-four (24) hours. If it is not economically or technically feasible to determine emission on a daily basis, alternatives expressing emission limits for longer averaging times may be accepted if approved by the cabinet. Case-by-case alternatives approved by the cabinet, but not previously authorized by the U.S. EPA, shall be submitted to the U.S. EPA as a SIP revision.

(6) The amount of exempt solvents shall be subtracted from the amount of coatings, just like water, with the ultimate value of interest being the mass of VOC per unit volume of coating less exempt solvent or water or both.

(7) Calculations to determine equivalency on one (1) coating line shall be based on mass of VOC per volume of solids.

(8) Daily records shall be maintained by the source for the most recent two (2) year period. These records shall be made available to the cabinet or the U.S. EPA upon request. The records shall include, but not be limited to, the following:

(a) Applicable regulation number;

(b) Application method and substrate type;

(c) Amount and type of adhesive, coating (including catalyst and reducer for multicomponent coatings), or solvent used at each point of application, including exempt compounds;

(d) The VOC content as applied in each adhesive, coatings, or solvent;

(e) The date for each application for adhesive, coating, or solvent;

(f) The amount of surface preparation, cleanup, or washup solvent (including exempt compounds) used and the VOC content of each; and

(g) Oven temperature, if applicable.

Section 5. Compliance Timetable. (1) Affected facilities which were subject to this regulation as in effect on June 29, 1979, shall have achieved final compliance upon start-up.

(2) The owner or operator of an affected facility that, on or after the effective date of this regulation, becomes subject to this regulation for any reason other than construction, modification, or reconstruction shall be required to complete the following:

(a) A final control plan for achieving compliance with this regulation shall be submitted no later than nine (9) months after the date the affected facility becomes subject to this regulation.

(b) The control system contract or the exempt coatings and any accompanying process change contracts shall be awarded no later than eleven (11) months after the date the affected facility becomes subject to this regulation.

(c) On-site construction or installation of emission control equipment or process changes for exempt coatings shall be initiated no later than thirteen (13) months after the date the affected facility becomes subject to this regulation.

(d) On-site construction or installation of emission control equipment or process changes for exempt coatings shall be completed no later than seventeen (17) months after the date the affected facility becomes subject to this regulation.

(e) Final compliance shall be achieved no later than eighteen (18) months after the date the affected facility becomes subject to this regulation.

(f) If an affected facility becomes subject to this regulation because it is located in a county previously designated nonurban nonattainment or redesignated in 401 KAR 51:010 after November 15, 1990, final compliance may be extended to May 31, 1995, and the schedule in paragraphs (a) through (d) of this subsection adjusted by the cabinet.

Section 6. [~~5.~~] Exemptions. (1) Any affected facility shall be exempt from [~~the provisions of~~] Section 3 of this regulation if the VOC [~~volatile organic compound~~] content of the coating is less than two-tenths (0.20) kg/l of coating (one and seven--tenths (1.7) lb/gal), excluding water or exempt solvent or both, delivered to the applicators associated with the coating line.

[~~(2) An owner or operator electing to qualify for an exemption under this section must achieve final compliance for that affected facility by July 1, 1981.~~]

(2) An affected facility shall be exempt from this regulation if the total VOC emissions from all affected facilities subject to this regulation are less than or equal to:

(a) Three (3) lb/hr actual emissions before add-on control;

(b) Fifteen (15) lb/day actual emissions before add-on control; or

(c) Ten (10) tons per year theoretical potential emissions based on design capacity (or maximum production) and 8,760 hour/year before add-on control.

(3) Low-use coatings shall be exempt from Section 3 of this regulation if the plantwide consumption of these coatings in the aggregate is less than or equal to fifty-five (55) gallons during the previous twelve (12) months.

PHILLIP J. SHEPHERD, Secretary
RONALD P. MILLS, Acting Commissioner
APPROVED BY AGENCY: January 7, 1992
FILED WITH LRC: January 15, 1992 at noon
PUBLIC HEARING: A public hearing to receive comments on this proposed regulation and proposed amendments will be conducted on February 28, 1992, at 10 a.m. (ET) in the Auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing: Kenneth M. Hines, Manager, Program Planning and Administration Branch, Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Hisham M. Saaid

(1) Type and number of entities affected: A review of the division's records indicates that there is currently one entity under this regulation. This entity operates a coating line for insulation of magnet wire. The amendments to this regulation have been made to eliminate deviations between state regulations which are a part of the state implementation plan (SIP) and U.S. EPA policy; to update the applicability; and to comply with KRS Chapter 13A. Many of the SIP deviations are requirements that already appear in 401 KAR 50:016, Policies incorporated by reference, which is a state regulation but not part of the SIP, and therefore no federally enforceable. The applicability is updated to be compatible with the requirements of the Clean Air Act as amended November 15, 1990. This amendment will not impact the one entity currently under this regulation. However, the Clean Air Act amendments eliminate the distinction between urban and nonurban ozone nonattainment areas. Previously, for example, minor sources in Boone, Campbell, and Kenton Counties (an urban nonattainment area) were subject to this regulation while similar sources in Boyd County (a nonurban nonattainment area) were not. The amendments will eliminate that distinction. This will make minor sources in Boyd County subject to this regulation. Further, the Clean Air Act amendments define 5 classifications of nonattainment. The redesignation of a county from attainment to any of the nonattainment classifications, except marginal nonattainment, would make additional entities subject to this regulation. Sources which become subject to this regulation because of the changes in applicability required by the Clean Air Act amendments shall achieve final compliance by May 31, 1995. In addition, the division no longer distinguishes between exempt counties and other counties for future construction. After the effective date of the amendments to this regulation, a new major source or major modification constructing in any county, is subject to this regulation. The amendments made to comply with KRS Chapter 13A do not impact any sources.

(a) Direct and indirect costs or savings to those affected: If Kentucky does not make the federally required amendments to this regulation, the U.S. EPA will promulgate the requirements in federal regulations. There are no additional costs associated with complying with the state's regulation over complying with the same requirements in a federal regulation.

1. First year: There are no costs or savings associated with KRS Chapter 13A amendments. The costs associated with the SIP deviation amendments are of the nature of more recordkeeping, a different test method, and a different capture efficiency procedure. A chemical that was previously uncontrolled because of its low vapor pressure could now be classified as a VOC or vice versa under the new definition of VOC. The applicability amendment required by the Clean Air Act will bring additional sources under this regulation for the first time. The number and size of entities will not be known until the redesignations of nonattainment status for individual counties or portions of counties have been made or new sources constructed. A full cost analysis for the initial and continuing impact of this regulation was originally given in the U.S. EPA document EPA-450/2-77-033, pages 3-1 through 3-12, December 1977. Control options are analyzed for four model sizes. On page 3-10, the lowest cost emission control system was estimated to be $105 per megagram of emissions controlled. The highest cost device considered is the single--oven model thermal incinerator without heat exchanges at an estimated cost of $405 per megagram of emissions controlled. Although inflation can be taken into consideration, the size of the entities affected is not available for an accurate evaluation. A typical cost multiplier factor for 1977 to 1991 is 1.8. This means that 1977 costs should be multiplied by 1.8 to obtain 1991 costs.

2. Continuing costs or savings: Please see discussion under first year, 1, above.

3. Additional factors increasing or decreasing costs (note any effects upon competition): Minor sources in nonattainment areas (except marginal nonattainment) are subject to this regulation, while minor sources in attainment areas are not.

(b) Reporting and paperwork requirements: The U.S. EPA identified recordkeeping as a SIP deficiency. Section 4(8) was added to comply with this federal requirement.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division will review and process permits for any sources newly affected. Costs will be recovered by a permit fee.

2. Continuing costs or savings: The division presently inspects all permitted sources of air pollutants and maintains plant and emissions data for emissions inventory purposes. Such activities are part of the division's normal day-to-day operations and are budgeted accordingly. Any newly affected source will be inspected and the cost will be absorbed as a part of the operating budget.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The division will review and issue permits for newly affected sources and will issue reports of inspections and emissions data as in 1. and 2. above.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were considered for the amendments which contain the same provisions as federal requirements.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is conflict in the capture efficiency procedures between this regulation and 401 KAR 50:016, Policies incorporated by reference. There is also duplication, because 401 KAR 50:016 is not part of Kentucky's SIP.

(a) Necessity of proposed regulation if in conflict: This regulation references 401 KAR 50:047, Test procedures for capture efficiency. 401 KAR 50:047 requires the U.S. EPA's new capture efficiency protocols. 401 KAR 50:016 requires the previous U.S. EPA capture efficiency procedures.

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

401 KAR 50:016 will be amended or repealed to eliminate the conflict. 401 KAR 50:016 is not part of Kentucky's SIP, therefore, amending only 401 KAR 50:016 would not satisfy the deviation between EPA's new policy and Kentucky's SIP.

(6) Any additional information or comments: These amendments were made in response to the requirements discussed under (1) above. In addition, for future construction after the effective date of the amendments to this regulation, major sources in all counties will become subject to the requirements of this regulation. Kentucky is required by the Clean Air Act to maintain the National Ambient Air Quality Standards in attainment areas. Part of the strategy chosen by Kentucky to accomplish that is the application of this regulation to major sources in attainment areas. The purpose of this amendment is to make that strategy equitable for all major sources in attainment areas. There are no stricter standards, or additional or different responsibilities or requirements imposed on sources constructed prior to the effective date of these amendments.

TIERING: Was tiering applied? No. The amendments eliminate deviations between the SIP and federal requirements. However, Section 6(2) of the amended regulation allows for an exemption based on low emissions. Section 6(3) has an exemption for low-use coatings.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Federal policy has changed subsequent to the promulgation of this regulation. The U.S. EPA is requiring these amendments to eliminate deviations between Kentucky's state implementation plan and federal policy. The applicability of this regulation has been updated to be compatible with the Clean Air Act as amended November 15, 1990.

2. State compliance standards. There are no changes in the standards. The federal policy refers to procedures, definitions, etc., to apply the standards.

3. Minimum or uniform standards contained in the federal mandate. The federal policy does not change the standards, but refers to procedures, definitions, etc., to apply the standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes, new sources in attainment counties will become subject to this regulation. For future construction after the effective date of the amendments to this regulation, major sources in attainment counties will become subject to the requirements of this regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Kentucky is required by the Clean Air Act to maintain the National Ambient Air Quality Standards in attainment areas. Part of the strategy chosen by Kentucky to accomplish that is the application of this regulation to new major sources in attainment areas. The purpose of this amendment is to make that strategy equitable for all new major sources in attainment areas.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(Proposed Amendment)

401 KAR 59:210. New fabric, vinyl and paper surface coating operations.

RELATES TO: KRS 224.20-100, 224.20-110, 224.20-120 [~~Chapter 224~~]

STATUTORY AUTHORITY: KRS 224.10-100 [~~224.033~~]

NECESSITY AND FUNCTION: KRS 224.10-100 [~~224.033~~] requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides for the control of volatile organic compound emissions from new fabric, vinyl or paper surface coating operations.

[~~Section 1. Applicability. The provisions of this regulation shall apply to each affected facility commenced on or after the classification date defined below which is located:~~]

[~~(1) In an urban county designated nonattainment for ozone under 401 KAR 51:010; or~~]

[~~(2) In any other county and is a part of a major source of volatile organic compounds.~~]

Section 1. [~~2.~~] Definitions. As used in this regulation, all terms not defined in this section [~~herein~~] shall have the meaning given to them in 401 KAR 50:010.

(1) "Affected facility" means a coating line for fabric, vinyl, or paper.

(2) "Applicator" means the mechanism or device used to apply the coating including, but not limited to, roll, knife, or rotogravure coater.

(3) "Flash-off area" means the space between the applicator and the oven.

(4) "Coating line" means a series of equipment [~~and/~~]or operations used to apply, dry, or cure any coatings containing volatile organic compounds (VOCs). This shall include, but is not limited to:

(a) Mixing operations;

(b) Process storage;

(c) Applicators;

(d) Drying operations including, but not limited to, flash-off area evaporation, oven drying, baking, curing, and polymerization;

(e) Clean up operations;

(f) Leaks, spills, and disposal of VOCs [~~volatile organic compounds~~];

(g) Processing and handling of recovered VOCs [~~volatile organic compounds~~];

(h) To determine [~~For the purposes of determining~~] compliance with this regulation, if any equipment or operation is [~~could be~~] considered to be a part of more than one (1) coating line, its VOC [~~volatile organic compound~~] emissions shall be assigned to each coating line of which it is a part proportionally to the throughput of VOCs [~~volatile organic compounds~~] it receives from or distributes to each coating line;

(i) If any portion of the series of equipment [~~and/~~]or operations qualifies for an exemption according to Section 6 [~~5~~] of this regulation, then that portion shall be considered to be a separate coating line.

(j) An affected facility which is capable of performing both paper coating and paper printing shall [~~will~~] be considered as performing a paper printing operation subject to 401 KAR 59:212.

[~~(5) "Volatile organic compounds" means chemical compounds of carbon (excluding methane, ethane, carbon monoxide, carbon dioxide, carbonic acid, metallic carbides, and ammonium carbonate) which have a vapor pressure greater than one tenth (0.1) mm Hg at conditions of twenty (20) degrees Celsius and 760 mm Hg.~~]

(5) [~~(6)~~] "Process storage" means mixing tanks, holding tanks, and other tanks, drums, or other containers which contain surface coatings, VOCs [~~volatile organic compounds~~], or recovered VOCs [~~volatile organic compounds~~], but does not mean storage tanks of petroleum liquids which are subject to 401 KAR 59:050, 401 KAR 59:052, or 401 KAR 61:050.

(6) [~~(7)~~] "Fabric coating" means the coating or saturation of a textile substrate to impart properties that are not initially present, such as strength, stability, water or acid repellency, functionality, [or appearance.

(7) [~~(8)~~] "Vinyl coating" means the coating of vinyl coated fabric or vinyl sheets, which includes decorative, functional, or protective topcoats or printing.

(8) [(9)] "Paper coating" means saturation or the application of a uniform layer of material across the entire width of a web of paper, pressure sensitive tapes regardless of substrate, related web coating processes on plastic film such as typewriter ribbons, photographic film, magnetic tape, functional films, and decorative coatings on metal foil such as gift wrap and packaging, but does not include the printing of paper.

(9) [(10)] "Knife coating" means the application of a coating material to a substrate by means of drawing the substrate beneath a knife that spreads the coating evenly over the full width of the substrate.

(10) [(11)] "Roll coating" means the application of a coating material to a substrate by means of hard rubber or steel rolls.

(11) [(12)] "Rotogravure coating" means the application of a uniform layer of material across a substrate by means of a roll coating technique in which the entire coating roll is uniformly etched with recessed cells and no pattern or design is present. The coating material is picked up in these recessed cells and is transferred to the substrate.

(12) [(13)] "Classification date" means June 29, 1979.

(13) "VOCs [(14) "Volatile organic compounds] net input" means the total amount of VOCs [volatile organic compounds] input to the affected facility minus the amount of VOCs [volatile organic compounds] that are not emitted into the atmosphere. VOCs [Volatile organic compounds] that are prevented from being emitted to the atmosphere by the use of control devices shall not be subtracted from the total for the purposes of determining VOCs [volatile organic compounds] net input. If [When] the nature of any operation or design of equipment [is such as to] permits more than one (1) interpretation of this definition, the interpretation that results in the minimum value for allowable emission shall apply.

(14) [(15)] "Printing" means the formation of words, designs, and pictures, usually by a series of application rolls, each with only partial coverage. It shall apply [applies] to flexographic and rotogravure processes as applied to publication, specialty, and packaging printing as defined in 401 KAR 59:212.

Section 2. Applicability. (1) This regulation shall apply to:

(a) Each affected facility commenced on or after the classification date defined in Section 1 of this regulation and located in a county or portion of a county designated as nonattainment for ozone in 401 KAR 51:010, for any classification except marginal; and

(b) Each affected facility commenced on or after the effective date of this regulation which is a part of a major source located in a county or portion of a county designated attainment or marginal nonattainment for ozone in 401 KAR 51:010.

(2) Each affected facility commenced on or after the classification date defined in Section 1 of this regulation but prior to the effective date of this regulation which is a part of a major source located in a county or portion of a county designated attainment or marginally nonattainment for ozone in 401 KAR 51:010 shall be exempt from this regulation except that control devices and procedures required at the time it commenced shall continue to be maintained.

Section 3. Standard for VOCs [Volatile Organic Compounds]. No person shall cause, allow, or permit an affected facility to discharge into the atmosphere more than fifteen (15) percent by weight of the VOCs [volatile organic compounds] net input into the affected facility.

Section 4. Compliance. (1) In all cases the design of any control system shall be [is] subject to approval by the cabinet.

(2) Compliance with the standard in Section 3 of this regulation shall be demonstrated by a material balance unless [except in these cases where] the cabinet determines that a material balance is not possible. If [For these cases where] a material balance is not possible, compliance shall [will] be determined based upon an engineering analysis by the cabinet of the control system design, control device efficiency, control system capture efficiency, and any other factors that may [could] influence the performance of the system. If [so] requested by the cabinet, performance tests [as] specified by the cabinet shall be conducted [in order] to determine the efficiency of the control device. Capture efficiency shall be determined by procedures specified in 401 KAR 50:047 in all ozone nonattainment areas except marginal.

(3) With the prior approval of the cabinet, the owner or operator may elect to effect all [such] changes [in the affected facility as are] necessary to qualify for an exemption under Section 6 [5] of this regulation.

(4) If [Whenever] deemed necessary by the cabinet, the cabinet shall obtain samples of the coatings used at an affected facility to verify that the coatings meet the requirements in Section 6 [5] of this regulation. Method 24, which has been incorporated [The following methods of analyses, filed] by reference in 401 KAR 50:015, [for coatings] shall be used as applicable to determine compliance of the coatings unless [except in these cases where] the cabinet determines that other methods would be more appropriate. Case-by-case alternatives approved by the cabinet, but not previously authorized by the U.S. EPA, shall be submitted to the U.S. EPA as a SIP revision. [:]

[(a) ASTM D-1644-75 Method A;]

[(b) ASTM D-1475-60(74);]

[(c) ASTM D-2369-73; or]

[(d) Federal Standard 141-a, Method 4082.1.]

(5) Compliance on one (1) coating line with VOC emission limits shall be based on an averaging period not to exceed twenty-four (24) hours. If it is not economically or technically feasible to determine emission on a daily basis, alternatives expressing emission limits for longer averaging times may be accepted if approved by the cabinet. Case-by-case alternatives approved by the cabinet, but not previously authorized by the U.S. EPA, shall be submitted to the U.S. EPA as a SIP revision.

(6) The amount of exempt solvents shall be subtracted from the amount of coatings, just like water, with the ultimate value of interest being the mass of VOC per unit volume of coating less exempt solvent or water or both.

(7) Calculations to determine equivalency on one (1) coating line shall be based on mass of VOC per volume of solids. Vinyl plastisols and organisols shall not be included in VOC equivalency calculations that are required to be included in applications for VOC bubbles.

(8) Daily records shall be maintained by the source for the most recent two (2) year period. These records shall be made available to the cabinet or the U.S. EPA upon request. The records shall include, but not be limited to, the following:

(a) Applicable regulation number;

(b) Application method and substrate type;

(c) Amount and type of adhesive, coating (including catalyst and reducer for multicomponent coatings), or solvent used at each point of application, including exempt compounds;

(d) The VOC content as applied in each adhesive, coating, or solvent;

(e) The date for each application for adhesive, coating, or solvent;

(f) The amount of surface preparation, cleanup, or washup solvent (including exempt compounds) used and the VOC content of each; and

(g) Oven temperature, if applicable.

Section 5. Compliance Timetable. (1) Affected facilities which were subject to this regulation as in effect on June 29, 1979, shall have achieved final compliance upon start-up.

(2) The owner or operator of an affected facility that, on or after the effective date of this regulation, becomes subject to this regulation for any reason other than construction, modification, or reconstruction shall be required to complete

the following:

(a) A final control plan for achieving compliance with this regulation shall be submitted no later than nine (9) months after the date the affected facility becomes subject to this regulation.

(b) The control system contract or the exempt coatings and any accompanying process change contracts shall be awarded no later than eleven (11) months after the date the affected facility becomes subject to this regulation.

(c) On-site construction or installation of emission control equipment or process changes for exempt coatings shall be initiated no later than thirteen (13) months after the date the affected facility becomes subject to this regulation.

(d) On-site construction or installation of emission control equipment or process changes for exempt coatings shall be completed no later than seventeen (17) months after the date the affected facility becomes subject to this regulation.

(e) Final compliance shall be achieved no later than eighteen (18) months after the date the affected facility becomes subject to this regulation.

(f) If an affected facility becomes subject to this regulation because it is located in a county previously designated nonurban nonattainment or redesignated in 401 KAR 51:010 after November 15, 1990, final compliance may be extended to May 31, 1995, and the schedule in paragraphs (a) through (d) of this subsection adjusted by the cabinet.

Section 6. [5.] Exemptions. (1) Any affected facility coating fabric or paper shall be exempt from [~~the provisions of~~] Section 3 of this regulation if the VOC [~~volatile organic compound~~] content of the coating is less than 0.35 kg/l of coating (two and nine-tenths (2.9) lb/gal), excluding water or exempt solvent or both, delivered to the applicators associated with the coating line.

(2) Any affected facility coating vinyl shall be exempt from [~~the provisions of~~] Section 3 of this regulation if the VOC [~~volatile organic compound~~] content of the coating is less than 0.45 kg/l of coating (three and eight-tenths (3.8) lb/gal) excluding water or exempt solvent or both, delivered to the applicators associated with the coating line.

(3) An owner or operator electing to qualify for an exemption [~~extension~~] under this section shall have [~~must~~] achieved final compliance for that affected facility by December 1, 1981.

(4) An affected facility shall be exempt from this regulation if the total VOC emissions from all affected facilities subject to this regulation are less than or equal to:

(a) Three (3) lb/hr actual emissions before add-on control;

(b) Fifteen (15) lb/day actual emissions before add-on control; or

(c) Ten (10) tons per year theoretical potential emissions based on design capacity for maximum production) and 8760 hr/yr before add-on control.

(5) Low-use coatings shall be exempt from Section 3 of this regulation if the plantwide consumption of these coatings in the aggregate is less than or equal to fifty-five (55) gallons during the previous twelve (12) months.

[~~Section 6. Variances. Variation with the standards and limitations contained in this regulation, when supported by adequate technical information, will be considered by the cabinet on a case by case basis to allow for technological or economic circumstances which are unique to a source.~~]

PHILLIP J. SHEPHERD, Secretary
RONALD P. MILLS, Acting Commissioner
APPROVED BY AGENCY: January 7, 1992
FILED WITH LRC: January 15, 1992

PUBLIC HEARING: A public hearing to receive comments on this proposed regulation and proposed amendments will be conducted on February 28, 1992, at 10 a.m. (ET) in the Auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing: Kenneth M. Hines, Manager, Program Planning and Administration Branch, Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Hisham M. Saaid

(1) Type and number of entities affected: A review of the division's records indicates that there are currently three entities under this regulation. These entities are fabric, vinyl, and paper surface coating operations. The amendments to this regulation have been made to eliminate deviations between state regulations which are a part of the state implementation plan (SIP) and U.S. EPA policy; to update the applicability; and to comply with KRS Chapter 13A. Many of the SIP deviations are requirements that already appear in 401 KAR 50:016, Policies incorporated by reference, which is a state regulation but not part of the SIP, and therefore no federally enforceable. The applicability is updated to be compatible with the requirements of the Clean Air Act as amended November 15, 1990. This amendment will not impact the three entities currently under this regulation. However, the Clean Air Act amendments eliminate the distinction between urban and nonurban ozone nonattainment areas. Previously, for example, minor sources in Boone, Campbell, and Kenton Counties (an urban nonattainment area) were subject to this regulation while similar sources in Boyd County (a nonurban nonattainment area) were not. The amendments will eliminate that distinction. This will make minor sources in Boyd County subject to this regulation. Further, the Clean Air Act amendments define 5 classifications of nonattainment. The redesignation of a county from attainment to any of the nonattainment classifications, except marginal nonattainment, would make additional entities subject to this regulation. Sources which become subject to this regulation because of the changes in applicability required by the Clean Air Act amendments shall achieve final compliance by May 31, 1995. In addition, the division no longer distinguishes between exempt counties and other counties for future construction. After the effective date of the amendments to this regulation, a new major source or major modification constructing in any county, is subject to this regulation. The amendments made to comply with KRS Chapter 13A do not impact any sources.

(a) Direct and indirect costs or savings to those affected: If Kentucky does not make the federally required amendments to this regulation, the U.S. EPA will promulgate the requirements in federal regulations. There are no additional costs associated with complying with the state's regulation over complying with the same requirements in a federal regulation.

1. First year: There are no costs or savings associated with KRS Chapter 13A amendments. The costs associated with the SIP deviation amendments are of the nature of more recordkeeping, a different test method, and a different capture efficiency procedure. A chemical that was previously uncontrolled because of its low vapor pressure could now be classified as a VOC or vice versa under the new definition of VOC. The applicability amendment required by the Clean Air Act will bring additional sources under this regulation for the first time. The number and size of entities will not be known until the redesignations of nonattainment status for individual counties or portions of counties have been made or new sources constructed. A cost analysis for the initial and continuing impact of this regulation was originally given in the U.S. EPA document EPA-450/2-77-008, Volume II, pages 4-13 through 4-19 and pages 5-17 through 5-28, May 1977. Three options (incineration, carbon adsorption, and low organic solvent coatings) were presented for several cases. For a typical fabric coating operation the costs for the incineration option for various cases ranged from $125,000 to $220,000 for installed costs, from $26,000 to $105,000 per year for annualized costs, and from $13 to $54 per ton of solvents recovered. For the carbon adsorption option for

various cases costs presented were $320,000 for installed costs; $100,000 (credit) to $127,000 (cost) per year for annualized operating costs; and $57 (credit) to $72 (cost) per ton of solvents recovered. A recovered solvent does not always mean it can be recycled. For a typical paper coating operation the costs for the incineration option for various cases ranged from $125,000 to $220,000 for installed costs, from $26,000 to $105,000 per year for annualized costs, and from $13 to $51 per ton of solvent burned. For the carbon adsorption option for various cases costs presented were $320,000 for installed costs; $100,000 (credit) to $127,000 (cost) per year for annualized costs; and $50 (credit) to $125 (cost) per ton of solvent recovered. Costs for converting to low solvent or water-borne coatings are difficult to compare because this strategy is dependent upon such factors as research and development costs as well as the cost of learning to apply the coatings. Although inflation can be taken into consideration, the size of the entities affected is not available for an accurate evaluation. A typical cost multiplier factor for 1977 to 1991 is 1.8. This means that 1977 costs should be multiplied by 1.8 to obtain 1991 costs.

2. Continuing costs or savings: Please see discussion under first year, 1, above.

3. Additional factors increasing or decreasing costs (note any effects upon competition): Minor sources in nonattainment areas (except marginal nonattainment) are subject to this regulation, while minor sources in attainment areas are not.

(b) Reporting and paperwork requirements: The U.S. EPA identified recordkeeping as a SIP deficiency. Section 4(8) was added to comply with this federal requirement.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division will review and process permits for any sources newly affected. Costs will be recovered by a permit fee.

2. Continuing costs or savings: The division presently inspects all permitted sources of air pollutants and maintains plant and emissions data for emissions inventory purposes. Such activities are part of the division's normal day-to-day operations and are budgeted accordingly. Any newly affected source will be inspected and the cost will be absorbed as a part of the operating budget.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The division will review and issue permits for newly affected sources and will issue reports of inspections and emissions data as in 1. and 2. above.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were considered for the amendments which contain the same provisions as federal requirements.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is conflict in the capture efficiency procedures between this regulation and 401 KAR 50:016, Policies incorporated by reference. There is also duplication, because 401 KAR 50:016 is not part of Kentucky's SIP.

(a) Necessity of proposed regulation if in conflict: This regulation references 401 KAR 50:047, Test procedures for capture efficiency. 401 KAR 50:047 requires the U.S. EPA's new capture efficiency protocols. 401 KAR 50:016 requires the previous U.S. EPA capture efficiency procedures.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: 401 KAR 50:016 will be amended or repealed to eliminate the conflict. 401 KAR 50:016 is not part of Kentucky's SIP, therefore, amending only 401 KAR 50:016 would not satisfy the deviation between EPA's new policy and Kentucky's SIP.

(6) Any additional information or comments: These amendments were made in response to the requirements discussed under (1) above.

TIERING: Was tiering applied? No. The amendments eliminate deviations between the SIP and federal requirements. However, Section 6(4) of the amended regulation allows for an exemption based on low emissions. Section 6(5) has an exemption for low-use coatings.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Federal policy has changed subsequent to the promulgation of this regulation. The U.S. EPA is requiring these amendments to eliminate deviations between Kentucky's state implementation plan and federal policy. The applicability of this regulation has been updated to be compatible with the Clean Air Act as amended November 15, 1990.

2. State compliance standards. There are no changes in the standards. The federal policy refers to procedures, definitions, etc., to apply the standards.

3. Minimum or uniform standards contained in the federal mandate. The federal policy does not change the standards, but refers to procedures, definitions, etc., to apply the standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes, new sources in attainment counties will become subject to this regulation. For future construction after the effective date of the amendments to this regulation, major sources in attainment counties will become subject to the requirements of this regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Kentucky is required by the Clean Air Act to maintain the National Ambient Air Quality Standards in attainment areas. Part of the strategy chosen by Kentucky to accomplish that is the application of this regulation to new major sources in attainment areas. The purpose of this amendment is to make that strategy equitable for all new major sources in attainment areas.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(Proposed Amendment)

401 KAR 59:212. New graphic arts facilities using rotogravure and flexography.

RELATES TO: KRS [~~Chapter~~] 224.20-100, 224.20-110, 224.20-120

STATUTORY AUTHORITY: KRS 224.10-100 [~~224.033~~]

NECESSITY AND FUNCTION: KRS 224.10-100 [~~224.033~~] requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement and control of air pollution. This regulation provides for the control of volatile organic compound emissions from new graphic arts facilities which use rotogravure and flexography.

~~[Section 1. Applicability. (1) The provisions of this regulation shall apply to each affected facility commenced on or after the classification date defined below which is located:]~~

~~[(a) In an urban county designated nonattainment for ozone under 401 KAR 51:010; or]~~

~~[(b) In any other county and is a part of a major source of volatile organic compounds.]~~

~~[(c) The provisions of this regulation shall not apply to affected facilities in the following counties: Garrard, Graves, Hopkins, Laurel, Montgomery, Nelson, Pulaski, Scott, Taylor, Trigg, and Union prior to designation of such counties~~

~~nonattainment for ozone under 401 KAR 51:010.]~~

~~[(2) The provisions of this regulation shall not apply to new facilities which use publication rotogravure printing process. These facilities shall be subject to the provisions of 401 KAR 59:213.]~~

Section 1. [~~2.~~] Definitions. As used in this regulation, all terms not defined in this section [~~herein~~] shall have the meaning given to them in 401 KAR 50:010.

(1) "Affected facility" means a printing line for packaging rotogravure, specialty rotogravure, and flexographic printing.

(2) "Applicator" means the mechanism or device used to apply the ink.

(3) "Flash-off area" means the space between the applicator and the oven.

(4) "Printing line" means a series of equipment [~~and/~~]or operations used to apply, dry, or cure any inks containing volatile organic compounds (VOCs). This shall include, but is not limited to:

(a) Mixing operations;

(b) Process storage;

(c) Applicators;

(d) Drying operations including, but not limited to, flash-off area evaporation, oven drying, baking, curing, and polymerization;

(e) Clean up operations;

(f) Leaks, spills and disposal of VOCs [volatile organic compounds];

(g) Processing and handling of recovered VOCs [~~volatile organic compounds~~];

(h) For the purposes of determining compliance with this regulation, if any equipment or operation is [~~could be~~] considered to be a part of more than one (1) printing line, its VOC [~~volatile organic compound~~] emissions shall be assigned to each printing line of which it is a part proportionally to the throughput of VOCs [~~volatile organic compounds~~] it receives from or distributes to each printing line;

(i) If any portion of the series of equipment [~~and/~~]or operations qualify for an exemption according to Section 6 of this regulation, then that portion shall be considered to be a separate printing line;

(j) All units in a machine which has both coating and printing units shall [will] be considered as performing a printing operation.

~~[(5) "Volatile organic compounds" means chemical compounds of carbon (excluding methane, ethane, carbon monoxide, carbon dioxide, carbonic acid, metallic carbides, and ammonium carbonate) which have a vapor pressure greater than one-tenth (0.1) mm Hg at conditions of twenty (20) degrees Celsius and 760 mm Hg.]~~

(5) [~~(6)~~] "Process storage" means mixing tanks, holding tanks, and other tanks, drums, or other containers which contain inks, VOCs [~~volatile organic compounds~~], or recovered VOCs [~~volatile organic compounds~~]; but does not mean storage tanks of petroleum liquid which are subject to 401 KAR 59:050, 401 KAR 59:052, or 401 KAR 61:050.

(6) [~~(7)~~] "Printing" means the formation of words, designs and pictures, usually by a series of application rolls each with only partial coverage. It applies to flexographic and rotogravure processes as applied to specialty and packaging printing.

(7) [~~(8)~~] "Coating" means the application of a uniform layer of material across the entire width of a web.

(8) [~~(9)~~] "Classification date" means February 4, 1981.

(9) "VOCs [~~(10) "Volatile organic compounds~~] net input" means the total amount of VOCs [~~volatile organic compounds~~] input to the affected facility minus the amount of VOCs [~~volatile organic compounds~~] that are not emitted into the atmosphere. VOCs [Volatile organic compounds] that are prevented from being emitted to the atmosphere by the use of control devices shall not be subtracted from the total for the purpose of determining VOCs [~~volatile organic compounds~~] net input. When the nature of any operation or design of equipment [~~is such as to~~] permits more than one (1) interpretation of this definition, the interpretation that results in the minimum value for allowable emissions shall apply.

(10) [~~(11)~~] "Packaging rotogravure printing" means rotogravure printing upon paper, paper board, metal foil, plastic film, and other substrates, which are, in subsequent operations, formed into packaging products and labels for articles to be sold.

(11) [~~(12)~~] "Publication rotogravure printing" means rotogravure printing upon paper which is subsequently formed into books, magazines, catalogs, brochures, directories, newspaper supplements, and other types of printed materials.

(12) [~~(13)~~] "Flexographic printing" means the application of words, designs and pictures to a substrate by means of a roll printing technique in which the pattern to be applied is raised above the printing roll and the image carrier is made of rubber or other elastomeric materials.

(13) [~~(14)~~] "Rotogravure printing" means the application of words, designs, and pictures to a substrate by means of a roll printing technique which involves intaglio or recessed image areas in the form of cells.

(14) [~~(15)~~] "Roll printing" means the application of words, designs and pictures to a substrate usually by means of a series of hard rubber or steel rolls each with only partial coverage.

(15) [~~(16)~~] "Specialty rotogravure printing" means all rotogravure printing except packaging rotogravure and publication rotogravure printing. It includes, but is not limited to, rotogravure printing on paper cups and plates, patterned gift wrap, wallpaper and floor coverings.

Section 2. Applicability. (1) This regulation shall apply to:

(a) Each affected facility commenced on or after the classification date defined in Section 1 of this regulation and located in a county or portion of a county designated as nonattainment for ozone in 401 KAR 51:010, for any classification except marginal; and

(b) Each affected facility commenced on or after the effective date of this regulation which is part of a major source located in a county or portion of a county designated attainment or marginal nonattainment for ozone in 401 KAR 51:010.

(2) Each affected facility commenced on or after the classification date defined in Section 1 of this regulation but prior to the effective date of this regulation which is part of a major source located in a county or portion of a county designated attainment or marginally nonattainment for ozone in 401 KAR 51:010 shall be exempt from this regulation except that control devices and procedures required at the time it commenced shall continue to be maintained.

Section 3. Standard for VOCs [~~Volatile Organic Compounds~~]. (1) No person shall cause, allow, or permit an affected facility for packaging rotogravure printing or specialty rotogravure printing to discharge into the atmosphere more than thirty-five (35) percent by weight of the VOCs [~~volatile organic compounds~~] net input into the affected facility.

(2) No person shall cause, allow, or permit an affected facility for flexographic printing to discharge into the atmosphere more than forty (40) percent by weight of the VOCs [~~volatile organic compounds~~] net input into the affected facility.

Section 4. Compliance. (1) In all cases the design of any control system shall be [~~is~~] subject to approval by the department.

(2) Compliance with the standard in Section 3 of this regulation shall be demonstrated by a material balance unless [~~except in these cases where~~] the department determines that a material balance is not possible. If [~~For these cases where~~] a material balance is not possible, compliance shall [~~will~~] be determined based upon an engineering analysis by the cabinet of[~~:~~] the control system design, control device efficiency, control system capture efficiency, and any other factors that may [~~could~~] influence the performance of the system. If [~~so~~] requested by the department, performance tests [~~as~~]

specified by the department shall be conducted [~~in order~~] to determine the efficiency of the control device. Capture efficiency shall be determined by procedures specified in 401 KAR 50:047 in all ozone nonattainment areas except marginal.

(3) With the prior approval of the department, the owner or operator may elect to effect all [~~such~~] changes [~~in the affected facility as are~~] necessary to qualify for an exemption under Section 6 [~~5~~] of this regulation.

(4) If [~~Whenever~~] deemed necessary by the department, the department shall obtain samples of the inks used at an affected facility to verify that the inks meet the requirements in Section 6 [~~5~~] of this regulation. Method 24A, which has been incorporated [~~The following methods of analyses, filed~~] by reference in 401 KAR 50:015, [~~for inks~~] shall be used as applicable to determine compliance of the inks unless [~~except in those cases where~~] the department determines that other methods would be more appropriate. Case-by-case alternatives approved by the cabinet, but not previously authorized by the U.S. EPA, shall be submitted to the U.S. EPA as a SIP revision. [~~:~~]

[~~(a) ASTM D 1644-75 Method A;~~]
[~~(b) ASTM D 1475-60(74);~~]
[~~(c) ASTM D 2369-73; or~~]
[~~(d) Federal Standard 141 a, Method 4082.1.~~]

(5) The amount of exempt solvents shall be subtracted from the amount of inks, just like water, with the ultimate value of interest being the mass of VOC per unit volume of ink less exempt solvent or water or both.

(6) Daily records shall be maintained by the source for the most recent two (2) year period. These records shall be made available to the cabinet or the U.S. EPA upon request. These records shall include, but not be limited to, the following:

(a) Applicable regulation number;

(b) Application method and substrate type;

(c) Amount and type of graphic arts material or solvent used at each point of application, including exempt compounds;

(d) The VOC content as applied in each graphic arts material or solvent;

(e) The date for each application for graphic arts material or solvent;

(f) The amount of surface preparation, cleanup, or washup solvent (including exempt compounds) used and the VOC content of each; and

(g) Oven temperature, if applicable.

Section 5. Compliance Timetable. (1) Affected facilities which were subject to this regulation as in effect on February 4, 1981, shall have achieved final compliance upon start-up.

(2) The owner or operator of an affected facility that, on or after the effective date of this regulation, becomes subject to this regulation for any reason other than construction, modification, or reconstruction shall be required to complete the following:

(a) A final control plan for achieving compliance with this regulation shall be submitted no later than nine (9) months after the date the affected facility becomes subject to this regulation.

(b) The control system contract or the exempt coatings and any accompanying process change contracts shall be awarded no later than eleven (11) months after the date the affected facility becomes subject to this regulation.

(c) On-site construction or installation of emission control equipment or process changes for exempt coatings shall be initiated no later than thirteen (13) months after the date the affected facility becomes subject to this regulation.

(d) On-site construction or installation of emission control equipment or process changes for exempt coatings shall be completed no later than seventeen (17) months after the date the affected facility becomes subject to this regulation.

(e) Final compliance shall be achieved no later than eighteen (18) months after the date the affected facility becomes subject to this regulation.

(f) If an affected facility becomes subject to this regulation because it is located in a county previously designated nonurban nonattainment or redesignated in 401 KAR 51:010 after November 15, 1990, final compliance may be extended to May 31, 1995, and the schedule in paragraphs (a) through (d) of this subsection adjusted by the cabinet.

Section 6. [~~5.~~] Exemptions. Any affected facility shall be exempt from [the provisions of] Section 3 of this regulation if the printing systems:

(1) Utilize a waterborne ink whose volatile portion consists of seventy-five (75) volume percent water and twenty-five (25) volume percent organic solvent (or a lower VOC [~~volatile organic compound~~] content) in all printing units;

(2) Achieve a seventy (70) volume percent overall reduction of solvent usage (compared to all solvent-borne ink usage); [~~or~~]

(3) Utilize inks which, excluding water, contain sixty (60) percent or more by volume nonvolatile material as applied to the substrate; or

(4) Utilize inks with an emission limit of five-tenths (0.5) lb VOC/lb solids as delivered to the applicator.

[~~Section 6. Variances. Variation with the standards and limitations contained in this regulation, when supported by adequate technical information, will be considered by the department on a case by case basis to allow for technological or economic circumstances which are unique to a source.~~]

PHILLIP J. SHEPHERD, Secretary
RONALD P. MILLS, Acting Commissioner
APPROVED BY AGENCY: January 7, 1992
FILED WITH LRC: January 15, 1992 at noon
PUBLIC HEARING: A public hearing to receive comments on this proposed regulation and proposed amendments will be conducted on February 28, 1992, at 10 a.m. (ET) in the Auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing: Kenneth M. Hines, Manager, Program Planning and Administration Branch, Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Hisham M. Saaid

(1) Type and number of entities affected: A review of the division's records indicates that there are currently two entities under this regulation. These entities are graphic arts facilities using rotogravure or flexography. The amendments to this regulation have been made to eliminate deviations between state regulations which are a part of the state implementation plan (SIP) and U.S. EPA policy; to update the applicability; and to comply with KRS Chapter 13A. Some of the SIP deviations are requirements that already appear in 401 KAR 50:016, Policies incorporated by reference, which is a state regulation but not part of the SIP, and therefore no federally enforceable. The applicability is updated to be compatible with the requirements of the Clean Air Act as amended November 15, 1990. This amendment will not impact the two entities currently under this regulation. However, the Clean Air Act amendments eliminate the distinction between urban and nonurban ozone nonattainment areas. Previously, for example, minor sources in Boone, Campbell, and Kenton Counties (an urban nonattainment area) were subject to this regulation while similar sources in Boyd County (a nonurban nonattainment area) were not. The amendments will eliminate that distinction. This will make minor sources in Boyd County subject to this regulation. Further, the Clean Air Act amendments define 5 classifications of nonattainment. The redesignation of a county from attainment to any of the nonattainment classifications, except marginal nonattainment, would make

additional entities subject to this regulation. Sources which become subject to this regulation because of the changes in applicability required by the Clean Air Act amendments shall achieve final compliance by May 31, 1995. In addition, the division no longer distinguishes between exempt counties and other counties for future construction. After the effective date of the amendments to this regulation, a new major source or major modification constructing in any county, is subject to this regulation. The amendments made to comply with KRS Chapter 13A do not impact any sources.

(a) Direct and indirect costs or savings to those affected: If Kentucky does not make the federally required amendments to this regulation, the U.S. EPA will promulgate the requirements in federal regulations. There are no additional costs associated with complying with the state's regulation over complying with the same requirements in a federal regulation.

1. First year: There are no costs or savings associated with KRS Chapter 13A amendments. The costs associated with the SIP deviation amendments are of the nature of more recordkeeping, a different test method, and a different capture efficiency procedure. A chemical that was previously uncontrolled because of its low vapor pressure could now be classified as a VOC or vice versa under the new definition of VOC. The applicability amendment required by the Clean Air Act will bring additional sources under this regulation for the first time. The number and size of entities will not be known until the redesignations of nonattainment status for individual counties or portions of counties have been made or new sources constructed. A full cost analysis for the initial and continuing impact of this regulation was originally given in the U.S. EPA document EPA-450/2-78-033, pages 4-1 through 4-25, December 1978. Three control options are analyzed for various plant sizes. For thermal incinerators the installed capital costs ranged from $85,000 to $1,704,000; total annualized costs ranged from $20,100 to $1,665,500; and cost-effectiveness of pollutant controlled ranged from $250/ton to $11,370/ton. For carbon adsorbers for publications rotogravure printing the installed capital costs ranged from $435,000 to $1,262,000; total annualized costs ranged from a credit of $41,700 to a cost of $107,800; and the cost-effectiveness ranged from a credit of $13/ton to a cost of $46/ton. For pebble bed incinerators the installed capital cost ranged from $118,000 to $1,500,000; total annualized costs ranged from $26,000 to $478,000; and cost-effectiveness ranged from $120/ton to $8,400/ton. Although inflation can be taken into consideration, the size of the entities affected is not available for an accurate evaluation. A typical cost multiplier factor for 1978 to 1991 is 1.7. This means that 1978 costs should be multiplied by 1.7 to obtain 1991 costs.

2. Continuing costs or savings: Please see discussion under first year, 1. above.

3. Additional factors increasing or decreasing costs (note any effects upon competition): Minor sources in nonattainment areas (except marginal nonattainment) are subject to this regulation, while minor sources in attainment areas are not. These amendments will create a more equitable competitive environment for major sources in attainment areas commenced after the effective date of these amendments.

(b) Reporting and paperwork requirements: The U.S. EPA identified recordkeeping as a SIP deficiency. Section 4(6) was added to comply with this federal requirement.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division will review and process permits for any sources newly affected. Costs will be recovered by a permit fee.

2. Continuing costs or savings: The division presently inspects all permitted sources of air pollutants and maintains plant and emissions data for emissions inventory purposes. Such activities are part of the division's normal day-to-day operations and are budgeted accordingly. Any newly affected source will be inspected and the cost will be absorbed as a part of the operating budget.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The division will review and issue permits for newly affected sources and will issue reports of inspections and emissions data as in 1. and 2. above.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were considered for the amendments which contain the same provisions as federal requirements. Three methods were considered for the applicability to major new sources. One method was to continue to exempt eleven counties. A second method was to make the provisions of this amended regulation retroactive to the exempt counties. The third was to make all major new sources commenced after the amendment of this regulation in all counties subject to this amended regulation. The first and second methods were not considered equitable. Therefore, the third method was chosen as the most equitable.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is conflict in the capture efficiency procedures between this regulation and 401 KAR 50:016, Policies incorporated by reference. There is also duplication, because 401 KAR 50:016 is not part of Kentucky's SIP.

(a) Necessity of proposed regulation if in conflict: This regulation references 401 KAR 50:047, Test procedures for capture efficiency. 401 KAR 50:047 requires the U.S. EPA's new capture efficiency protocols. 401 KAR 50:016 requires the previous U.S. EPA capture efficiency procedures.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: 401 KAR 50:016 will be amended or repealed to eliminate the conflict. 401 KAR 50:016 is not part of Kentucky's SIP, therefore, amending only 401 KAR 50:016 would not satisfy the deviation between EPA's new policy and Kentucky's SIP.

(6) Any additional information or comments: These amendments were made in response to the requirements discussed under (1) above. In addition, new sources in formerly exempt counties will become subject to this regulation. For future construction after the effective date of the amendments to this regulation, major sources in the exempt counties will become subject to the requirements of this regulation. Kentucky is required by the Clean Air Act to maintain the National Ambient Air Quality Standards in attainment areas. Part of the strategy chosen by Kentucky to accomplish that is the application of this regulation to major sources in attainment areas. The purpose of this amendment is to make that strategy equitable for all major sources in attainment areas.

TIERING: Was tiering applied? No. The amendments eliminate deviations between the SIP and federal requirements.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Federal policy has changed subsequent to the promulgation of this regulation. The U.S. EPA is requiring these amendments to eliminate deviations between Kentucky's state implementation plan and federal policy. The applicability of this regulation has been updated to be compatible with the Clean Air Act as amended November 15, 1990.

2. State compliance standards. There are no changes in the standards. The federal policy refers to procedures, definitions, etc., to apply the standards.

3. Minimum or uniform standards contained in the federal mandate. The federal policy does not change the standards, but refers to procedures, definitions, etc., to apply the standards.

4. Will this administrative regulation impose stricter

requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes, new sources in attainment counties will become subject to this regulation. For future construction after the effective date of the amendments to this regulation, major sources in attainment counties will become subject to the requirements of this regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Kentucky is required by the Clean Air Act to maintain the National Ambient Air Quality Standards in attainment areas. Part of the strategy chosen by Kentucky to accomplish that is the application of this regulation to new major sources in attainment areas. The purpose of this amendment is to make that strategy equitable for all new major sources in attainment areas.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(Proposed Amendment)

401 KAR 59:214. New factory surface coating operations of flat wood paneling.

RELATES TO: KRS 224.20-100, 224.20-110, 224.20-120 [~~Chapter 224~~]

STATUTORY AUTHORITY: KRS 224.10-100 [~~224.033~~]

NECESSITY AND FUNCTION: KRS 224.10-100 [~~224.033~~] requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement and control of air pollution. This regulation provides for the control of volatile organic compound emissions from new factory surface coating operations of flat wood paneling.

[~~Section 1. Applicability. The provisions of this regulation shall apply to each affected facility commenced on or after the classification date defined below which is located:~~]

[~~(1) In an urban county designated nonattainment for ozone under 401 KAR 51:010; or~~]

[~~(2) In any other county and is a part of a major source of volatile organic compounds.~~]

[~~(3) The provisions of this regulation shall not apply to affected facilities in the following counties: Garrard, Graves, Hopkins, Laurel, Montgomery, Nelson, Pulaski, Scott, Taylor, Trigg, and Union prior to designation of such counties nonattainment for ozone under 401 KAR 51:010.~~]

Section 1. [~~2.~~] Definitions. As used in this regulation, all terms not defined in this section [herein] shall have the meaning given to them in 401 KAR 50:010.

(1) "Affected facility" means a coating line for the factory surface coating of interior flat wood paneling.

(2) "Applicator" means the mechanism or device used to apply the coating including but not limited to: roll coaters, curtain coaters, sprays and brushes.

(3) "Flash-off area" means the space between the applicator and the oven.

(4) "Coating line" means a series of equipment [and/]or operations used to apply, dry, or cure [any] coatings containing volatile organic compounds (VOCs). This shall include, but is not limited to:

(a) Mixing operations;

(b) Process storage;

(c) Applicators;

(d) Drying operations including, but not limited to, flash-off area evaporation, oven drying, baking, curing, and polymerization;

(e) Clean up operations;

(f) Leaks, spills and disposal of VOCs [~~volatile organic compounds~~];

(g) Processing and handling of recovered VOCs [~~volatile organic compounds~~];

(h) For the purposes of determining compliance with this regulation, if [any] equipment or an operation is [~~could be~~] considered to be a part of more than one (1) coating line, its VOC [~~volatile organic compound~~] emissions shall be assigned to each coating line of which it is a part proportionally to the throughput of VOC [~~volatile organic compound~~] it receives from or distributes to each coating line;

(i) If a [any] portion of the series of equipment [~~and/~~]or operations qualifies [~~qualify~~] for an exemption according to Section 6 [5] of this regulation, then that portion shall be considered to be a separate coating line;

[~~(5) "Volatile organic compounds" means chemical compounds of carbon (excluding methane, ethane, carbon monoxide, carbon dioxide, carbonic acid, metallic carbides, and ammonium carbonate) which have a vapor pressure greater than one tenth (0.1) mm Hg at conditions of twenty (20) degrees Celsius and 760 mm Hg.~~]

(5) [~~(6)~~] "Process storage" means mixing tanks, holding tanks, and other tanks, drums, or [other] containers which contain surface coatings, VOCs [volatile organic compounds], or recovered VOCs [~~volatile organic compounds~~]; but does not mean storage tanks of petroleum liquids which are subject to 401 KAR 59:050, 401 KAR 59:052, or 401 KAR 61:050.

(6) [~~(7)~~] "Interior flat wood paneling" means printed interior wall panels made of hardwood plywood and thin particle board, natural finish hardwood plywood panels, or hardboard paneling with Class II finishes.

(7) [~~(8)~~] "Printed panels" means panels whose grain or natural surface is obscured by fillers and basecoats upon which a simulated grain or decorative pattern is printed.

(8) [(9)] "Hardwood plywood" means plywood whose surface layer is a veneer of hardwood.

(9) [~~(10)~~] "Particle board" means a manufactured board made of individual wood particles which have been coated with a binder and formed into flat sheets by pressure. Thin particle board has a thickness of one-fourth (1/4) inch or less.

(10) [~~(11)~~] "Natural finish hardwood plywood panels" means panels whose original grain pattern is enhanced by essentially transparent finishes frequently supplemented by fillers and toners.

(11) [~~(12)~~] "Hardboard" means a panel manufactured primarily from interfelted lignocellulosic fibers which are consolidated under heat and pressure in a hot-press.

(12) [~~(13)~~] "Class II hardboard paneling finishes" means finishes which meet the specifications of Voluntary Product Standard PS-59-73, which has been incorporated [~~filed~~] by reference in 401 KAR 50:015, as approved by the American National Standards Institute.

(13) [~~(14)~~] "Classification date" means February 4, 1981. [~~the effective date of this regulation.~~]

(14) "VOCs [~~(15) "Volatile organic compounds~~] net input" means the total amount of VOCs [~~volatile organic compounds~~] input to the affected facility minus the amount of VOCs [volatile organic compounds] that are not emitted into the atmosphere. VOCs [~~Volatile organic compounds~~] that are prevented from being emitted to the atmosphere by the use of control devices shall not be subtracted from the total for the purposes of determining VOCs [~~volatile organic compounds~~] net input. If [When] the nature of an [~~any~~[operation or a design of equipment [~~is such as to~~] permits more than one (1) interpretation of this definition, the interpretation that results in the minimum value for allowable emissions shall apply.

Section 2. Applicability. (1) This regulation shall apply to:

(a) Each affected facility commenced on or after the classification date defined in Section 1 of this regulation and located in a county or a portion of a county designated as nonattainment for ozone in 401 KAR 51:010, for any classification except marginal; and

(b) Each affected facility commenced on or after the effective date of this regulation which is part of a major source

located in a county or portion of a county designated attainment or marginal nonattainment for ozone in 401 KAR 51:010.

(2) Each affected facility commenced on or after the classification date defined in Section 1 of this regulation but prior to the effective date of this regulation which is a part of a major source located in a county or portion of a county designated attainment or marginally nonattainment for ozone in 401 KAR 51:010 shall be exempt from this regulation except that control devices and procedures required at the time it commenced shall continue to be maintained.

Section 3. Standard for VOCs [~~Volatile Organic Compounds~~]. No person shall cause, allow, or permit an affected facility to discharge into the atmosphere more than fifteen (15) percent by weight of the VOCs [~~volatile organic compounds~~] net input into the affected facility.

Section 4. Compliance. (1) In all cases the design of a [~~any~~] control system is subject to approval by the cabinet.

(2) Compliance with the standard in Section 3 of this regulation shall be demonstrated by a material balance unless [~~except in these cases where~~] the cabinet determines that a material balance is not possible. If [~~For these cases where~~] a material balance is not possible, compliance shall [~~will~~] be determined based upon an engineering analysis by the cabinet of: the control system design, control device efficiency, control system capture efficiency, and [~~any~~] other factors that could influence the performance of the system. If [~~so~~] requested by the cabinet, performance tests [~~as~~] specified by the cabinet shall be conducted [~~in order~~] to determine the efficiency of the control device. Capture efficiency shall be determined by procedures specified in 401 KAR 50:047 in all ozone nonattainment areas except marginal.

(3) With the prior approval of the cabinet, the owner or operator may elect to effect all [~~such~~] changes [in the affected facility as are] necessary to qualify for an exemption under Section 6 [~~5~~] of this regulation.

(4) If [~~Whenever~~] deemed necessary by the cabinet, the cabinet shall obtain samples of the coatings used at an affected facility to verify that the coatings meet the requirements in Section 6 [~~5~~] of this regulation. Method 24, which has been incorporated [~~The following methods of analyses, filed~~] by reference in 401 KAR 50:015, [~~for coatings~~] shall be used as applicable to determine compliance of the coatings unless [~~except in these cases where~~] the cabinet determines that other methods would be more appropriate. Case-by-case alternatives approved by the cabinet, but not previously authorized by the U.S. EPA, shall be submitted to the U.S. EPA as a SIP revision. [~~:~~]

[~~(a) ASTM D 1644-75 Method A;~~]

[~~(b) ASTM D 1475-60(74);~~]

[~~(c) ASTM D 2369-73; or~~]

[~~(d) Federal Standard 141 a, Method 4082.1.~~]

(5) Compliance on one (1) coating line with VOC emission limits shall be based on an averaging period not to exceed twenty-four (24) hours. If it is not economically or technically feasible to determine emissions on a daily basis, alternatives expressing emission limits for longer averaging times may be accepted if approved by the cabinet. Case-by-case alternatives approved by the cabinet, but not previously authorized by the U.S. EPA, shall be submitted to the U.S. EPA as a SIP revision.

(6) The amount of exempt solvents shall be subtracted from the amount of coatings, just like water, with the ultimate value of interest being the mass of VOC per unit volume of coating less exempt solvent or water or both.

(7) Calculations to determine equivalency on one (1) coating line shall be based on mass of VOC per volume of solids.

(8) Daily records shall be maintained by the source for the most recent two (2) year period. These records shall be made available to the cabinet or the U.S. EPA upon request. The records shall include, but not be limited to, the following:

(a) Applicable regulation number;

(b) Application method and substrate type;

(c) Amount and type of adhesive, coating (including catalyst and reducer for multicomponent coatings), or solvent used at each point of application, including exempt compounds;

(d) The VOC content as applied in each adhesive, coating, or solvent;

(e) The date for each application of adhesive, coating, or solvent;

(f) The amount of surface preparation, cleanup, or washup solvent (including exempt compounds) used and the VOC content of each; and

(g) Oven temperature, if applicable.

Section 5. Compliance Timetable. (1) Affected facilities which were subject to this regulation as in effect on February 4, 1981, shall have achieved final compliance upon startup.

(2) The owner or operator of an affected facility that, on or after the effective date of this regulation, becomes subject to this regulation for a reason other than construction, modification, or reconstruction shall be required to complete the following:

(a) Submit a final control plan for achieving compliance with this regulation no later than nine (9) months after the date the affected facility becomes subject to this regulation.

(b) Award a contract for the control system or for the exempt coatings and any accompanying process change no later than eleven (11) months after the date the affected facility becomes subject to this regulation.

(c) Initiate on-site construction or installation of emission control equipment or process changes for exempt coatings no later than thirteen (13) months after the date the affected facility becomes subject to this regulation.

(d) On-site construction or installation of emission control equipment or process changes for exempt coatings shall be completed no later than seventeen (17) months after the date the affected facility becomes subject to this regulation.

(e) Final compliance shall be achieved no later than eighteen (18) months after the date the affected facility becomes subject to this regulation.

(f) If an affected facility becomes subject to this regulation because it is located in a county previously designated nonurban nonattainment or redesignated in 401 KAR 51:010 after November 15, 1990, final compliance may be extended to May 31, 1995, and the schedule in paragraphs (a) through (d) of this subsection adjusted by the cabinet.

Section 6. [~~5.~~] Exemptions. (1) An [~~Any~~] affected facility shall be exempt from [the provision of] Section 3 of this regulation if the total VOC [~~volatile organic compound~~] content of all the coatings applied to a specific area of finished paneling product is:

(a) [~~(1)~~] Less than two and nine-tenths (2.9) kg of VOCs [~~volatile organic compounds~~] per 100 sq. m. of coated surface (six (6.0) lb/1,000 sq. ft.) for printed interior wall panels made of hardwood plywood and thin particle board;

(b) [~~(2)~~] Less than five and eight-tenths (5.8) [~~five and nine tenths (5.9)~~] kg of VOCs [~~volatile organic compounds~~] per 100 sq. m. of coated surface (twelve (12.0) lb/1,000 sq. ft.) for natural finish hardwood plywood panels; or

(c) [~~(3)~~] Less than four and eight-tenths (4.8) [~~four and nine tenths (4.9)~~] kg of VOCs [~~volatile organic compounds~~] per 100 sq. m. of coated surface (ten (10.0) lb/1,000 sq. ft.) for Class II finishes for hardboard paneling.

(2) Low-use coatings shall be exempt from Section 3 of this regulation if the plantwide consumption of these coatings in the aggregate is less than or equal to fifty-five (55) gallons during the previous twelve (12) months.

(3) An affected facility shall be exempt from this regulation if the total VOC emissions from all affected facilities subject to this regulation are less than or equal to:

(a) Three (3) lb/hour actual emissions before add-on

control;

(b) Fifteen (15) lb/day actual emissions before add-on control; or

(c) Ten (10) tons per year theoretical potential emissions based on design capacity (or maximum production) and 8760 hr/yr before add-on control.

~~[Section 6. Variances. Variation with the standards and limitations contained in this regulation, when supported by adequate technical information, will be considered by the cabinet on a case by case basis to allow for technological or economic circumstances which are unique to a source.~~]

PHILLIP J. SHEPHERD, Secretary
RONALD P. MILLS, Acting Commissioner

APPROVED BY AGENCY: January 7, 1992

FILED WITH LRC: January 15, 1992 at noon

PUBLIC HEARING: A public hearing to receive comments on this proposed regulation and proposed amendments will be conducted on February 28, 1992, at 10 a.m. (ET) in the Auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing: Kenneth M. Hines, Manager, Program Planning and Administration Branch, Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Hisham M. Saaid

(1) Type and number of entities affected: A review of the division's records indicates that there are no entities presently affected by the amendments to this regulation. The amendments to this regulation have been made to eliminate deviations between state regulations which are a part of the State Implementation Plan (SIP) and U.S EPA policy, to update the applicability, and to comply with KRS Chapter 13A. Many of the SIP deviations are requirements that already appear in 401 KAR 50:016, Policies incorporated by reference, which is a state regulation but not part of the SIP, and therefore not federally enforceable. The applicability has been updated to be compatible with the Clean Air Act as amended November 15, 1990. The Clean Air Act eliminates the distinction between rural and urban nonattainment counties. Formerly, minor sources were controlled only in urban nonattainment counties. Now minor sources will be controlled in all nonattainment areas except those classified as marginal. The amendments made to comply with KRS Chapter 13A do not impact any sources.

(a) Direct and indirect costs or savings to those affected: There are currently no entities affected by these amendments; therefore, there are no direct and indirect costs or savings.

1. First year: There are no first year costs or savings.

2. Continuing costs or savings: There are no continuing costs or savings.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There are currently no entities affected by these amendments; therefore, reporting and paperwork requirements are not applicable.

(2) Effects on the promulgating administrative body: There are no entities affected by these amendments; therefore, there are no effects on the promulgating administrative body.

(a) Direct and indirect costs or savings: There are no direct and indirect costs or savings.

1. First year: There are no first year costs or savings.

2. Continuing costs or savings: There are no continuing costs or savings.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There are no entities affected by these amendments; therefore, reporting and paperwork requirements are not applicable.

(3) Assessment of anticipated effect on state and local revenues: There is no effect on state and local revenues because there are no entities affected by the amendments.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were not considered because there are currently no entities affected by these amendments, and therefore no basis for an alternative exists.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no entities affected by these amendments. Conflict and duplication exist between this regulation and 401 KAR 50:016, Policies incorporated by reference. The conflict is in the capture efficiency procedures. This regulation references the new capture efficiency procedures required by the U.S. EPA which will take precedence over the old U.S. EPA capture efficiency procedures contained in 401 KAR 50:016. The duplication is in the control of volatile organic compounds. 401 KAR 50:016 is not part of Kentucky's State Implementation Plan (SIP). The requirements are repeated in this regulation which is a part of Kentucky's SIP.

(a) Necessity of proposed regulation if in conflict: This regulation references 401 KAR 50:047, Test procedures for capture efficiency. 401 KAR 50:047 requires the U.S. EPA's new capture efficiency protocols. 401 KAR 50:016 requires the previous U.S. EPA capture efficiency procedure.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: 401 KAR 50:016 will be amended or repealed to eliminate the conflict. 401 KAR 50:016 is not part of Kentucky's SIP, therefore, amending only 401 KAR 50:016 would not satisfy the deviation between EPA's new policy and Kentucky's SIP.

(6) Any additional information or comments: The compliance time schedule has been added to allow for present affected facilities which become subject to this regulation on or after the effective date of this regulation. This situation could occur if the attainment status of a county changes. In addition, the division no longer distinguishes between exempt counties and other counties for future construction. After the effective date of the amendments to this regulation, a new major source or major modification constructing in a previously exempt county or any other county, is subject to this regulation.

TIERING: Was tiering applied? No. The amendment is being made to a regulation in which tiering already applies.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Federal policy has changed subsequent to the promulgation of this regulation. The U.S. EPA is requiring these amendments to eliminate deviations between Kentucky's State Implementation Plan and federal policy. The applicability of this regulation has been updated to be compatible with the Clean Air Act as amended November 15, 1990.

2. State compliance standards. There are no changes in the standards. The federal policy refers to procedures, definitions, etc., to apply the standards.

3. Minimum or uniform standards contained in the federal mandate. The federal policy does not change the standards, but refers to procedures, definitions, etc., to apply the standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes, new sources in formerly exempt counties will become subject to this regulation. For future construction after the effective date of the amendments to this regulation, major sources in the exempt counties will become subject to the requirements of this regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

Kentucky is required by the Clean Air Act to maintain the National Ambient Air Quality Standards in attainment areas. Part of the strategy chosen by Kentucky to accomplish that is the application of this regulation to major sources in attainment areas. The purpose of this amendment is to make that strategy equitable for all major sources in attainment areas. There are no stricter standards, or additional or different responsibilities or requirements imposed on sources constructed prior to the effective date of these amendments.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(Proposed Amendment)

401 KAR 59:225. New miscellaneous metal parts and products surface coating operations.

RELATES TO: KRS 224.20-100, 224.20-110, 224.20-120 [Chapter 224]

STATUTORY AUTHORITY: KRS 224.10-100 [224.033]

NECESSITY AND FUNCTION: KRS 224.10-100 [224.033] requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement and control of air pollution. This regulation provides for the control of volatile organic compound emissions from new miscellaneous metal parts and products surface coating operations.

[Section 1. Applicability. The provisions of this regulation shall apply to each affected facility commenced on or after the classification date defined below which is located:]

[(1) In an urban county designated nonattainment for ozone under 401 KAR 51:010; or]

[(2) In any other county and is a part of a major source of volatile organic compounds.]

[(3) The provisions of this regulation shall not apply to affected facilities in the following counties: Garrard, Graves, Hopkins, Laurel, Montgomery, Nelson, Pulaski, Scott, Taylor, Trigg, and Union prior to designation of such counties nonattainment for ozone under 401 KAR 51:010.]

Section 1. [2.] Definitions. As used in this regulation, all terms not defined in this section [herein] shall have the meaning given to them in 401 KAR 50:010.

(1) "Affected facility" means a coating line located at job shops and original equipment manufacturing industries which apply coatings on metal substrates not elsewhere subject to regulation in this chapter.

(2) "Applicator" means the mechanism or device used to apply the coating, including but not limited to: dipping, spraying, or flow coating.

(3) "Flash-off area" means the space between the applicator and the oven.

(4) "Single coat" means only one (1) film of coating is applied to the metal substrate.

(5) "Prime coat" means the first of two (2) or more films of coating applied in an operation.

(6) "Topcoat" means the final film or series of films of coating applied in a two (2) coat (or more) operation.

(7) "Coating line" means a series of equipment [and/]or operations used to apply, dry, or cure any prime, topcoat or single coatings containing volatile organic compounds (VOCs). This shall include, but is not limited to:

(a) Mixing operations;

(b) Process storage;

(c) Applicators;

(d) Drying operations including, but not limited to, flash-off area evaporation, oven drying, baking, curing, and polymerization;

(e) Clean up operations;

(f) Leaks, spills and disposal of VOCs [volatile organic compounds];

(g) Processing and handling of recovered VOCs [volatile organic compounds];

(h) For the purposes of determining compliance with this regulation, if [any] equipment or an operation is [could be] considered to be a part of more than one (1) coating line, its VOC [volatile organic compound] emissions shall be assigned to each coating line of which it is a part proportionally to the throughput of VOC [volatile organic compound] it receives from or distributes to each coating line;

(i) If a [any] portion of the series of equipment [and/]or operations qualify for an exemption according to Section 6 [5] of this regulation, then that portion shall be considered to be a separate coating line.

[(8) "Volatile organic compounds" means chemical compounds of carbon (excluding methane, ethane, carbon monoxide, carbon dioxide, carbonic acid, metallic carbides, and ammonium carbonate) which have a vapor pressure greater than one tenth (0.1) mm Hg at conditions of twenty (20) degrees Celsius and 760 mm Hg.]

(8) [(9)] "Process storage" means mixing tanks, holding tanks, and other tanks, drums, or other containers which contain surface coatings, VOCs [volatile organic compounds], or recovered VOCs [volatile organic compounds]; but does not mean storage tanks of petroleum liquids which are subject to 401 KAR 59:050, 401 KAR 59:052, or 401 KAR 61:050.

(9) [(10)] "Miscellaneous metal parts and products" means items including but not limited to:

(a) Large farm machinery (harvesting, fertilizing and planting machines, tractors, combines, etc.);

(b) Small farm machinery (lawn and garden tractors, lawn mowers, rototillers, etc.);

(c) Small appliances (fans, mixers, blenders, crock pots, dehumidifiers, vacuum cleaners, etc.);

(d) Commercial machinery (computers and auxiliary equipment, typewriters, calculators, vending machines, etc.);

(e) Industrial machinery (pumps, compressors, conveyor components, fans, blowers, transformers, etc.);

(f) Fabricated metal products (metal covered doors, frames, etc.); and

(g) Any other industrial category not otherwise subject to regulation in this chapter which coats metal parts or products.

(10) [(11)] "Heat sensitive material" means materials which cannot be exposed to temperatures greater than eighty-two (82) to ninety-three (93)°C (180°-200°F).

(11) [(12)] "Air or forced air-dried items" means parts that are too large or too heavy for practical size ovens; parts that are sensitive to heat; parts to which heat sensitive materials are attached; or equipment assembled prior to top coating for specific performance or quality standards.

(12) [(13)] "Outdoor or harsh exposure or extreme environmental conditions" means exposure to any of the following: year round weather conditions, temperatures consistently above ninety-five (95)° Celsius, detergents, scouring, solvents, corrosive atmosphere; and similar environmental conditions.

(13) [(14)] "Classification date" means February 4, 1981. [the effective date of this regulation.]

(14) "VOCs [(15) "Volatile organic compounds] net input" means the total amount of VOCs [volatile organic compounds] input to the affected facility minus the amount of VOCs [volatile organic compounds] that are not emitted into the atmosphere. VOCs [Volatile organic compounds] that are prevented from being emitted to the atmosphere by the use of control devices shall not be subtracted from the total for the purposes of determining VOCs [volatile organic compounds] net input. If [When] the nature of an [any] operation or design of equipment [is such as to] permits more than one (1) interpretation of this definition, the interpretation that results in the minimum value for allowable emissions shall apply.

(15) "Glass primer" means a primer applied to the body of a vehicle to etch the topcoat for the purpose of ensuring a

positive bond with the adhesive used to secure the windshield and back glass to the vehicle in a manner consistent with federal safety regulations.

Section 2. Applicability. (1) This regulation shall apply to:

(a) Each affected facility commenced on or after the classification date defined in Section 1 of this regulation and located in a county or portion of a county designated as nonattainment for ozone in 401 KAR 51:010, for any classification except marginal; and

(b) Each affected facility commenced on or after the effective date of this regulation which is part of a major source located in a county or portion of a county designated attainment or marginal nonattainment for ozone in 401 KAR 51:010.

(2) Each affected facility commenced on or after the classification date defined in Section 1 of this regulation but prior to the effective date of this regulation which is part of a major source located in a county or portion of a county designated attainment or marginally nonattainment for ozone in 401 KAR 51:010 shall be exempt from this regulation except that control devices and procedures required at the time it commenced shall continue to be maintained.

(3) The provisions of this regulation shall not apply to affected facilities which are subject to local air pollution control district regulations which have been approved by the cabinet and the U.S. EPA.

Section 3. Standard for VOCs [~~Volatile Organic Compounds~~]. No person shall cause, allow, or permit an affected facility to discharge into the atmosphere more than fifteen (15) percent by weight of the VOCs [~~volatile organic compounds~~] net input into the affected facility.

Section 4. Compliance. (1) In all cases the design of a [~~any~~] control system is subject to approval by the cabinet.

(2) Compliance with the standard in Section 3 of this regulation shall be demonstrated by a material balance unless [~~except in those cases where~~] the cabinet determines that a material balance is not possible. If [~~For those cases where~~] a material balance is not possible, compliance shall [~~will~~] be determined based upon an engineering analysis by the cabinet of: the control system design, control device efficiency, control system capture efficiency, and [~~any~~] other factors that could influence the performance of the system. If [~~so~~] requested by the cabinet, performance tests [~~as~~] specified by the cabinet shall be conducted [~~in order~~] to determine the efficiency of the control device. Capture efficiency shall be determined by the procedures specified in 401 KAR 50:047 in all ozone nonattainment areas except marginal.

(3) With the prior approval of the cabinet, the owner or operator may elect to effect all [~~such~~] changes [~~in the affected facility as are~~] necessary to qualify for an exemption under Section 6 [~~5~~] of this regulation.

(4) If [~~Whenever~~] deemed necessary by the cabinet, the cabinet shall obtain samples of the coatings used at an affected facility to verify that the coatings meet the requirements in Section 6 [~~5~~] of this regulation. Method 24, which has been incorporated [~~The following methods of analyses, filed~~] by reference in 401 KAR 50:015, [~~for coatings~~] shall be used as applicable to determine compliance of the coatings unless [except in those cases where] the cabinet determines that other methods would be more appropriate. Case-by-case alternatives approved by the cabinet, but not previously authorized by the U.S. EPA, shall be submitted to the U.S. EPA as a SIP revision. [~~:~~]

[~~(a) ASTM D 1644-75 Method A;~~]

[~~(b) ASTM D 1475-60(74);~~]

[~~(c) ASTM D 2369-73; or~~]

[~~(d) Federal Standard 141 a, Method 4082.1.~~]

(5) Compliance on one (1) coating line with VOC emission limits shall be based on an averaging period not to exceed twenty-four (24) hours. If it is not economically or technically feasible to determine emissions on a daily basis, alternatives expressing emission limits for longer averaging times may be accepted if approved by the cabinet. Case-by-case alternatives approved by the cabinet, but not previously authorized by the U.S. EPA, shall be submitted to the U.S. EPA as a SIP revision.

(6) The amount of exempt solvent shall be subtracted from the amount of coatings, just like water, with the ultimate value of interest being the mass of VOC per unit volume of coating less exempt solvent or water or both.

(7) Calculations to determine equivalency on one (1) coating line shall be based on mass of VOC per volume of solids.

(8) Daily records shall be maintained by the source for the most recent two (2) year period. These records shall be made available to the cabinet or the U.S. EPA upon request. The records shall include, but not be limited to, the following:

(a) Applicable regulation number;

(b) Application method and substrate type;

(c) Amount and type of adhesive, coating (including catalyst and reducer for multicomponent coatings), or solvent used at each point of application, including exempt compounds;

(d) The VOC content as applied in each adhesive, coating, or solvent;

(e) The date for each application for adhesive, coating, or solvent;

(f) The amount of surface preparation, cleanup, or washup solvent (including exempt compounds) used and the VOC content of each; and

(g) Oven temperature, if applicable.

Section 5. Compliance Timetable. (1) Affected facilities which were subject to this regulation as in effect on February 4, 1981, shall have achieved final compliance upon startup.

(2) The owner or operator of an affected facility that, on or after the effective date of this regulation, becomes subject to this regulation for a reason other than construction, modification, or reconstruction shall be required to complete the following:

(a) Submit a final control plan for achieving compliance with this regulation no later than nine (9) months after the date the affected facility becomes subject to this regulation.

(b) Award a contract for the control system or for the exempt coatings and any accompanying process change no later than eleven (11) months after the date the affected facility becomes subject to this regulation.

(c) Initiate on-site construction or installation of emission control equipment or process changes for exempt coatings no later than thirteen (13) months after the date the affected facility becomes subject to this regulation.

(d) On-site construction or installation of emission control equipment or process changes for exempt coatings shall be completed no later than seventeen (17) months after the date the affected facility becomes subject to this regulation.

(e) Final compliance shall be achieved no later than eighteen (18) months after the date the affected facility becomes subject to this regulation.

(f) If an affected facility becomes subject to this regulation because it is located in a county previously designated nonurban nonattainment or redesignated in 401 KAR 51:010 after November 15, 1990, final compliance may be extended to May 31, 1995, and the schedule in paragraphs (a) through (d) of this subsection adjusted by the cabinet.

Section 6. [~~5.~~] Exemptions. (1) An [~~Any~~] affected facility shall be exempt from the provisions of Section 3 of this regulation if the VOC [~~volatile organic compound~~] content of coating is:

(a) Less than 0.52 kg/l of coating (four and three-tenths (4.3) lb/gal), excluding water or exempt solvent or both, delivered to applicators associated with clear coat;

(b) Less than 0.42 kg/l of coating (three and five-tenths (3.5) lb/gal), excluding water or exempt solvent or both,

delivered to applicators associated with air or forced air-dried items or items subject to outdoor or harsh exposure or extreme environmental conditions;

(c) Less than 0.36 kg/l of coating (three (3.0) lb/gal), excluding water or exempt solvent or both, delivered to applicators associated with color coat or first coat on untreated ferrous substrate; or

(d) Less than 0.05 kg/l of powder coating (four-tenths (0.4) lb/gal) delivered to applicators associated with no or infrequent color change, or a small number of colors applied.

(2) The surface coating of the following metal parts and products are exempt from this regulation:

(a) The exterior of airplanes and marine vessels, but not parts for the exterior of airplanes and marine vessels that are coated as a separate manufacturing or coating operation;

(b) Automobile refinishing; and

(c) Customized top coating of automobiles and trucks, if production is less than thirty-five (35) vehicles per day.

(3) An [~~Any~~] affected facility shall be exempt from [~~the provisions of Section 3 of~~] this regulation if the total VOC [~~volatile organic compound~~] emissions from all affected facilities subject to this regulation are less than or equal to twenty (20) tons per year.

(4) Low-use coatings shall be exempt from Section 3 of this regulation if the plantwide consumption of these coatings in the aggregate is less than or equal to fifty-five (55) gallons during the previous twelve (12) months.

(5) Glass primer with VOC content equal to or less than six and nine-tenths (6.9) lb/gal of glass primer, excluding water or exempt solvent or both, shall be exempt from this regulation.

[~~Section 6. Variances. Variation with the standards and limitations contained in this regulation, when supported by adequate technical information, will be considered by the cabinet on a case by case basis to allow for technological or economic circumstances which are unique to a source.~~]

PHILLIP J. SHEPHERD, Secretary
RONALD P. MILLS, Acting Commissioner
APPROVED BY AGENCY: January 7, 1992
FILED WITH LRC: January 15, 1992 at noon

PUBLIC HEARING: A public hearing to receive comments on this proposed regulation and proposed amendments will be conducted on February 28, 1992, at 10 a.m. (ET) in the Auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing: Kenneth M. Hines, Manager, Program Planning and Administration Branch, Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Hisham M. Saaid

(1) Type and number of entities affected: A review of the division's records indicates that there are currently 11 entities under this regulation. These entities are miscellaneous metal parts and products surface coating operations. The amendments to this regulation have been made to eliminate deviations between state regulations which are a part of the state implementation plan (SIP) and U.S. EPA policy; to update the applicability; and to comply with KRS Chapter 13A. Many of the SIP deviations are requirements that already appear in 401 KAR 50:016, Policies incorporated by reference, which is a state regulation but not part of the SIP, and therefore not federally enforceable. The applicability is updated to be compatible with the requirements of the Clean Air Act as amended November 15, 1991. This amendment will not impact the 11 entities currently under this regulation. However, the Clean Air Act amendments eliminate the distinction between urban and nonurban ozone nonattainment areas. Previously, for example, minor sources in Boone, Campbell, and Kenton Counties (an urban nonattainment area) were subject to this regulation while similar sources in Boyd County (a nonurban nonattainment area) were not. The amendments will eliminate that distinction. This will make minor sources in Boyd County subject to this regulation. Further, the Clean Air Act amendments define 5 classifications of nonattainment. The redesignation of a county from attainment to any of the nonattainment classifications, except marginal nonattainment, would make additional entities subject to this regulation. Sources which become subject to this regulation because of the changes in applicability required by the Clean Air Act amendments shall achieve final compliance by May 31, 1995. In addition, the division no longer distinguishes between exempt counties and other counties for future construction. After the effective date of the amendments to this regulation, a new major source or major modification construction in a previously exempt county or any other county, is subject to this regulation. The amendments made to comply with KRS Chapter 13A do not impact any sources.

(a) Direct and indirect costs or savings to those affected: If Kentucky does not make the federally required amendments to this regulation, the U.S. EPA will promulgate the requirements in federal regulations. There are no additional costs associated with complying with the state's regulation over complying with the same requirements in a federal regulation.

1. First year: There are no costs or savings associated with KRS Chapter 13A amendments. There are no additional costs associated with complying with the state's amendments over complying with the same requirements in a federal regulation. The costs associated with the SIP deviation amendments are of the nature of more recordkeeping, a different test method, and a different capture efficiency procedure. A chemical that was previously noncontrolled because of its low vapor pressure could now be classified as a volatile organic compound or vice versa under the new definition of volatile organic compound. The applicability amendment required by the Clean Air Act will bring additional sources under this regulation for the first time. The number and size of entities will not be known until the redesignations of nonattainment status for individual counties or portions of counties have been made. A full cost analysis for the initial and continuing impact of this regulation was originally given in the U.S. EPA document EPA-450/2-78-015, pages 3-1 through 3-24, June 1978. Five control options are analyzed for small, medium, and large sources for 7 operation types. A small source waterborne-coatings cost effectiveness is given on page 3-12 at $857/megagram of solvent controlled. However, in the consideration of the various applicable control options, a range from $339 saved to $20,154 cost per megagram of solvent controlled is presented. Although inflation can be taken into consideration, the size of the entities affected is not available for an accurate evaluation. A typical cost multiplier factor for 1978 to 1991 is 1.7. This means that 1978 costs should be multiplied by 1.7 to obtain 1991 costs.

2. Continuing costs or savings: Please see discussion under First year, 1 above.

3. Additional factors increasing or decreasing costs (note any effects upon competition): Minor sources in nonattainment areas (except marginal nonattainment) are subject to this regulation, while minor sources in attainment areas are not. These amendments will create a more equitable competitive environment for major sources in attainment areas commenced after the effective date of these amendments.

(b) Reporting and paperwork requirements: The U.S. EPA identified recordkeeping as a SIP deficiency. Section 4(8) was added to comply with this federal requirement.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division will review and process permits for any sources newly affected. Costs will be recovered by a permit fee.

2. Continuing costs or savings: The division presently

inspects all permitted sources of air pollutants and maintains plant and emissions data for emissions inventory purposes. Such activities are part of the division's normal day-to-day operations and are budgeted accordingly. Any newly affected source will be inspected and the cost will be absorbed as a part of the operating budget.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The division will review and issue permits for newly affected sources and will issue reports of inspections and emissions data as in 1. and 2. above.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were considered for the amendments which contain the same provisions as federal requirements. Three methods were considered for the applicability to major new sources. One method was to continue to exempt 11 counties. A second method was to make the provisions of this amended regulation retroactive to the exempt counties. The third was to make all major new sources commenced after the amendment of this regulation in all counties subject to this amended regulation. The first and second methods were not considered equitable. Therefore, the third method was chosen as the most equitable.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is conflict in the capture efficiency procedures between this regulation and 401 KAR 50:016, Policies incorporated by reference. There is also duplication, because 401 KAR 50:016 is not part of Kentucky's SIP.

(a) Necessity of proposed regulation if in conflict: This regulation references 401 KAR 50:047, Test procedures for capture efficiency. 401 KAR 50:047 requires the U.S. EPA's new capture efficiency protocols. 401 KAR 50:016 requires the previous U.S. EPA capture efficiency procedures.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: 401 KAR 50:016 will be amended or repealed to eliminate the conflict. 401 KAR 50:016 is not part of Kentucky's SIP, therefore, amending only 401 KAR 50:016 would not satisfy the deviation between EPA's new policy and Kentucky's SIP.

(6) Any additional information or comments: These amendments were made in response to the requirements discussed under (1) above. In addition, new sources in formerly exempt counties will become subject to this regulation. For future construction after the effective date of the amendments to this regulation, major sources in the exempt counties will become subject to the requirements of this regulation. Kentucky is required by the Clean Air Act to maintain the National Ambient Air Quality Standards in attainment areas. Part of the strategy chosen by Kentucky to accomplish that is the application of this regulation to major sources in attainment areas. The purpose of this amendment is to make that strategy equitable for all major sources in attainment areas. There are no stricter standards, or additional or different responsibilities or requirements imposed on sources constructed prior to the effective date of these amendments.

TIERING: Was tiering applied? No. The amendments eliminate deviations between the SIP and federal requirements. This amendment is being made to a regulation in which tiering already applies.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Federal policy has changed subsequent to the promulgation of this regulation. The U.S. EPA is requiring these amendments to eliminate deviations between Kentucky's State Implementation Plan and federal policy. The applicability of this regulation has been updated to be compatible with the Clean Air Act as amended November 15, 1990.

2. State compliance standards. There are no changes in the standards. The federal policy refers to procedures, definitions, etc., to apply the standards.

3. Minimum or uniform standards contained in the federal mandate. The federal policy does not change the standards, but refers to procedures, definitions, etc., to apply the standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes, new sources in formerly exempt counties will become subject to this regulation. For future construction after the effective date of the amendments to this regulation, major sources in the exempt counties will become subject to the requirements of this regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Kentucky is required by the Clean Air Act to maintain the National Ambient Air Quality Standards in attainment areas. Part of the strategy chosen by Kentucky to accomplish that is the application of this regulation to major sources in attainment areas. The purpose of this amendment is to make that strategy equitable for all major sources in attainment areas. There are no stricter standards, or additional or different responsibilities or requirements imposed on sources constructed prior to the effective date of these amendments.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(Proposed Amendment)

401 KAR 59:230. New synthesized pharmaceutical product manufacturing operations.

RELATES TO: KRS 224.20-100, 224.20-110, 224.20-120 [~~Chapter 224~~]

STATUTORY AUTHORITY: KRS 224.10-100 [~~224.033~~]

NECESSITY AND FUNCTION: KRS 224.10-100 [~~224.033~~] requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides for the control of volatile organic compound emissions from new synthesized pharmaceutical product manufacturing operations.

[~~Section 1. Applicability. The provisions of this regulation shall apply to each affected facility commenced on or after the classification date defined below which is located:~~]

[~~(1) In an urban county designated nonattainment for ozone under 401 KAR 51:010; or~~]

[~~(2) In any other county and is a part of a major source of volatile organic compounds.~~]

[~~(3) The provisions of this regulation shall not apply to affected facilities in the following counties: Garrard, Graves, Hopkins, Laurel, Montgomery, Nelson, Pulaski, Scott, Taylor, Trigg, and Union prior to designation of such counties nonattainment for ozone under 401 KAR 51:010.~~]

Section 1. [~~2.~~] Definitions. As used in this regulation, all terms not defined in this section [~~herein~~] shall have the meaning given to them in 401 KAR 50:010.

(1) "Affected facility" means operations involved in the manufacture of pharmaceutical products by chemical synthesis, but does not include fermentation, extraction, or formulation and packaging.

(2) "Extraction" means the manufacture of botanical and biological products by the extraction of organic chemicals from vegetative materials or animal tissues.

(3) "Fermentation" means the production and separation

of medicinal chemicals such as antibiotics and vitamins from microorganisms.

(4) "Formulation and packaging" means the formulation of bulk pharmaceuticals into various dosage forms such as tablets, capsules, injectable solutions, ointments, etc., that can be taken by the patient immediately and in accurate amount.

[~~(5) "Volatile organic compounds" means chemical compounds of carbon (excluding methane, ethane, carbon monoxide, carbon dioxide, carbonic acid, metallic carbides, and ammonium carbonate) which have a vapor pressure greater than one-tenth (0.1) mm Hg at conditions of twenty (20) degrees Celsius and 760 mm Hg.~~]

(5) [~~(6)~~] "Classification date" means February 4, 1981. [~~the effective date of this regulation.~~]

(6) [~~(7)~~] "kPa" means kilopascals.

(7) [~~(8)~~] "psi" means pounds per square inch.

Section 2. Applicability. (1) This regulation shall apply to:

(a) Each affected facility commenced on or after the classification date defined in Section 1 of this regulation and located in a county or portion of a county designated as nonattainment for ozone in 401 KAR 51:010, for any classification except marginal; and

(b) Each affected facility commenced on or after the effective date of this regulation which is part of a major source located in a county or portion of a county designated attainment or marginal nonattainment for ozone in 401 KAR 51:010.

(2) Each affected facility commenced on or after the classification date defined in Section 1 of this regulation but prior to the effective date of this regulation which is part of a major source located in a county or portion of a county designated attainment or marginally nonattainment for ozone in 401 KAR 51:010 shall be exempt from this regulation except that control devices and procedures required at the time it commenced shall continue to be maintained.

Section 3. Standard for VOCs [~~Volatile Organic Compounds~~]. The owner or operator of an affected facility to which this regulation applies shall install, maintain and operate the control equipment and observe at all times the following operating requirements:

(1)(a) Each vent from reactors, distillation operations, crystallizers, centrifuges, and vacuum dryers that emit six and eight-tenths (6.8) kg/day (fifteen (15) lb/day) or more of VOCs [~~volatile organic compounds~~] shall be equipped with surface condensers or other methods of control which provide emission reductions equivalent to the use of surface condensers which meet the requirements in paragraph (b) of this subsection.

(b) If surface condensers are used, the condenser outlet gas temperatures shall not exceed the following temperatures (degrees Celsius) if [~~when~~] condensing VOCs [~~volatile organic compounds~~] with the respective minimum vapor pressures (kilopascals). All vapor pressures are measured to twenty (20) degrees Celsius.

1. Negative twenty-five (-25)°C; forty (40) kPa (five and eighttenths (5.8) psi);

2. Negative fifteen (-15)°C; twenty (20) kPa (two and nine-tenths (2.9) psi);

3. Zero°C; ten (10) kPa (one and five-tenths (1.5) psi);

4. Ten (10)°C; seven (7) kPa (one (1.0) psi); and

5. Twenty-five (25)°C; three and five-tenths (3.5) kPa (five-tenths (0.5) psi).

(2)(a) For air dryers and production equipment exhaust systems that emit 150 kg/day (330 lbs/day) or more of VOCs [~~volatile organic compounds~~], emissions shall be reduced ninety (90) percent.

(b) For air dryers and production equipment exhaust systems that emit less than 150 kg/day (330 lbs/day), emissions shall be reduced to fifteen (15) kg/day (thirty-three (33) lbs/day).

(3)(a) For storage tanks storing VOCs [~~volatile organic compounds~~] with a vapor pressure greater than twenty-eight (28) kPa (four and one-tenth (4.1) psi) at twenty (20)°C, one (1) liter of displaced vapor shall be allowed to be released to the atmosphere for every ten (10) liters transferred (i.e., a ninety (90) percent effective vapor balance or equivalent) on truck or [~~/~~]rail car delivery to all tanks greater than 7,500 liters (2,000 gal) capacity unless the [~~except where~~] tanks are equipped with floating roofs, vapor recovery systems, or their equivalent. This requirement does not apply to transfer of VOCs [~~volatile organic compounds~~] from one (1) in-plant location to another.

(b) For tanks storing VOCs [~~volatile organic compounds~~] with a vapor pressure greater than ten (10) kPa (one and five-tenths (1.5) psi) at twenty (20)°C, the pressure or [~~/~~]vacuum conservation vents shall be set at plus or minus two-tenths (0.2) kPa, unless [~~except where~~] more effective air pollution control is used.

(4) All centrifuges containing VOCs [~~volatile organic compounds~~], rotary vacuum filters processing liquid containing VOCs [~~volatile organic compounds~~] and [~~any~~] other filters having an exposed liquid surface if [~~where~~] the liquid contains VOCs [~~volatile organic compounds~~] shall be enclosed. This applies to liquids exerting a total VOCs [~~volatile organic compounds~~] vapor pressure of three and five-tenths (3.5) kPa (five-tenths (0.5) psi) or more at twenty (20)°C.

(5) All in-process tanks containing VOCs [~~volatile organic compound~~] at any time shall have covers which shall be closed except for short periods when production, sampling, maintenance, or inspection procedures require operator access.

(6) For liquids containing VOCs [~~volatile organic compounds~~], all leaks in which liquid is [~~can be~~] observed to be running or dripping from vessels and equipment (for example: pumps, valves, flanges) shall be repaired within fifteen (15) days. A visual recheck shall be made after repair. If the leak is still present or a new leak is created by the repair, further maintenance shall be performed until the VOC [~~volatile organic compound~~] emission drops below the screening value (observed to be running or dripping). Leaks that cannot be repaired within fifteen (15) days shall be repaired during the next scheduled turnaround. If the cabinet requests it, the owner or operator shall demonstrate to the cabinet's satisfaction while the repairs could not be completed within the initial fifteen (15) day period. If the leak is [~~, or if~~] unable to be brought into compliance, a variance shall be requested and obtained on an individual basis. Case-by-case alternatives approved by the cabinet, but not previously authorized by the U.S. EPA, shall be submitted to the U.S. EPA as a SIP revision. Leak detection or [~~/~~]maintenance and repair procedures shall include maintaining a survey log identifying when the leak occurred and reporting every ninety (90) days those leaks not repaired after fifteen (15) days. The operator shall retain the survey log for two (2) years after the inspection is completed.

Section 4. Compliance Timetable. (1) Affected facilities which were subject to this regulation as in effect on February 4, 1981, shall have achieved final compliance upon startup.

(2) The owner or operator of an affected facility that, on or after the effective date of this regulation, becomes subject to this regulation for a reason other than construction, modification, or reconstruction shall be required to complete the following:

(a) Submit a final control plan for achieving compliance with this regulation no later than three (3) months after the date the affected facility becomes subject to this regulation.

(b) Award the control system contract no later than five (5) months after the date the affected facility becomes subject to this regulation.

(c) Initiate on-site construction or installation of emissions control equipment no later than seven (7) months after the date the affected facility becomes subject to this regulation.

(d) On-site construction or installation of emission control equipment shall be completed no later than eleven (11)

months after the date the affected facility becomes subject to this regulation.

(e) Final compliance shall be achieved no later than twelve (12) months after the date the affected facility becomes subject to this regulation.

(f) If an affected facility becomes subject to this regulation because it is located in a county previously designated nonurban nonattainment or redesignated in 401 KAR 51:010 after November 15, 1990, final compliance may be extended to May 31, 1995, and the schedule in paragraphs (a) through (d) of this subsection adjusted by the cabinet.

Section 5. [~~4.~~] Compliance Procedures. Compliance shall [~~will~~] be determined based upon an engineering analysis by the cabinet of[~~:~~] the control system design, control device efficiency, control system capture efficiency, and [~~any~~] other factors that could influence the performance of the system. If [~~so~~] requested by the cabinet, performance tests [~~as~~] specified by the cabinet shall be conducted [~~in order~~] to determine the efficiency of the control device.

Section 6. [~~5.~~] Monitoring Requirements. If [~~When~~] adsorbers, condensers, incinerators or scrubbers are used to achieve compliance with Section 3 of this regulation, the following monitoring devices shall be an integral part of the control device:

(1) For carbon adsorbers, a monitoring device connected to an alarm device, which indicates carbon bed breakthrough;

(2) For condensers, a temperature securing device located in the exit gas stream;

(3) For incinerators, temperature securing devices located in the combustion chamber for thermal incinerators and in the catalyst preheat chamber for catalytic incinerators; and

(4) For scrubbers, flow meters for measuring flow rate of scrubbing medium or pressure drop measuring devices indicating back pressure and pressure drop across the scrubber.

[~~Section 6. Variances. Variation with the standards and limitations contained in this regulation, when supported by adequate technical information, will be considered by the cabinet on a case by case basis to allow for technological or economic circumstances which are unique to a source.~~]

PHILLIP J. SHEPHERD, Secretary
RONALD P. MILLS, Acting Commissioner
APPROVED BY AGENCY: January 7, 1992
FILED WITH LRC: January 15, 1992 at noon

PUBLIC HEARING: A public hearing to receive comments on this proposed regulation and proposed amendments will be conducted on February 28, 1992, at 10 a.m. (ET) in the Auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing: Kenneth M. Hines, Manager, Program Planning and Administration Branch, Division for Air Quality, 315 St. Clair Mall, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Hisham M. Saaid

(1) Type and number of entities affected: A review of the division's records indicates that there are no entities presently affected by the amendments to this regulation. The amendments to this regulation have been made to eliminate deviations between state regulations which are a part of the SIP and U.S. EPA policy, to update the applicability, and to comply with KRS Chapter 13A. The applicability has been updated to be compatible with the Clean Air Act as amended November 15, 1990. The Clean Air Act eliminates the distinction between rural and urban nonattainment counties. Now minor sources will be controlled in all nonattainment areas except those classified as marginal. The amendments made to comply with KRS Chapter 13A do not impact any sources.

(a) Direct and indirect costs or savings to those affected: There are currently no entities affected by these amendments; therefore, there are no direct and indirect costs or savings.

1. First year: There are no first year costs or savings.

2. Continuing costs or savings: There are no continuing costs or savings.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There are currently no entities affected by the amendments; therefore, reporting and paperwork requirements are not applicable.

(2) Effects on the promulgating administrative body: There are no entities affected by these amendments; therefore, there are no effects on the promulgating administrative body.

(a) Direct and indirect costs or savings: There are no direct and indirect costs or savings.

1. First year: There are no first year costs or savings.

2. Continuing costs or savings: There are no continuing costs or savings.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There are currently no entities affected by the amendments; therefore, reporting and paperwork requirements are not applicable.

(3) Assessment of anticipated effect on state and local revenues: There is no effect on state and local revenues because there are no entities affected by these amendments.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were not considered because there are currently no entities affected by these amendments; therefore, no basis for an alternative exists.

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

(a) Necessity of proposed regulation if in conflict: There is no conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no conflict.

(6) Any additional information or comments: The compliance time schedule has been added to allow for affected facilities which become subject to this regulation on or after the effective date of this regulation. For instance, this situation could occur if the attainment status of a county changes. In addition, the division no longer distinguishes between exempt counties and other counties in future construction after the effective date of this regulation. If a new major source or major modification constructs in a previously exempt county or any other county, it is subject to this regulation.

TIERING: Was tiering applied? No. This amendment is being made to a regulation in which tiering already applies.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Federal policy has changed subsequent to the promulgation of this regulation. The U.S. EPA is requiring these amendments to eliminate deviations between Kentucky's SID and federal policy. The applicability of this regulation has been updated to be compatible with the Clean Air Act as amended November 15, 1990.

2. State compliance standards. There are no changes in the standards. The federal policy refers to procedures, definitions, etc., to apply the standards.

3. Minimum or uniform standards contained in the federal mandate. The federal policy does not change the standards, but refers to procedures, definitions, etc., to apply the standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or

requirements, than those required by the federal mandate? Yes, new sources in formerly exempt counties will become subject to this regulation. For future construction after the effective date of the amendments to this regulation, major sources in the exempt counties will become subject to the requirements of this regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Kentucky is required by the Clean Air Act to maintain the National Ambient Air quality Standards in attainment areas. Part of the strategy chosen by Kentucky to accomplish that is the application of this regulation to major sources in attainment areas. The purpose of this amendment is to make that strategy equitable for all major sources in attainment areas. There are no stricter standards, or additional or different responsibilities or requirements imposed on sources constructed prior to the effective date of these amendments.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(Proposed Amendment)

401 KAR 59:240. New perchloroethylene dry cleaning systems.

RELATES TO: KRS 224.20-100, 224.20-110, 224.20-120 [~~Chapter 224~~]

STATUTORY AUTHORITY: KRS 224.10-100 [~~224.033~~]

NECESSITY AND FUNCTION: KRS 224.10-100 [~~224.033~~] requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement and control of air pollution. This regulation provides for the control of volatile organic compound emissions from new perchloroethylene dry cleaning systems.

[~~Section 1. Applicability. The provisions of this regulation shall apply to each affected facility commenced on or after the classification date defined below which is located:~~]

[~~(1) In an urban county designated nonattainment for ozone under 401 KAR 51:010; or~~]

[~~(2) In any other county and is a part of a major source of volatile organic compounds.~~]

[~~(3) The provisions of this regulation shall not apply to affected facilities in the following counties: Garrard, Graves, Hopkins, Laurel, Montgomery, Nelson, Pulaski, Scott, Taylor, Trigg, and Union prior to designation of such counties nonattainment for ozone under 401 KAR 51:010.~~]

Section 1. [2.] Definitions. As used in this regulation, all terms not defined in this section [~~herein~~] shall have the meaning given to them in 401 KAR 50:010.

(1) "Affected facility" means a dry cleaning system which uses perchloroethylene.

(2) "Dry cleaning system" means a series of equipment [~~and/~~]or operations which includes, but is not limited to washer, dryer, filter and purification systems, waste disposal systems, holding tanks, pumps, and attendant piping and valves used for the purpose of commercial cleaning of fabrics.

[~~(3) "Volatile organic compounds" means chemical compounds of carbon (excluding methane, ethane, carbon monoxide, carbon dioxide, carbonic acid, metallic carbides, and ammonium carbonate) which have a vapor pressure greater than one tenth (0.1) mm Hg at conditions of twenty (20) degrees Celsius and 760 mm Hg.~~]

(3) [(4)] "Classification date" means February 4, 1981. [~~the effective date of this regulation.~~]

Section 2. Applicability. (1) This regulation shall apply to:

(a) Each affected facility commenced on or after the classification date defined in Section 1 of this regulation and located in a county or portion of a county designated as nonattainment for ozone in 401 KAR 51:010, for any classification except marginal; and

(b) Each affected facility commenced on or after the effective date of this regulation which is part of a major source located in a county or portion of a county designated attainment or marginal nonattainment for ozone in 401 KAR 51:010.

(2) Each affected facility commenced on or after the classification date defined in Section 1 of this regulation but prior to the effective date of this regulation which is part of a major source located in a county or portion of a county designated attainment or marginally nonattainment for ozone in 401 KAR 51:010 shall be exempt from this regulation except that control devices and procedures required at the time it commenced shall continue to be maintained.

Section 3. Standard for VOCs [~~Volatile Organic Compounds~~]. The owner or operator of an affected facility shall install, maintain and operate the control equipment such that the following requirements are met:

(1) There shall be no liquid leakage of organic solvents from the system.

(2) The entire dryer exhaust shall be vented through a properly functioning carbon adsorber or equally effective control device.

(3) The maximum organic solvent concentration in the vent from the dryer control device shall not exceed 100 ppm before dilution.

(4) Filter and distillation wastes.

(a) The residue from a [~~any~~] diatomaceous earth filter shall be cooked or treated so that wastes shall not contain more than twenty-five (25) kg of solvent per 100 kg of wet waste material.

(b) The residue from a solvent still shall not contain more than sixty (60) kg of solvent per 100 kg of wet waste material.

(c) Filtration cartridges shall be drained in the filter housing for at least twenty-four (24) hours before being discarded. The drained cartridges shall be dried in the dryer tumbler after draining.

(d) Any other filtration or distillation system may [~~can~~] be used if equivalency to these requirements is demonstrated. A [~~Any~~] system reducing waste losses below one (1) kg solvent per 100 kg clothes cleaned shall [~~will~~] be considered equivalent.

Section 4. Compliance. (1) Liquid leakage shall be determined by visual inspection of the following sources:

(a) Hose connections, unions, couplings and valves;
(b) Machine door gasket and seating;
(c) Filter head gasket and seating;
(d) Pumps;
(e) Base tanks and storage containers;
(f) Water separators;
(g) Filter sludge recovery operations;
(h) Distillation units;
(i) Diverter valves;
(j) Saturated line from lint basket; and
(k) Cartridge filters.

(2) Dryer exhaust concentration shall be determined by the proper installation, operation, and maintenance of approved equipment as determined by the cabinet or by performance tests specified by the cabinet.

(3) The amount of solvent in filter and distillation wastes shall be determined by ASTM D 322-67(77), and substituting collector C from ASTM E 123-78. ASTM methods have been incorporated [~~are filed~~] by reference in 401 KAR 50:015.

Section 5. Compliance Timetable. (1) Affected facilities which were subject to this regulation as in effect on February 4, 1981, shall have achieved final compliance upon startup.

(2) The owner or operator of an affected facility that, on or after the effective date of this regulation, becomes subject to this regulation for a reason other than construction,

modification, or reconstruction shall be required to complete the following:

(a) Submit a final control plan for achieving compliance with this regulation no later than three (3) months after the date the affected facility becomes subject to this regulation.

(b) Award the control system contract no later than five (5) months after the date the affected facility becomes subject to this regulation.

(c) Initiate on-site construction or installation of emission control equipment no later than seven (7) months after the date the affected facility becomes subject to this regulation.

(d) On-site construction or installation of emission control equipment shall be completed no later than eleven (11) months after the date the affected facility becomes subject to this regulation.

(e) Final compliance shall be achieved no later than twelve (12) months after the date the affected facility becomes subject to this regulation.

(f) If an affected facility becomes subject to this regulation because it is located in a county previously designated nonurban nonattainment or redesignated in 401 KAR 51:010 after November 15, 1990, final compliance may be extended to May 31, 1995, and the schedule in paragraphs (a) through (d) of this subsection adjusted by the cabinet.

Section 6. [~~5.~~] Exemptions. Perchloroethylene dry cleaning facilities which are coin-operated shall be exempt from this regulation.

Section 7. [~~6.~~] Variances. Variation with the standards and limitations contained in this regulation, if [~~when~~] supported by adequate technical information, may [~~will~~] be considered by the cabinet on a case-by-case basis to allow for technological or economic circumstances which are unique to a source. Case-by-case alternatives approved by the cabinet, but not previously authorized by the U.S. EPA, shall be submitted to the U.S. EPA as a SIP revision.

PHILLIP J. SHEPHERD, Secretary
RONALD P. MILLS, Acting Commissioner
APPROVED BY AGENCY: December 13, 1991
FILED WITH LRC: December 13, 1991 at noon
PUBLIC HEARING: A public hearing to receive comments on this proposed regulation and proposed amendments will be conducted on February 28, 1992, at 10 a.m. (ET) in the Auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing: Kenneth M. Hines, Manager, Program Planning and Administration Branch, Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Hisham M. Saaid

(1) Type and number of entities affected: A review of the division's records indicates that there are currently 8 entities under this regulation for dry cleaners. The amendments to this regulation have been made in response to 3 requirements. The first requirement is to eliminate deviations between state regulations which are a part of the State Implementation Plan (SIP) and U.S. EPA policy. The second is to update the applicability to be compatible with the requirements of the Clean Air Act as amended November 15, 1990. The third is to comply with KRS Chapter 13A. The impacts of these amendments to the 8 sources are minimal. However, the Clean Air Act amendments eliminate the distinction between urban and nonurban ozone nonattainment areas. Previously, for example, minor sources in Boone, Campbell, and Kenton Counties (an urban nonattainment area) were subject to this regulation while similar sources in Boyd County (a nonurban nonattainment area) were not. The amendments will eliminate that distinction. This will make minor sources in Boyd County subject to this regulation. Further the Clean Air Act amendments define 5 classifications of nonattainment. The redesignation of a county from attainment to any of the nonattainment classifications, except marginal nonattainment, would make additional entities subject to this regulation. Sources which become subject to this regulation because of the changes in applicability required by the Clean Air Act amendments shall achieve final compliance by May 31, 1995. Any new source locating in a nonattainment area, except marginal nonattainment, will be subject to this regulation and the proposed amendments. In addition, the division no longer distinguishes between exempt counties and other counties in future construction after the effective date of these amendments. If a new major source or major modification constructs in a previously exempt county or any other county, it is subject to this regulation.

(a) Direct and indirect costs or savings to those affected: If Kentucky does not make the federally required amendments to this regulation, the U.S. EPA will promulgate the requirements in federal regulation. There are no additional costs associated with complying with the state's regulation over complying with the same requirements in a federal regulation.

1. First year: There are no costs or savings associated with KRS Chapter 13A amendments. The costs or savings due to the SIP deviations' amendments are minimal. The applicability amendment required by the Clean Air Act will bring additional sources under this regulation for the first time. The number of entities will not be known until the redesignations of nonattainment status for individual counties have been made. A full cost analysis for the initial and continuing impact of this regulation was originally given in the U.S. EPA document EPA-450/2-78-050, December 1978. 5 different sized facilities were analyzed. For example, for the model 11 kg/load commercial plant the total installed capital cost for a carbon adsorber was estimated to be $3200, the net annualized cost $500/year, and the cost per kilogram of hydrocarbon controlled 31 cents/kg controlled. Large industrialized units of 114 kg/load were predicted a savings of 41 cents/kg controlled. Although inflation can be accounted for, the size of the entities affected is not available for an accurate evaluation. A typical cost multiplier factor for 1978 to 1991 is 1.7. This means that 1978 costs should be multiplied by 1.7 to obtain 1991 costs.

2. Continuing costs or savings: Please see discussion under first year, 1. above.

3. Additional factors increasing or decreasing costs (note any effects upon competition): Minor sources in nonattainment areas (except marginal nonattainment) are subject to this regulation, while minor sources in attainment and marginal nonattainment areas are not. These amendments will create a more equitable competitive environment for major sources in attainment areas commenced after the effective date of these amendments.

(b) Reporting and paperwork requirements: There are no additional reporting and paperwork requirements.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division will review and process permits for sources newly affected. Costs will be recovered by a permit fee.

2. Continuing costs or savings: The division presently inspects all permitted sources of air pollutants and maintains plant and emissions data for emissions inventory purposes. Such activities are part of the division's normal day-to-day operations and are budgeted accordingly. Any newly affected source will be inspected and the cost will be absorbed as a part of the operating budget.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The division will review and issue permits for newly affected sources and will issue reports of inspections and emissions data as in 1. and 2. above.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered for the amendments which contain the same provisions as the federal requirements.

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

(a) Necessity of proposed regulation if in conflict: There is no conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no conflict.

(6) Any additional information or comments: These amendments were made in response to the 3 requirements discussed under (1) above. In addition, new sources in formerly exempt counties will become subject to this regulation. For future construction after the effective date of the amendments to this regulation, major sources in the exempt counties will become subject to the requirements of this regulation. Kentucky is required by the Clean Air Act to maintain the National Ambient Air Quality Standards in attainment areas. Part of the strategy chosen by Kentucky to accomplish that is the application of this regulation to major sources in attainment areas. The purpose of this amendment is to make that strategy equitable for all major sources in attainment areas. There are no stricter standards, or additional or different responsibilities or requirements imposed on sources constructed prior to the effective date of these amendments.

TIERING: Was tiering applied? No. The amendments eliminate deviations between the SIP and federal requirements. The amendments are being made to a regulation that is already tiered.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Federal policy has changed subsequent to the promulgation of this regulation. The U.S. EPA is requiring these amendments to eliminate deviations between Kentucky's State Implementation Plan and federal policy. The applicability of this regulation has been updated to be compatible with the Clean Air Act as amended November 15, 1990.

2. State compliance standards. There are no changes in the standards. The federal policy refers to procedures, definitions, etc., to apply the standards.

3. Minimum or uniform standards contained in the federal mandate. The federal policy does not change the standards, but refers to procedures, definitions, etc., to apply the standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes, new sources in formerly exempt counties will become subject to this regulation. For future construction after the effective date of the amendments to this regulation, major sources in the exempt counties will become subject to the requirements of this regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Kentucky is required by the Clean Air Act to maintain the National Ambient Air Quality Standards in attainment areas. Part of the strategy chosen by Kentucky to accomplish that is the application of this regulation to major sources in attainment areas. The purpose of this amendment is to make that strategy equitable for all major sources in attainment areas. There are no stricter standards, or additional or different responsibilities or requirements imposed on sources constructed prior to the effective date of these amendments.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(Proposed Amendment)

401 KAR 61:050. Existing storage vessels for petroleum liquids.

RELATES TO: KRS 224.20-100, 224.20-110, 224.20-120 [~~Chapter 224~~]

STATUTORY AUTHORITY: KRS 224.10-100 [~~224.033~~]

NECESSITY AND FUNCTION: KRS 224.10-100 [~~224.033~~] requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides for the control of emissions from existing storage vessels for petroleum liquids.

[~~Section 1. Applicability. The provisions of this regulation shall apply to each affected facility commenced before the applicable classification date defined below, which is located:~~]

[~~(1) In an urban county designated nonattainment for ozone under 401 KAR 51:010; or~~]

[~~(2) In any county which is designated nonattainment or unclassified for ozone under 401 KAR 51:010 and is a part of a major source of volatile organic compounds.~~]

[~~(3) This regulation shall not apply to storage vessels located on a farm and used exclusively for storing petroleum liquids used by the farm.~~]

[~~(4) The provisions of Sections 3(4) and 4(3) of this regulation shall not apply to affected facilities in the following counties: Garrard, Graves, Hopkins, Laurel, Montgomery, Nelson, Pulaski, Scott, Tayler, Trigg, and Union prior to designation of such counties nonattainment for ozone under 401 KAR 51:010.~~]

Section 1. [2.] Definitions. As used in this regulation, all terms not defined in this section [~~herein~~] shall have the meaning given them in 401 KAR 50:010.

(1) "Affected facility" means a storage vessel for petroleum liquids which has a storage capacity of greater than 2,195 liters (580 gallons).

(2) "Storage vessel" means any tank, reservoir, or container used for the storage of petroleum liquids, but does not include:

(a) Pressure vessels which are designed to operate in excess of fifteen (15) pounds per square inch gauge without emissions to the atmosphere except under emergency conditions;

(b) Subsurface caverns or porous rock reservoirs; or

(c) Underground tanks if the total volume of petroleum liquids added to and taken from a tank annually does not exceed twice the volume of the tank.

(3) "Petroleum liquids" means crude petroleum, condensate, and any finished or intermediate products manufactured in a petroleum refinery but does not mean Number 2 through Number 6 fuel oils, gas turbine fuel oils Numbers 2-GT through 4-GT, or diesel fuel oils Numbers 2-D and 4-D as specified by the cabinet.

(4) "Petroleum refinery" means any facility engaged in producing gasoline, kerosene, distillate fuel oils, residual fuel oils, lubricants, or other products through distillation of petroleum or through redistillation, cracking, or reforming of unfinished petroleum derivatives.

(5) "Crude petroleum" means a naturally occurring mixture which consists of hydrocarbons [~~and/~~]or sulfur, nitrogen [~~and/~~]or oxygen derivatives of hydrocarbons and which is a liquid at standard conditions.

(6) "Hydrocarbon" means any organic compound consisting predominantly of carbon and hydrogen.

(7) "Condensate" means hydrocarbon liquid separated from natural gas which condenses due to changes in the

temperature [~~and/~~]or pressure and remains liquid at standard conditions.

(8) "True vapor pressure" means the equilibrium partial pressure exerted by a petroleum liquid as determined in accordance with methods specified by the cabinet.

(9) "Floating roof" means a storage vessel cover consisting of a double deck, pontoon single deck, internal floating cover or covered floating roof, which rests upon and is supported by the petroleum liquid being contained and is equipped with a closure seal or seals to close the space between the roof edge and tank wall.

(10) "Vapor recovery system" means a vapor gathering system capable of collecting all hydrocarbon vapors and gases discharged from the storage vessel and a vapor disposal system capable of processing these [~~such~~] hydrocarbon vapors and gases so as to prevent their emission to the atmosphere.

(11) "Reid vapor pressure" is the absolute vapor pressure of volatile crude oil and volatile petroleum liquids, except liquefied petroleum gases, as determined by methods specified by the cabinet.

(12) "Submerged fill pipe" means any fill pipe the discharge of which is entirely submerged when the liquid level is six (6) inches above the bottom of the tank; or when applied to a tank which is loaded from the side, shall mean every fill pipe the discharge opening of which is entirely submerged when the liquid level is two (2) times the fill pipe diameter above the bottom of the tank.

(13) "Classification date" means April 9, 1972.

[~~(14) "Volatile organic compounds" means chemical compounds of carbon (excluding methane, ethane, carbon monoxide, carbon dioxide, carbonic acid, metallic carbides, and ammonium carbonate) which have a vapor pressure greater than one tenth (0.1) mm Hg at conditions of twenty (20) degrees Celsius and 760 mm Hg.~~]

(14) [~~(15)~~] "Custody transfer" means the transfer of produced crude oil [~~and/~~]or condensate, after processing [and/]or treating in the producing operations, from storage tanks or automatic transfer facilities to pipelines or any other forms of transportation.

(15) [~~(16)~~] "External floating roof" means a storage vessel cover in an open top tank consisting of a double deck or pontoon single deck which rests upon and is supported by the petroleum liquid being contained and is equipped with closure seals to close the space between the roof edge and tank shell.

(16) [~~(17)~~] "Internal floating roof" means a cover or roof in a fixed roof tank which rests upon or is floated upon the petroleum liquid being contained, and is equipped with closure seals to close the space between the roof edge and tank shell.

(17) [~~(18)~~] "Liquid-mounted" means a primary seal mounted so that the bottom of the seal covers the liquid surface between the tank shell and the floating roof.

(18) [~~(19)~~] "Vapor-mounted" means a primary seal mounted so that there is an annular vapor space underneath the seal. The annular vapor space is bounded by the bottom of the primary seal, the tank shell, the liquid surface, and the floating roof.

Section 2. Applicability. (1) This regulation shall apply to each affected facility commenced before the classification date defined in Section 1 of this regulation which is located in a county or portion of a county which is designated ozone nonattainment, for any nonattainment classification except marginal, under 401 KAR 51:010.

(2) This regulation shall not apply to storage vessels located on a farm and used exclusively for storing petroleum liquids used by the farm.

Section 3. Standard for VOCs [~~Volatile Organic Compounds~~]. The owner or operator of any storage vessel to which this regulation applies shall store petroleum liquids as follows:

(1) If the storage vessel has a storage capacity greater than 151,400 liters (40,000 gallons) and if the true vapor pressure of the petroleum liquid, as stored, is equal to or greater than seventy-eight (78) mm Hg (one and five-tenths (1.5) psia) but not greater than 574 mm Hg (eleven and one-tenth (11.1) psia) the storage vessel shall be equipped with a floating roof, a vapor recovery system, or their equivalents.

(2) If the storage vessel has a storage capacity greater than 151,400 liters (40,000 gallons) and if the true vapor pressure of the petroleum liquid as stored is greater than 574 mm Hg (eleven and one-tenth (11.1) psia), the storage vessel shall be equipped with a vapor recovery system or its equivalent.

(3) If the storage vessel has a storage capacity greater than 2,195 liters (580 gallons), and if the true vapor pressure of the petroleum liquid, as stored, is equal to or greater than ten and three-tenths (10.3) kilopascal (one and five-tenths (1.5) psia), as a minimum it shall be equipped with a permanent submerged fill pipe.

(4) If the storage vessel is an external floating roof tank with a storage capacity greater than 151,400 liters (40,000 gallons), it shall be retrofitted with a continuous secondary seal extending from the floating roof to the tank wall (a rim-mounted secondary seal) if:

(a) The tank is a welded tank, the true vapor pressure of the contained liquid is twenty-seven and six-tenths (27.6) kilopascal (four (4.0) psia) or greater, and the primary seal is one (1) of the following:

1. A metallic-type shoe seal, a liquid-mounted foam seal, or a liquid-mounted liquid-filled type seal; or

2. Any other closure device which can be demonstrated equivalent to the above primary seals.

(b) The tank is a riveted tank and the true vapor pressure of the contained liquid is ten and three-tenths (10.3) kilopascal (one and five-tenths (1.5) psia) or greater.

(c) The tank is a welded tank, the true vapor pressure of the contained liquid is ten and three-tenths (10.3) kilopascal (one and five-tenths (1.5) psia) or greater and the primary seal is vapor-mounted. If this [~~such~~] primary seal closure device can be demonstrated equivalent to the primary seals described in paragraph (a) of this subsection, then the secondary seal is required if [~~when~~] the vapor pressure is twenty--seven and six-tenths (27.6) kilopascal (four (4.0) psia) or greater.

Section 4. Operating Requirements. (1) There shall be no visible holes, tears, or other openings in the seal or any seal fabric.

(2) All openings, except stub drains, shall be equipped with covers, lids, or seals so [~~such~~] that:

(a) The cover, lid, or seal is in the closed position at all times except during [~~when in~~] actual use;

(b) Automatic bleeder vents are closed at all times, unless [~~except when~~] the roof is floated off or landed on the roof leg supports; and

(c) Rim vents, if provided, are set to open if [~~when~~] the roof is being floated off the roof leg supports or at the manufacturer's recommended setting.

(3) External floating roof tanks subject to this regulation shall meet the additional requirements:

(a) The seals shall [~~must~~] be intact and uniformly in place around the circumference of the floating roof between the floating roof and the tank wall.

(b) The gap area of gaps exceeding 0.32 cm (one-eighth (1/8) in) in width between the secondary seal installed pursuant to Section 3(4)(a) of this regulation and the tank wall shall not exceed six and five-tenths (6.5) sq. cm./0.3 m of tank diameter (one (1.0) sq. in/ft).

(c) All openings in the external floating roof, except for automatic bleeder vents, rims space vents, and leg sleeves, shall [~~are to~~] provide a projection below the liquid surface.

(d) Any emergency roof drain shall [~~is to~~] be provided with a slotted membrane fabric cover or equivalent that covers at least ninety (90) percent of the area of the opening.

~~Section~~ 5. Monitoring of Operations. (1) If [~~When~~] a liquid having a true vapor pressure greater than seven (7.0) kPa (one (1.0) psia) is stored in an external floating roof tank with a capacity of greater than 151,400 liters (40,000 gallons) not equipped with a secondary seal or approved alternative control technology, the owner or operator shall maintain a record of the average monthly storage temperature, the type of liquid, and the Reid vapor pressure of the liquid. The owner or operator shall retain the record for two (2) years after the date on which the record was made.

(2) The true vapor pressure shall be determined by using the average monthly storage temperature and typical Reid vapor pressure of the contained liquid or from typical available data on the contained liquid. Supporting analytical data shall be requested by the cabinet if there is a question on the values reported.

Section 6. Compliance Timetable. [~~(1) The following compliance schedule applies to those affected facilities subject to the standards and operating requirements in Sections 3(1) to (3) and 4(1) and (2) of this regulation.~~]

[~~(a) An affected facility located in a Priority I Region for hydrocarbons shall be in compliance on or before June 29, 1979.~~]

[~~(b) Except as provided in paragraph (c) of this subsection, the owner or operator of an affected facility located in a Priority III region for hydrocarbons shall be required to complete the following:~~]

[~~1. Submit a final control plan for achieving compliance with this regulation no later than September 1, 1979.~~]

[~~2. Award the control device contract no later than January 1, 1980.~~]

[~~3. Initiate on-site construction or installation of emissions control equipment no later than July 1, 1980.~~]

[~~4. On-site construction or installation of emission control equipment shall be completed no later than February 1, 1981.~~]

[~~5. Final compliance shall be achieved no later than May 1, 1981.~~]

[~~(c) An owner or operator of a storage vessel with a storage capacity of greater than 2,195 liters (580 gallons) but less than or equal to 151,400 liters (40,000 gallons) which is associated with a bulk gasoline plant regulated by 401 KAR 61:056 shall adhere to the compliance schedule provided therein.~~]

[~~(2) The following compliance schedule applies to those affected facilities subject to the standards and operating requirements in Sections 3(4) and 4(3) of this regulation.~~] The owner or operator of an affected facility that becomes subject to this regulation on or after the effective date of this regulation shall be required to complete the following:

(1) [~~(a) Submit~~] A final control plan for achieving compliance with this regulation shall be submitted no later than three (3) months after the date the affected facility becomes subject to this regulation [~~April 15, 1981~~].

(2) [~~(b) Award~~] The control device contract shall be awarded no later than five (5) months after the date the affected facility becomes subject to this regulation [~~June 15, 1981~~].

(3) [~~(c) Initiate~~] On-site construction or installation of emissions control equipment shall be initiated no later than seven (7) months after the date the effected facility becomes subject to this regulation [~~December 1, 1981~~].

(4) [~~(d)~~] On-site construction or installation of emission control equipment shall be completed no later than eleven (11) months after the date the affected facility becomes subject to this regulation [~~December 1, 1982~~].

(5) [~~(e)~~] Final compliance shall be achieved no later than twelve (12) months after the date the affected facility becomes subject to this regulation [~~December 31, 1982~~].

(6) If an affected facility becomes subject to this regulation because it is located in a county previously designated nonurban nonattainment or redesignated in 401 KAR 51:010 after November 15, 1990, final compliance may be extended to May 31, 1995, and the schedule in paragraphs (a) through (d) of this subsection adjusted by the cabinet.

Section 7. Exemptions. Any of the following types of external floating roof tanks storing liquid petroleum shall be exempt from [~~the provisions of~~] Section 3(4) of this regulation as follows:

(1) External floating roof tanks having capacities less than 1,600,000 liters (422,000 gallons) used to store produced crude oil in condensate prior to custody transfer.

(2) A metallic-type shoe seal in a welded tank which has a secondary seal from the top of the shoe seal to the tank wall (a shoe-mounted secondary seal).

(3) External floating roof tanks storing waxy, heavy pour crudes.

(4) External floating roof tanks with a closure or other devices which can be demonstrated to the satisfaction of the cabinet to be equivalent to the seals required in Section 3(4)(a) of this regulation.

PHILLIP J. SHEPHERD, Secretary
RONALD P. MILLS, Acting Commissioner
APPROVED BY AGENCY: January 7, 1992
FILED WITH LRC: January 15, 1992 at noon
PUBLIC HEARING: A public hearing to receive comments on this proposed regulation and proposed amendments will be conducted on February 28, 1992, at 10 a.m. (ET) in the Auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing: Kenneth M. Hines, Manager, Program Planning and Administration Branch, Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Hisham M. Saaid

(1) Type and number of entities affected: A review of the division's records indicates that there are currently 17 entities under this regulation. These entities are industries with existing storage vessels for petroleum liquids. The amendments to this regulation have been made to eliminate deviations between state regulations which are a part of the state implementation plan (SIP) and U.S. EPA policy; to update the applicability; and to comply with KRS Chapter 13A. The SIP deviation identified by the U.S. EPA is the definition of volatile organic compounds. The applicability is updated to be compatible with the requirements of the Clean Air Act as amended November 15, 1990. This amendment will not impact the 17 entities currently under this regulation. However, the Clean Air Act amendments eliminate the distinction between urban and nonurban ozone nonattainment areas. Previously, for example, minor sources in Boone, Campbell, and Kenton Counties (an urban nonattainment area) were subject to this regulation while similar sources in Boyd County (a nonurban nonattainment area) were not. The amendments will eliminate that distinction. This will make minor sources in Boyd County subject to this regulation. Further, the Clean Air Act amendments define 5 classifications of nonattainment. The redesignation of a county from attainment to any of the nonattainment classifications, except marginal nonattainment, would make additional entities subject to this regulation. Sources which become subject to this regulation because of the changes in applicability required by the Clean Air Act amendments shall achieve final compliance by May 31, 1995. The amendments made to comply with KRS Chapter 13A do not impact any sources.

(a) Direct and indirect costs or savings to those affected: If Kentucky does not make the federally required amendments

to this regulation, the U.S. EPA will promulgate the requirements in federal regulations. There are no additional costs associated with complying with the state's regulation over complying with the same requirements in a federal regulation.

1. First year: There are no costs or savings associated with KRS Chapter 13A amendments. A chemical that was previously uncontrolled because of its low vapor pressure could now be classified as a VOC or vice versa under the new definition of VOC. The applicability amendment required by the Clean Air Act will bring additional sources under this regulation for the first time. The number and size of entities will not be known until the redesignations of nonattainment status for individual counties or portions of counties have been made or new sources constructed. A full cost analysis for the initial and continuing impact of this regulation was originally given in the U.S. EPA documents EPA-450/2-77-036, December 1977 (Control of Volatile Organic Emissions from Storage of Petroleum Liquids in Fixed-Roof Tanks), pages 4-1 through 4-13, and EPA 450-2/78-047, December 1978 (Control of Volatile Organic Emissions from Petroleum Liquid Storage in External Floating Roof Tanks), pages 4-1 through 4-14. Costs are analyzed for 3 model sizes of fixed roof petroleum liquids storage tanks. The median capital costs of internal floating roofs retrofitted on the small, medium, and large model tanks are given as $15,000, $13,000, and $57,000, respectively. The total annual control system costs of the 3 model tanks were estimated as $3,000, $6,300, and $11,700, respectively. The cost effectiveness of a small tank storing gasoline varies from a credit of $115/Mg to a cost of $65/Mg of controlled emissions. The corresponding cost effectiveness ratios for crude oil range from a credit of $80/Mg to a cost of $240/Mg. For a medium size model tank cost-effectiveness ranges from a credit of $135/Mg for gasoline to a cost of $80/Mg of controlled emissions from crude oil. For the large model tank cost-effectiveness varies from a credit of $140/Mg for gasoline to a cost of $30/Mg for crude oil. For existing external floating roof tanks the additional cost of retrofitting a secondary seal on the existing tanks is presented for a middle size model for various wind speeds and expected ranges of product true vapor pressure at stored temperatures. Installed capital costs of a secondary seal were $16,900 and total annual costs were $4,400. The cost effectiveness ranges from a credit of $66/Mg of controlled emissions to a cost of $3665 for gasoline. The corresponding cost-effectiveness for crude oil emission controlled varies from a cost of $25/Mg to a cost of $5,044/Mg. Although inflation can be taken into consideration, the size of the entities affected is not available for an accurate evaluation. A typical cost multiplier factor for 1978 to 1991 is 1.7. This means that 1978 costs should be multiplied by 1.7 to obtain 1991 costs.

2. Continuing costs or savings: Please see discussion under first year, 1, above.

3. Additional factors increasing or decreasing costs (note any effects upon competition): Minor sources in nonattainment areas (except marginal nonattainment) are subject to this regulation, while minor sources in attainment areas are not.

(b) Reporting and paperwork requirements: The amendments do not require additional reporting and paperwork requirements.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division will review and process permits for any sources newly affected. Costs will be recovered by a permit fee.

2. Continuing costs or savings: The division presently inspects all permitted sources of air pollutants and maintains plant and emissions data for emissions inventory purposes. Such activities are part of the division's normal day-to-day operations and are budgeted accordingly. Any newly affected source will be inspected and the cost will be absorbed as a part of the operating budget.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The division will review and issue permits for newly affected sources and will issue reports of inspections and emissions data as in 1. and 2. above.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered since these amendments contain the same provisions as federal requirements.

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

(a) Necessity of proposed regulation if in conflict: There is no conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no conflict.

(6) Any additional information or comments: These amendments were made in response to the requirements discussed under (1) above.

TIERING: Was tiering applied? No. The amendments eliminate deviations between the SIP and federal requirements. The amendments are being made to a regulation in which tiering already applies.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Clean Air Act as amended November 15, 1990.

2. State compliance standards. These amendments change the applicability and eliminate the deviations between Kentucky's SIP and U.S. EPA policy, but do not change the standards.

3. Minimum or uniform standards contained in the federal mandate. These amendments do not change the standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. These amendments are proposed to eliminate deviations from U.S. EPA policy and the Clean Air Act.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The proposed amendments do not impose stricter standards, or additional or different responsibilities or requirements.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(Proposed Amendment)

401 KAR 61:090. Existing automobile and light-duty truck surface coating operations.

RELATES TO: KRS 224.20-100, 224.20-110, 224.20-120 [~~Chapter 224~~]

STATUTORY AUTHORITY: KRS 224.10-100 [~~224.033~~]

NECESSITY AND FUNCTION: KRS 224.10-100 [~~224.033~~] requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides for the control of volatile organic compound emissions from existing automobile and light-duty truck surface coating operations.

[~~Section 1. Applicability. The provisions of this regulation shall apply to each affected facility commenced before the classification date defined below which is located:~~]

[~~(1) In an urban county designated nonattainment for~~

~~ozone under 401 KAR 51:010; or~~]

~~[(2) In any county which is designated nonattainment or unclassified under 401 KAR 51:010 and is a part of a major source of volatile organic compounds.~~]

Section 1. [2.] Definitions. As used in this regulation, all terms not defined in this section [~~herein~~] shall have the meaning given to them in 401 KAR 50:010.

(1) "Affected facility" means a coating line for automobile and light-duty truck frames, small parts, wheels, and main body parts at an assembly plant but does not include the following:

(a) Underbottom-sound deadener coatings;

(b) Zinc rich antirust and weld line antirust prime coatings;

(c) Adhesive coatings or mastics;

(d) Flexible coatings;

(e) Plastic body fillers or caulks; or

(f) Interior coatings which are applied after upholstery and interior plastic parts are attached to the body.

(2) "Applicator" means the mechanism or device used to apply the coating, including, but not limited to dipping and spraying.

(3) "Automobile" means all passenger cars or passenger car derivatives capable of seating twelve (12) or fewer passengers.

(4) "Classification date" means June 29, 1979. [~~the effective date of this regulation.~~]

(5) "Coating line" means a series of equipment [~~and/~~]or operations used to apply, dry, or cure any prime, topcoat or repair coatings containing volatile organic compounds (VOCs). This shall include, but is not limited to:

(a) Mixing operations;

(b) Process storage;

(c) Applicators;

(d) Drying operations including, but not limited to, flash-off area evaporation, oven drying, baking, curing, and polymerization;

(e) Clean up operations;

(f) Leaks, spills and disposal of VOCs [~~volatile organic compounds~~];

(g) Processing and handling of recovered VOCs [~~volatile organic compounds~~];

(h) For the purposes of determining compliance with this regulation, if any equipment or operation is [~~could be~~] considered to be a part of more than one (1) coating line, its VOC [~~volatile organic compound~~] emissions shall be assigned to each coating line of which it is a part proportionally to the throughput of VOC [~~volatile organic compound~~] it receives from or distributes to each coating line;

(i) If any portion of the series of equipment [~~and/~~]or operations qualifies [qualify] for an exemption according to Section 6 of this regulation, then that portion shall be considered to be a separate coating line.

(6) "Final repair coating line" means a coating line for the repainting of any coatings which are damaged during vehicle assembly.

(7) "Flash-off area" means the space between the application area and the oven.

(8) "Light-duty truck" means all motor vehicles rated at 3,864 kilograms (8,500 pounds) gross vehicle weight or less which is designed primarily for purposes of transportation of property or are derivatives of these [such] vehicles (including, but not limited to, pickups, vans, and window vans).

(9) "Prime coat coating line" means a coating line for the first coating and surfacer which are responsible for protecting the surface from corrosion and providing for good adhesion of the topcoat.

(10) "Process storage" means mixing tanks, holding tanks, and other tanks, drums, or other containers which contain surface coatings, VOCs [~~volatile organic compounds~~], or recovered VOCs [~~volatile organic compounds~~]; but does not mean storage tanks of petroleum liquids which are subject to 401 KAR 59:050, 401 KAR 59:052, or 401 KAR 61:050.

(11) "Topcoat coating line" means a coating line for the coating of the surface to obtain desired aesthetic effects.

~~[(12) "Volatile organic compounds" means chemical compounds of carbon (excluding methane, ethane, carbon monoxide, carbon dioxide, carbonic acid, metallic carbides, and ammonium carbonate) which have a vapor pressure greater than one tenth (0.1) mm Hg at conditions of twenty (20) degrees Celsius and 760 mm Hg.~~]

(12) [~~(13)~~] "Surfacer" means the spray application of primer to touchup areas on the surface not adequately covered during electrodeposition.

(13) "VOCs [~~(14) "Volatile organic compounds~~] net input" means the total amount of VOCs [~~volatile organic compounds~~] input to the affected facility minus the amount of VOCs [~~volatile organic compounds~~] that are not emitted into the atmosphere. VOCs [~~Volatile organic compounds~~] that are prevented from being emitted to the atmosphere by the use of control devices shall not be subtracted from the total for the purposes of determining VOCs [~~volatile organic compounds~~] net input. When the nature of any operation or design of equipment [~~is such as to~~] permits more than one (1) interpretation of this definition, the interpretation that results in the minimum value for allowable emission shall apply.

(14) [~~(15)~~] "Electrophoretic deposition" means a process of applying a coating by dipping the component in a coating bath with an electrical potential difference between the component and the bath.

Section 2. Applicability. (1) This regulation shall apply to each affected facility commenced before the classification date defined in Section 1 of this regulation which is located in a county or portion of a county which is designated ozone nonattainment, for any nonattainment classification except marginal, under 401 KAR 51:010.

(2) This regulation shall not apply to affected facilities which are subject to local air pollution control district regulations which have been approved by the cabinet and the U.S. EPA.

Section 3. Standard for VOCs [~~Volatile Organic Compounds~~]. No person shall cause, allow, or permit an affected facility to discharge into the atmosphere more than fifteen (15) percent by weight of the VOCs [~~volatile organic compounds~~] net input into the affected facility.

Section 4. Compliance. (1) If applicable, compliance is determined by "Protocol for Determining the Daily Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Topcoat Operations", which has been incorporated by reference in Section 7 of this regulation.

(2) [~~(1)~~] In all cases the design of any control system shall be [~~is~~] subject to approval by the cabinet.

(3) [~~(2)~~] Compliance with the standard in Section 3 of this regulation shall be demonstrated by a material balance unless [~~except in those cases where~~] the cabinet determines that a material balance is not possible. If [~~For those cases where~~] a material balance is not possible, compliance shall [~~will~~] be determined based upon an engineering analysis by the cabinet of the control system design, control device efficiency, control system capture efficiency, and any other factors that may [~~could~~] influence the performance of the system. If [~~so~~] requested by the cabinet, performance tests [~~as~~] specified by the cabinet shall be conducted [~~in order~~] to determine the efficiency of the control device. Capture efficiency shall be determined by procedures specified in 401 KAR 50:047.

(4) [~~(3)~~] With the prior approval of the cabinet, the owner or operator may elect to effect all [~~such~~] changes [~~in the affected facility as are~~] necessary to qualify for an exemption under Section 6 of this regulation.

(5) If [~~(4) Whenever~~] deemed necessary by the cabinet, the cabinet shall obtain samples of the coatings used at an affected facility to verify that the coatings meet the requirements in Section 6 of this regulation. [~~The following methods~~

~~of analyses, filed by reference in 401 KAR 50:015, for coatings shall be used as applicable except in those cases where the cabinet determines that other methods would be more appropriate:~~

~~[(a) ASTM D-1644-75 Method A;~~

~~[(b) ASTM D-1475-60(74);~~

~~[(c) ASTM D-2369-73; or~~

~~[(d) Federal Standard 141-a, Method 4082.1.~~]

Section 5. Compliance Timetable. (1) Affected facilities which were subject to this regulation as in effect June 29, 1979, shall have achieved final compliance by January 1, 1983, for prime coatings systems and final repair systems and by January 1, 1986, for topcoat systems.

(2) The owner or operator of an affected facility that becomes subject to this regulation on or after the effective date of this regulation shall be required to complete the following:

(a) [~~(1)~~] Prime coatings systems, topcoat systems, and final repair coating systems except as provided for in paragraph (b) of this subsection [~~subsection (3) of this section~~]:

1. [~~(a) Submit~~] A final control plan for achieving compliance with this regulation shall be submitted no later than nine (9) months after the date the affected facility becomes subject to this regulation [~~March 1, 1980~~].

2. [~~(b) Award~~] The control system contract [~~and/~~]or the exempt coatings contracts and purchase orders shall be awarded no later than eleven (11) months after the date the affected facility becomes subject to this regulation [~~March 1, 1981~~].

3. [~~(c) Initiate~~] On-site construction or installation of emission control equipment [~~and/~~]or process changes for exempt coatings shall be initiated no later than thirteen (13) months after the date the affected facility becomes subject to this regulation [~~June 1, 1981~~].

4. [~~(d)~~] On-site construction or installation of emission control equipment [~~and/~~]or process changes for exempt coatings shall be completed no later than seventeen (17) months after the date the affected facility becomes subject to this regulation [~~July 31, 1982~~].

5. [~~(e)~~] Final compliance shall be achieved no later than eighteen (18) months after the date the affected facility becomes subject to this regulation [~~January 1, 1983~~].

6. If an affected facility becomes subject to this regulation because it is located in a county previously designated nonurban nonattainment or redesignated in 401 KAR 51:010 after November 15, 1990, final compliance may be extended to May 31, 1995, and the schedule in paragraphs (a) through (d) of this subsection adjusted by the cabinet.

~~[(2) Topcoat systems.~~]

~~[(a) Submit a final control plan for achieving compliance with this regulation no later than July 1, 1980.~~]

~~[(b) Award the control system contract and/or the exempt coating contracts and purchase orders no later than March 1, 1983.~~]

~~[(c) Initiate on-site construction or installation of emission control equipment and/or process changes for exempt coatings no later than June 1, 1983.~~]

~~[(d) On-site construction or installation of emission control equipment and/or process changes for exempt coatings shall be completed no later than July 31, 1985.~~]

~~[(e) Final compliance shall be achieved no later than January 1, 1986.~~]

(b) [~~(3)~~] Prime coating lines which are using electrophoretic deposition on or before the effective date of this regulation shall be in compliance on the effective date of this regulation.

Section 6. Exemptions. (1) Any affected facility shall be exempt from [~~the provisions of~~] Section 3 of this regulation if the VOC [~~volatile organic compound~~] content of the coating is:

(a) Prime coating line: 0.14 kg/l of coating (one and two-tenths (1.2) lb/gal), excluding water or exempt solvent or both, which shall be applied by electrophoretic deposition and 0.34 kg/l of coating (two and eight-tenths (2.8) lb/gal), excluding water or exempt solvent or both, delivered to the applicators associated with the surfacer. An alternative for the surfacer is fifty-five (55) percent solids by volume organic--borne prime coat applied with a minimum of sixty-five (65) percent transfer efficiency. An alternative for the prime coating line is an organic borne prime coat consisting of a minimum of fifty-five (55) percent solids by volume which is applied with a minimum of fifty (50) percent transfer efficiency.

(b) Topcoat coating line: 0.34 kg/l of coating (two and eight-tenths (2.8) lb/gal), excluding water or exempt solvent or both, delivered to the applicator(s) associated with the topcoat coating line or a fifty (50) percent solids by volume organic--borne topcoat applied with a minimum of sixty-five (65) percent transfer efficiency.

(c) Repair coating line: 0.58 kg/l of coating (four and eight-tenths (4.8) lb/gal), excluding water or exempt solvent or both, as delivered to the applicator applied with a minimum of sixty-five (65) percent transfer efficiency.

(2) Any affected facility using this section may elect to use an arithmetic average of the coatings used in the particular coating line involved. If this [~~such~~] average meets the exemption then all the coatings shall [~~will~~] be considered to meet the exemption.

(3) The exemptions specified in this section may be achieved by:

(a) Use of low solvent coating; [~~and/~~]or

(b) Any other emission reduction process or equipment shown to be as effective.

(4) Low-use coatings shall be exempt from Section 3 of this regulation if the plantwide consumption of these coatings in the aggregate is less than or equal to fifty-five (55) gallons during the previous twelve (12) months.

Section 7. Reference Material. (1) Incorporation by Reference. The following document is incorporated by reference: "Protocol for Determining the Daily Volatile Organic Compound Emission Rate of Automobile and Light Duty Truck Topcoat Operations," EPA-450/3-88-018, December 1988, available from U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711 and the U.S. Department of Commerce, National Technical Information Service, Springfield, Virginia 22161.

(2) The document incorporated by reference in subsection (1) of this section is available for public inspection and copying, subject to copyright law, at the following main and regional offices of the Kentucky Division for Air Quality during the normal working hours of 8 a.m. to 4:30 p.m., local time.

(a) Kentucky Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky 40601, (502) 465-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky 41101, (606) 325-8569;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky 42104, (502) 843-5475;

(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky 41042, (606) 292-6411;

(e) Hazard Regional Office, 233 Birch Street, Hazard, Kentucky 41701, (606) 439-2391;

(f) Owensboro Regional Office, 311 West Second Street, Owensboro, Kentucky 42301, (502) 686-3304; and

(g) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky 42003, (502) 898-8468.

~~[Section 7. Variances. Variation with the standards and limitations contained in this regulation, when supported by adequate technical information will be considered by the cabinet on a case by case basis to allow for technological or economic circumstances which are unique to a source.~~]

PHILLIP J. SHEPHERD, Secretary
RONALD P. MILLS, Acting Commissioner
APPROVED BY AGENCY: January 7, 1992

FILED WITH LRC: January 15, 1992 at noon

PUBLIC HEARING: A public hearing to receive comments on this proposed regulation and proposed amendments will be conducted on February 28, 1992, at 10 a.m. (ET) in the Auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing: Hisham M. Saaid, Acting Director, Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Hisham M. Saaid

(1) Type and number of entities affected: A review of the division's records indicates that there are no entities presently affected by the amendments to this regulation for existing automobile and light-duty truck surface coating operations. The amendments to this regulation have been made to eliminate deviations between state regulations which are a part of the state implementation plan (SIP) and U.S. EPA policy, to update the applicability, and to comply with KRS Chapter 13A. Many of the SIP deviations are requirements that already appear in 401 KAR 50:016, Policies incorporated by reference, which is a state regulation but not part of the SIP, and therefore not federally enforceable. If applicable, compliance is determined by the U.S. EPA's document, "Protocol for Determining the Daily Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Topcoat Operations". The applicability has been updated to be compatible with the requirements of the Clean Air Act as amended November 15, 1990. The Clean Air Act eliminate the distinction between urban and nonurban ozone nonattainment areas. Formerly, minor sources were controlled only in urban nonattainment counties. Now minor sources will be controlled in all nonattainment areas except those classified as marginal. The amendments made to comply with KRS Chapter 13A do not impact any sources.

(a) Direct and indirect costs or savings to those affected: There are currently no entities affected by these amendments; therefore, there are no direct and indirect costs or savings, to those affected.

1. First year: There are no first year costs or savings.

2. Continuing costs or savings: There are no continuing costs or savings.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There are no entities affected by these amendments; therefore, reporting and paperwork requirements are not applicable. Recordkeeping requirements are contained in the "Protocol for Determining the Daily Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Topcoat Operations".

(2) Effects on the promulgating administrative body: There are no entities affected by these amendments; therefore, there are no effects on the promulgating administrative body.

(a) Direct and indirect costs or savings: There are no direct and indirect costs or savings.

1. First year: There are no first year costs or savings.

2. Continuing costs or savings: There are no continuing costs or savings.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There are no entities affected by these amendments; therefore, reporting and paperwork requirements are not applicable.

(3) Assessment of anticipated effect on state and local revenues: There is no effect on state and local revenues because there are no entities affected by these amendments.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were not considered because no basis for an alternative exists since there are currently no entities affected by these amendments.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no entities affected by these amendments. Conflicts and duplication exist between this regulation and 401 KAR 50:016, Policies incorporated by reference. The conflict is in the capture efficiency procedures. This regulation references the new capture efficiency procedures required by the U.S. EPA which will take precedence over the old U.S. EPA capture efficiency procedures contained in 401 KAR 50:016. The duplication is in the control of volatile organic compounds. 401 KAR 50:016 is not part of Kentucky's SIP. The requirements are repeated in this regulation, which is a part of Kentucky's SIP.

(a) Necessity of proposed regulation if in conflict: This regulation references 401 KAR 50:047, Test procedures for capture efficiency. 401 KAR 50:047 requires the U.S. EPA's new capture efficiency protocols. 401 KAR 50:016 requires the previous U.S. EPA capture efficiency procedures.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: 401 KAR 50:016 will be amended or repealed to eliminate the conflict. 401 KAR 50:016 is not part of Kentucky's SIP, therefore, amending only 401 KAR 50:016 would not satisfy the deviation between EPA's new policy and Kentucky's SIP.

(6) Any additional information or comments: The compliance time schedule has been updated to allow for affected facilities which become subject to this regulation on or after the effective date of this regulation. For instance, this situation could occur if the attainment status of a county changes.

TIERING: Was tiering applied? No. There are no entities currently affected by these amendments; therefore, no basis for tiering exists. Section 6(4) exempts low-use coatings.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Federal policy has changed subsequent to the promulgation of this regulation. The U.S. EPA is requiring these amendments to eliminate deviations between Kentucky's state implementation plan and federal policy. The applicability of this regulation has been updated to be compatible with the Clean Air Act as amended November 15, 1990.

2. State compliance standards. There are no changes in the standards. The federal policy refers to procedures, calculations, etc., to apply the standards.

3. Minimum or uniform standards contained in the federal mandate. The federal policy does not change the standards, but refers to procedures, calculations, etc., to apply the standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This regulation has been amended to eliminate deviations between Kentucky's SIP and federal policy.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There are no stricter standards or additional or different responsibilities or requirements imposed by these amendments.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(Proposed Amendment)

401 KAR 61:095. Existing solvent metal cleaning equipment.

RELATES TO: KRS ~~[Chapter]~~ 224.20-100, 224.20-110, 224.20-120

STATUTORY AUTHORITY: KRS 224.10-100 ~~[224.033]~~

NECESSITY AND FUNCTION: KRS 224.10-100 [224.033] requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides for the control of volatile organic compound emissions from existing solvent metal cleaning equipment.

[Section 1. Applicability. The provisions of this regulation shall apply to each affected facility commenced before the classification date defined below which is located:]

[(1) In an urban county designated nonattainment for ozone under 401 KAR 51:010; or]

[(2) In any county which is designated nonattainment or unclassified under 401 KAR 51:010 and is a part of a major source of volatile organic compounds.]

Section 1. [2.] Definitions. As used in this regulation, all terms not defined in this section [herein] shall have the meaning given to them in 401 KAR 50:010.

(1) "Affected facility" means cold cleaners, open top vapor degreasers, and conveyorized degreasers which utilize volatile organic compounds (VOCs) to remove soluble impurities from metal surfaces.

[(2) "Volatile organic compounds" means chemical compounds of carbon (excluding methane, ethane, carbon monoxide, carbon dioxide, carbonic acid, metallic carbides, and ammonium carbonate) which have a vapor pressure greater than one tenth (0.1) mm Hg at conditions of twenty (20) degrees Celsius and 760 mm Hg.]

(2) [(3)] "Classification date" means June 29, 1979.

(3) [(4)] "Freeboard height" means, for a cold cleaner, the distance from the liquid solvent level in the degreaser tank to the lip of the tank. For a vapor degreaser it means [is] the distance from the solvent vapor level in the tank to the lip of the tank.

(4) [(5)] "Freeboard ratio" means the freeboard height divided by the width of the degreaser.

(5) [(6)] "Refrigerated chiller" means a second set of freeboard condenser coils located slightly above the primary condenser coils which create a cold air blanket above the vapor zone.

(6) [(7)] "Cold cleaner" means a batch-loaded degreaser whose solvent is kept below its boiling point.

(7) [(8)] "Open top vapor degreaser" means a batch--loaded degreaser whose solvent is heated to its boiling point creating a solvent vapor zone.

(8) [(9)] "Conveyorized degreasers" means a degreaser which is continuously loaded by means of a conveyor system. Its solvent may be boiling or nonboiling.

(9) [(10)] "Solvent" means, in this regulation, VOCs [volatile organic compounds].

Section 2. Applicability. This regulation shall apply to each affected facility commenced before the classification date defined in Section 1 of this regulation which is located in a county or portion of a county which is designated ozone nonattainment, for any nonattainment classification except marginal, under 401 KAR 51:010.

Section 3. Standard for VOCs [Volatile Organic Compounds]. The owner or operator of an affected facility to which this regulation applies shall install, maintain and operate the control equipment and observe at all times the operating requirements which apply to this type of degreaser as specified in Sections 4, 5, and 6 of this regulation.

Section 4. Cold Cleaners. (1) Control equipment.

(a) The cleaner shall be equipped with a cover. If the solvent volatility is greater than fifteen (15) mm Hg measured at 100°F or if the solvent is agitated or heated, then the cover shall be designed so that it can be easily operated with one (1) hand.

(b) The cleaner shall be equipped with a drainage facility so [such] that solvent that drains off parts removed from the cleaner will return to the cleaner. If the solvent volatility is greater than thirty-two (32) mm Hg measured at 100°F then the drainage facility shall be internal so that parts are enclosed under the cover while draining. The drainage facility may be external if the cabinet determines that an internal type cannot fit into the cleaning system.

(c) A permanent, conspicuous label, summarizing the operating requirements specified in subsection (2) of this section shall be installed on or near the cleaner.

(d) If used, the solvent spray shall be a fluid stream (not a fine, atomized or shower type spray) and at a pressure which does not cause excessive splashing.

(e) If the solvent volatility is greater than thirty-two (32) mm Hg measured at 100°F or if the solvent is heated above 120°F, then one (1) of the following control devices shall be used:

1. Freeboard that gives a freeboard ratio greater than or equal to seven-tenths (0.7).

2. Water cover (solvent shall [must] be insoluble in and heavier than water).

3. Other systems of equivalent control, such as a refrigerated chiller or carbon adsorption.

(2) Operating requirements.

(a) [Do not dispose of] Waste solvent shall not be disposed of or transferred [or transfer it] to another party so [, such] that greater than twenty (20) percent by weight of the waste solvent can evaporate into the atmosphere. [Store] Waste solvent shall be stored only in covered containers.

(b) [Close] Degreaser cover shall be closed if [whenever] not handling parts in the cleaner.

(c) [Drain] Cleaned parts shall be drained until dripping ceases (fifteen (15) seconds is usually necessary).

Section 5. Open Top Vapor Degreasers. (1) Control equipment.

(a) The degreaser shall be equipped with a cover that can be opened and closed easily without disturbing the vapor zone.

(b) The degreaser shall be equipped with the following safety switches:

1. Condenser flow switch and thermostat to shut off sump heat if condenser coolant either is not circulating or is too warm.

2. Spray safety switch to shut off spray pump if the vapor level drops more than four (4) inches below the bottom condenser coil in order to prevent spraying above the vapor level.

3. Vapor level control thermostat which shuts off sump heat if the vapor zone rises above the design level.

4. Equivalent safety systems as approved on a case-by--case basis by the cabinet.

(c) The degreaser shall be equipped with at least one (1) of the following major control devices:

1. Freeboard with freeboard ratio greater than or equal to 0.75, and if the degreaser opening is greater than ten (10) square feet, the cover shall be powered or mechanically assisted.

2. Refrigerated chiller.

3. Enclosed design so [such] that the cover or door opens only when the dry part is actually entering or exiting the degreaser.

4. Carbon adsorption system, with ventilation greater than or equal to fifty (50) cfm/square foot of air/vapor interface area (if [when] cover is open), and exhausting less than twenty-five (25) ppm by volume solvent averaged over one (1) complete adsorption cycle.

5. Control system demonstrated to have control efficiency equivalent to or better than any of the above.

(d) A permanent, conspicuous label, summarizing the operating procedures specified in subsection (2) of this section shall be installed on or near the degreaser.

(2) Operating requirements.

(a) [Keep] The cover shall be closed at all times unless [except when] processing work loads through the degreaser.

(b) [Minimize] Solvent carryout shall be minimized by the following measures:

1. [Rack] Parts shall be racked so that entrainment of solvent is avoided and full drainage is accomplished.

2. [Move] Parts shall be moved in and out of the degreaser at vertical speed less than eleven (11) ft./min.

3. [Degrease] The work load in the vapor zone shall be degreased until condensation ceases (thirty (30) seconds or more is usually necessary).

4. [Tip out] Any pools of solvent on the cleaned parts shall be tipped out before removal.

5. [Allow] Parts shall be allowed to dry within the degreaser above the vapor zone until visually dry (fifteen (15) seconds is usually necessary).

(c) [Do not degrease] Porous or absorbent materials such as cloth, leather, wood, or rope shall not be degreased.

(d) Work loads shall [should] not occupy more than half of the degreaser's open top area.

(e) Spraying shall not be allowed [Never spray] above the vapor level.

(f) [Repair] Solvent leaks shall be repaired immediately or shut down the degreaser.

(g) [Do not dispose of] Waste solvent shall not be disposed of or transferred [or transfer it] to another party so [such] that greater than twenty (20) percent by weight of the waste solvent can evaporate into the atmosphere. [Store] Waste solvent shall be stored only in closed containers.

(h) Exhaust ventilation shall [should] not exceed sixty-five (65) cfm per square foot of degreaser area unless necessary to meet OSHA requirements or control device requirements. Ventilation fans shall [should] not be used near the degreaser opening.

(i) Water shall [should] not be visually detectable in the solvent exiting the water separator.

Section 6. Conveyorized Degreasers. (1) Control equipment.

(a) A conveyorized degreaser shall be enclosed for work load entrances and exits.

(b) The degreaser shall be equipped with a drying tunnel or another means such as rotating baskets sufficient to prevent cleaned parts from carrying out solvent liquid or vapor.

(c) Minimized openings. Entrances and exits shall silhouette work loads so that the average clearance between the largest parts and the edge of the degreaser opening is either less than four (4) inches or less than ten (10) percent of the width of the opening.

(d) Downtime covers. The degreaser shall be equipped with covers for closing off the entrance and exit during shutdown hours.

(e) If the degreaser has an air/solvent interface area or an air/vapor interface area equal to or greater than twenty (20) square feet, [ft.] it shall be equipped with at least one (1) of the following major control devices:

1. Refrigerated chiller.

2. Carbon adsorption system with ventilation greater than or equal to fifty (50) cfm/square foot of air/vapor interface area (when downtime covers are open) and exhausting less than twenty-five (25) ppm of solvent by volume averaged over a complete adsorption cycle.

3. A system demonstrated to have a control efficiency equivalent to or better than either of the above.

(f) If the degreaser is a vapor type, it shall be equipped with the following safety switches:

1. Condenser flow switch and thermostat which will shut off the sump heat if coolant is either not circulating or is too warm.

2. Spray safety switch which will shut off the spray pump or conveyor if the vapor level drops more than four (4) inches below the bottom condenser coil in order to prevent spraying above the vapor level.

3. Vapor level control thermostat which will shut off sump heat if the vapor level rises above the design level.

4. Equivalent safety systems as approved on a case-by--case basis by the cabinet.

(g) A permanent, conspicuous label, summarizing the operating procedures specified in subsection (2) of this section shall be installed on or near the degreaser.

(2) Operating requirements.

(a) Exhaust ventilation shall [should] not exceed sixty-five (65) cfm per square foot of degreaser opening unless necessary to meet OSHA requirements or control device requirements. Work place fans shall [should] not be used near the degreaser opening.

(b) [Minimize] Solvent carryout shall be minimized by the following measures:

1. [Rack] Parts shall be racked so that entrainment of solvent is avoided and full drainage is accomplished.

2. [Maintain] Vertical conveyor speed shall be maintained at less than eleven (11) ft/min.

(c) [Do not dispose of] Waste solvent shall not be disposed of or transferred [or transfer it] to another party in a way [such] that greater than twenty (20) percent by weight of the waste solvent can evaporate into the atmosphere. [Store] Waste solvent shall be stored only in closed containers.

(d) [Repair] Solvent leaks shall be repaired immediately or [shut down] the degreaser shut down.

(e) Water shall [should] not be visually detectable in the solvent exiting the water separator.

(f) Downtime covers shall be placed over entrances and exits of the degreaser immediately after the conveyor and exhaust are shut down and removed just before they are started up.

Section 7. Compliance Timetable. (1) Affected facilities which were subject to this regulation as in effect on June 29, 1979, shall have achieved final compliance by July 1, 1981.

(2) The owner or operator of an affected facility that becomes subject to this regulation on or after the effective date of this regulation shall be required to complete the following:

(a) [(1) Submit] A final control plan for achieving compliance with this regulation shall be submitted no later than three (3) months after the date the affected facility becomes subject to this regulation [September 1, 1979].

(b) [(2) Award] The control system contract shall be awarded no later than five (5) months after the affected facility becomes subject to this regulation [November 1, 1979].

(c) [(3) Initiate] On-site construction or installation of emission control equipment shall be initiated no later than seven (7) months after the date the affected facility becomes subject to this regulation [July 1, 1980].

(d) [(4)] On-site construction or installation of emission control equipment shall be completed no later than eleven (11) months after the date the affected facility becomes subject to this regulation [May 1, 1981].

(e) [(5)] Final compliance shall be achieved no later than twelve (12) months after the date the affected facility becomes subject to this regulation [July 1, 1981].

(f) If an affected facility becomes subject to this regulation because it is located in a county previously designated nonurban nonattainment or redesignated in 401 KAR 51:010 after November 15, 1990, final compliance may be extended to May 31, 1995, and the schedule in paragraphs (a) through (d) of this subsection adjusted by the cabinet.

Section 8. Exemptions. Any cold cleaners shall be exempt from [the provisions of] Section 4 of this regulation if the following criteria are met:

(1) The cold cleaner shall [must] have a remote solvent reservoir;

(2) The solvent used in the cold cleaner shall [must] not have a vapor pressure that exceeds thirty-three (33) mm Hg

measured at 100oF or be heated above 120oF;

(3) The sink-like work area shall [~~must~~] have an open drain area less than 100 sq. cm.; and

(4) Evidence shall be [~~is~~] provided that waste solvent shall [must] be stored or properly disposed of with minimal loss due to evaporation.

PHILLIP J. SHEPHERD, Secretary
RONALD P. MILLS, Acting Commissioner
APPROVED BY AGENCY: January 7, 1992
FILED WITH LRC: January 15, 1992 at noon

PUBLIC HEARING: A public hearing to receive comments on this proposed regulation and proposed amendments will be conducted on February 28, 1992, at 10 a.m. (ET) in the Auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing: Kenneth M. Hines, Manager, Program Planning and Administration Branch, Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Hisham M. Saaid

(1) Type and number of entities affected: A review of the division's records indicates that there are currently 10 entities under this regulation. These entities are industries with solvent metal cleaning equipment. The amendments to this regulation have been made to eliminate deviations between state regulations which are a part of the state implementation plan (SIP) and U.S. EPA policy; to update the applicability; and to comply with KRS Chapter 13A. The change in the definition of volatile organic compounds is a SIP deviation. The applicability is updated to be compatible with the requirements of the Clean Air Act as amended November 15, 1990. This amendment will not impact the 10 entities currently under this regulation. However, the Clean Air Act amendments eliminate the distinction between urban and nonurban ozone nonattainment areas. Previously, for example, minor sources in Boone, Campbell, and Kenton Counties (an urban nonattainment area) were subject to this regulation while similar sources in Boyd County (a nonurban nonattainment area) were not. The amendments will eliminate that distinction. This will make minor sources in Boyd County subject to this regulation. Further, the Clean Air Act amendments define 5 classifications of nonattainment. The redesignation of a county from attainment to any of the nonattainment classifications, except marginal nonattainment, would make additional entities subject to this regulation. Sources which become subject to this regulation because of the changes in applicability required by the Clean Air Act amendments shall achieve final compliance by May 31, 1995. The amendments made to comply with KRS Chapter 13A do not impact any sources.

(a) Direct and indirect costs or savings to those affected: If Kentucky does not make the federally required amendments to this regulation, the U.S. EPA will promulgate the requirements in federal regulations. There are no additional costs associated with complying with the state's regulation over complying with the same requirements in a federal regulation.

1. First year: There are no costs or savings associated with KRS Chapter 13A amendments. There are no additional costs associated with complying with the states amendments over complying with the same requirements in a federal regulation. A chemical that was previously not considered a volatile organic compound because of its low vapor pressure could now be classified as a VOC or vice versa under the new definition of VOC. The applicability amendment required by the Clean Air Act will bring additional sources under this regulation for the first time. The number and size of entities will not be known until the redesignations of nonattainment status for individual counties or portions of counties have been made. A full cost analysis for the initial and continuing impact of this regulation was originally given in the U.S. EPA document EPA-450/2-77-022, pages 4-1 through 4-23, November 1977. Cost data for model facilities of cold cleaners, open top vapor degreasers, and conveyorized vapor degreasers were provided for various control techniques. For cold cleaners installed capital costs vary from $25 to $65; annualized costs vary from a savings of $25.61/year to a cost of $0.50/year; and cost effectiveness varies from a savings of $0.27/kg to a cost of 0.021/kg of solvent controlled. For open top degreasers installed capital costs vary from $300 to $10,000; net annualized costs range from a credit of $799/year to a cost of $797/year; and the cost effectiveness varies from a credit of $0.40/kg to a cost of $0.242/kg of controlled emissions. For typical conveyorized degreasers installed capital costs vary from $7,460 to $17,600; annualized costs range from a credit of $3,734/year to a cost of $1,516/year; and cost effectiveness varies from a credit $0.28/kg to a cost of $0.29/kg of solvent controlled. Although inflation can be taken into consideration, the size of the entities affected is not available for an accurate evaluation. A typical cost multiplier factor for 1977 to 1991 is 1.8. This means that 1977 costs should be multiplied by 1.8 to obtain 1991 costs.

2. Continuing costs or savings: Please see discussion under first year, 1, above.

3. Additional factors increasing or decreasing costs (note any effects upon competition): Minor sources in nonattainment areas (except marginal nonattainment) are subject to this regulation, while minor sources in attainment areas are not.

(b) Reporting and paperwork requirements: The amendments do not required additional reporting and paperwork requirements.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division will review and process permits for any sources newly affected. Costs will be recovered by a permit fee.

2. Continuing costs or savings: The division presently inspects all permitted sources of air pollutants and maintains plant and emissions data for emissions inventory purposes. Such activities are part of the division's normal day-to-day operations and are budgeted accordingly. Any newly affected source will be inspected and the cost will be absorbed as a part of the operating budget.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The division will review and issue permits for newly affected sources and will issue reports of inspections and emissions data as in 1 and 2 above.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered for the amendments which contain the same provisions as federal requirements.

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

(a) Necessity of proposed regulation if in conflict: There is no conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no conflict.

(6) Any additional information or comments: These amendments were made in response to the requirements discussed under (1) above.

TIERING: Was tiering applied? No. The amendments eliminate deviations between the SIP and federal requirements.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Federal policy has changed subsequent to the promulgation of this regulation. The U.S. EPA is requiring these amendments to eliminate deviations between Kentucky's state implementation plan and federal policy. The applicability of this regulation has been updated to be compatible with the Clean Air Act as amended November 15, 1990.

2. State compliance standards. There are no changes in the standards. These amendments change the applicability and eliminate the deviations between Kentucky's definition for VOCs and U.S. EPA policy, but do not change the standards.

3. Minimum or uniform standards contained in the federal mandate. The federal policy does not change the standards, but refers to procedures, definitions, etc., to apply the standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. These amendments are proposed to eliminate deviations from U.S. EPA policy and the Clean Air Act.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The proposed amendments do not impose stricter standards, or additional or different responsibilities or requirements.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(Proposed Amendment)

401 KAR 61:100. Existing insulation of magnet wire operations.

RELATES TO: KRS 224.20-100, 224.20-110, 224.20-120 [~~Chapter 224~~]

STATUTORY AUTHORITY: KRS 224.10-100 [~~224.033~~]

NECESSITY AND FUNCTION: KRS 224.10-100 [~~224.033~~] requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides for the control of volatile organic compound emissions from existing insulation of magnet wire operations.

~~[Section 1. Applicability. The provisions of this regulation shall apply to each affected facility commenced before the classification date defined below which is located:]~~

~~[(1) In an urban county designated nonattainment for ozone under 401 KAR 51:010; or]~~

~~[(2) In any county which is designated nonattainment or unclassified under 401 KAR 51:010 and is a part of a major source of volatile organic compounds.]~~

Section 1. [2.] Definitions. As used in this regulation, all terms not defined in this section [~~herein~~] shall have the meaning given to them in 401 KAR 50:010.

(1) "Affected facility" means a coating line for insulation of magnet wire.

(2) "Applicator" means the mechanism or device used to apply the coating, including but not limited to a coating bath.

(3) "Coating die" means the device, located between the applicator and the drying oven, which scrapes off excess coating and leaves a thin film of desired thickness.

(4) "Magnet wire" means wire used in [~~such~~] equipment such as electrical motors, generators, and transformers which carries an electrical current.

(5) "Coating line" means a series of equipment [~~and/~~]or operations used to apply, dry, or cure any coatings containing volatile organic compounds (VOCs). This shall include, but is not limited to:

(a) Mixing operations;

(b) Process storage;

(c) Applicators;

(d) Drying operations including coating die area evaporation, oven drying, baking, curing, and polymerization;

(e) Clean up operations;

(f) Leaks, spills, and disposal of VOCs [~~volatile organic compounds~~];

(g) Processing and handling of recovered VOCs [~~volatile organic compounds~~];

(h) For the purposes of determining compliance with this regulation, if any equipment or operation is [could be] considered to be a part of more than one (1) coating line, its VOC [~~volatile organic compound~~] emissions shall be assigned to each coating line of which it is a part proportionally to the throughput of VOCs [~~volatile organic compounds~~] it receives from or distributes to each coating line;

(i) If any portion of the series of equipment [~~and/~~]or operations qualifies [~~qualify~~] for an exemption according to Section 6 of this regulation, then that portion shall be considered to be a separate coating line.

~~[(6) "Volatile organic compounds" means chemical compounds of carbon (excluding methane, ethane, carbon monoxide, carbon dioxide, carbonic acid, metallic carbides, and ammonium carbonate) which have a vapor pressure greater than one tenth (0.1) mm Hg at conditions of twenty (20) degrees Celsius and 760 mm Hg.]~~

(6) [~~(7)~~] "Process storage" means mixing tanks, holding tanks, and other tanks, drums, or other containers which contain surface coatings, VOCs [~~volatile organic compounds~~], or recovered VOCs [~~volatile organic compounds~~]; but does not mean storage tanks of petroleum liquids which are subject to 401 KAR 59:050, 401 KAR 59:052, or 401 KAR 61:050.

(7) [~~(8)~~] "Classification date" means June 29, 1979. [~~the effective date of this regulation.~~]

(8) "VOCs [~~(9) "Volatile organic compounds~~] net input" means the total amount of VOCs [~~volatile organic compounds~~] input to the affected facility minus the amount of VOCs [~~volatile organic compounds~~] that are not emitted into the atmosphere. VOCs [~~Volatile organic compounds~~] that are prevented from being emitted to the atmosphere by the use of control devices shall not be subtracted from the total for the purposes of determining VOCs [~~volatile organic compounds~~] net input. If [~~When~~] the nature of any operation or design of equipment is such as to permit more than one (1) interpretation of this definition, the interpretation that results in the minimum value for allowable emission shall apply.

Section 2. Applicability. This regulation shall apply to each affected facility commenced before the classification date defined in Section 1 of this regulation which is located in a county or portion of a county which is designated ozone nonattainment, for any nonattainment classification except marginal, under 401 KAR 51:010.

Section 3. Standard for VOCs [~~Volatile Organic Compounds~~]. No person shall cause, allow, or permit an affected facility to discharge into the atmosphere more than fifteen (15) percent by weight of the VOCs [~~volatile organic compounds~~] net input into the affected facility.

Section 4. Compliance. (1) In all cases the design of any control system shall be [is] subject to approval by the cabinet.

(2) Compliance with the standard in Section 3 of this regulation shall be demonstrated by a material balance unless [~~except in those cases where~~] the cabinet determines that a material balance is not possible. If [~~For those cases where~~] a material balance is not possible, compliance shall [~~will~~] be determined based upon an engineering analysis by the cabinet of the control system design, control device efficiency, control system capture efficiency and any other factors that may [~~could~~] influence the performance of the system. If [so] requested by the cabinet, performance tests [~~as~~] specified by

the cabinet shall be conducted [~~in order~~] to determine the efficiency of the control device. Capture efficiency shall be determined by procedures specified in 401 KAR 50:047.

(3) With the prior approval of the cabinet, the owner or operator may elect to effect all [~~such~~] changes [~~in the affected facility as are~~] necessary to qualify for an exemption under Section 6 of this regulation.

(4) If [~~Whenever~~] deemed necessary by the cabinet, the cabinet shall obtain samples of the coatings used at an affected facility to verify that the coatings meet the requirements in Section 6 of this regulation. Method 24, which has been incorporated [~~The following methods of analyses, filed~~] by reference in 401 KAR 50:015, [~~for coatings~~] shall be used as applicable to determine compliance of the coatings unless [~~except in these cases where~~] the cabinet determines that other methods are [~~would be~~] more appropriate. Case-by-case alternatives approved by the cabinet, but not previously authorized by the U.S. EPA, shall be submitted to the U.S. EPA as a SIP revision. [~~:~~]

[~~(a) ASTM D 1644 75 Method A;~~]

[~~(b) ASTM D 1475 60(74);~~]

[~~(c) ASTM D 2369 73; or~~]

[~~(d) Federal Standard 141 a, Method 4082.1.~~]

(5) Compliance on one (1) coating line with VOC emission limits shall be based on an averaging period not to exceed twenty-four (24) hours. If it is not economically or technically feasible to determine emissions on a daily basis, alternatives expressing emission limits for longer averaging times may be accepted if approved by the cabinet. Case-by-case alternatives approved by the cabinet, but not previously authorized by the U.S. EPA, shall be submitted to the U.S. EPA as a SIP revision.

(6) The amount of exempt solvents shall be subtracted from the amount of coatings, just like water, with the ultimate value of interest being the mass of VOC per unit volume of coating less exempt solvent or water or both.

(7) Calculations to determine equivalency on one (1) coating line shall be based on mass of VOC per volume of solids.

(8) Daily records shall be maintained by the source for the most recent two (2) year period. These records shall be made available to the cabinet or the U.S. EPA upon request. The records shall include, but not be limited to, the following:

(a) Applicable regulation number;

(b) Application method and substrate type;

(c) Amount and type of adhesive, coating (including catalyst and reducer for multicomponent coatings), or solvent used at each point of application, including exempt compounds;

(d) The VOC content as applied in each adhesive, coating, or solvent;

(e) The date for each application for adhesive, coating, or solvent;

(f) The amount of surface preparation, cleanup, or washup solvent (including exempt compounds) used and the VOC content of each; and

(g) Oven temperature, if applicable.

Section 5. Compliance Timetable. (1) Affected facilities which were subject to this regulation as in effect on June 29, 1979, shall have achieved final compliance by July 1, 1981.

(2) The owner or operator of an affected facility that becomes subject to this regulation on or after the effective date of this regulation shall be required to complete the following:

(a) [~~(1) Submit~~] A final control plan for achieving compliance with this regulation shall be submitted no later than nine (9) months after the date the affected facility becomes subject to this regulation [~~September 1, 1979~~].

(b) [~~(2) Award~~] The control system contract or the exempt coatings and any accompanying process change contracts shall be awarded no later than eleven (11) months after the date the affected facility becomes subject to this regulation [~~April 1, 1980~~].

(c) [~~(3) Initiate~~] On-site construction or installation of emission control equipment or process changes for exempt coatings shall be initiated no later than thirteen (13) months after the date the affected facility becomes subject to this regulation [~~October 1, 1980~~].

(d) [~~(4)~~] On-site construction or installation of emission control equipment or process changes for exempt coatings shall be completed no later than seventeen (17) months after the date the affected facility becomes subject to this regulation [~~April 1, 1981~~].

(e) [~~(5)~~] Final compliance shall be achieved no later than eighteen (18) months after the date the affected facility becomes subject to this regulation [~~July 1, 1981~~].

(f) If an affected facility becomes subject to this regulation because it is located in a county previously designated nonurban nonattainment or redesignated in 401 KAR 51:010 after November 15, 1990, final compliance may be extended to May 31, 1995, and the schedule in paragraphs (a) through (d) of this subsection adjusted by the cabinet.

Section 6. Exemptions. (1) Any affected facility shall be exempt from [the provisions of] Section 3 of this regulation if the VOC [~~volatile organic compound~~] content of the coating is less than two-tenths (0.20) kg/l of coating (one and seven--tenths (1.7) lb/gal), excluding water or exempt solvent or both, delivered to the applicators associated with the coating line.

(2) An affected facility shall be exempt from this regulation if the total VOC emissions from all affected facilities subject to this regulation are less than or equal to:

(a) Three (3) lb/hr actual emissions before add-on control;

(b) Fifteen (15) lb/day actual emissions before add-on control; or

(c) Ten (10) tons per year theoretical potential emissions based on design capacity (or maximum production) and 8760 hr/year before add-on control.

(3) Low-use coatings shall be exempt from Section 3 of this regulation if the plantwide consumption of these coatings in the aggregate is less than or equal to fifty-five (55) gallons during the previous twelve (12) months.

PHILLIP J. SHEPHERD, Secretary
RONALD P. MILLS, Acting Commissioner
APPROVED BY AGENCY: January 7, 1992
FILED WITH LRC: January 15, 1992 at noon

PUBLIC HEARING: A public hearing to receive comments on this proposed regulation and proposed amendments will be conducted on February 28, 1992, at 10 a.m. (ET) in the Auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing: Kenneth M. Hines, Manager, Program Planning and Administration Branch, Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Hisham M. Saaid

(1) Type and number of entities affected: A review of the division's records indicates that there is currently one entity under this regulation. This entity operates a coating line for insulation of magnet wire. The amendments to this regulation have been made to eliminate deviations between state regulations which are a part of the state implementation plan (SIP) and U.S. EPA policy; to update the applicability; and to comply with KRS Chapter 13A. Many of the SIP deviations are requirements that already appear in 401 KAR 50:016, Policies incorporated by reference, which is a state regulation but not part of the SIP, and therefore not federally enforceable. SIP deviations identified by the U.S. EPA include changes in the definition of VOCs, updated test methods, and capture efficiency procedures. The applicability is updated to be compatible with the requirements of the Clean Air Act as

amended November 15, 1990. This amendment will not impact the one entity currently under this regulation. However, the Clean Air Act amendments eliminate the distinction between urban and nonurban ozone nonattainment areas. Previously, for example, minor sources in Boone, Campbell, and Kenton Counties (an urban nonattainment area) were subject to this regulation while similar sources in Boyd County (a nonurban nonattainment area) were not. The amendments will eliminate that distinction. This will make minor sources in Boyd County subject to this regulation. Further, the Clean Air Act amendments define 5 classifications of nonattainment. The redesignation of a county from attainment to any of the nonattainment classifications, except marginal nonattainment, would make additional entities subject to this regulation. Sources which become subject to this regulation because of the changes in applicability required by the Clean Air Act amendments shall achieve final compliance by May 31, 1995. The amendments made to comply with KRS Chapter 13A do not impact any sources.

(a) Direct and indirect costs or savings to those affected: If Kentucky does not make the federally required amendments to this regulation, the U.S. EPA will promulgate the requirements in federal regulations. There are no additional costs associated with complying with the state's regulation over complying with the same requirements in a federal regulation.

1. First year: There are no costs or savings associated with KRS Chapter 13A amendments. There are no additional costs associated with complying with the state's amendments over complying with the same requirements in a federal regulation. The costs associated with the SIP deviation amendments are of the nature of more recordkeeping, a different test method, and a different capture efficiency procedure. A chemical that was previously uncontrolled because of its low vapor pressure could now be classified as a VOC or vice versa under the new definition of VOC. The applicability amendment required by the Clean Air Act will bring additional sources under this regulation for the first time. The number and size of entities will not be known until the redesignations of nonattainment status for individual counties or portions of counties have been made or new sources constructed. A full cost analysis for the initial and continuing impact of this regulation was originally given in the U.S. EPA document EPA-450/2-77-003, pages 3-1 through 3-12, December 1977. Control options are analyzed for four model sizes. On page 3-10, the lowest cost emission control system was estimated to be $105 per megagram of emissions controlled. The highest cost device considered is the single--oven model thermal incinerator without heat exchanger at an estimated cost of $405 per megagram of emissions controlled. Although inflation can be taken into consideration, the size of the entities affected is not available for an accurate evaluation. A typical cost multiplier factor for 1977 to 1991 is 1.8. This means that 1977 costs should be multiplied by 1.8 to obtain 1991 costs.

2. Continuing costs or savings: Please see discussion under first year, 1, above.

3. Additional factors increasing or decreasing costs (note any effects upon competition): Minor sources in nonattainment areas (except marginal nonattainment) are subject to this regulation, while minor sources in attainment areas are not.

(b) Reporting and paperwork requirements: The U.S. EPA identified recordkeeping as a SIP deficiency. Section 4(8) was added to comply with this federal requirement.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division will review and process permits for any sources newly affected. Costs will be recovered by a permit fee.

2. Continuing costs or savings: The division presently inspects all permitted sources of air pollutants and maintains plant and emissions data for emissions inventory purposes. Such activities are part of the division's normal day-to-day operations and are budgeted accordingly. Any newly affected source will be inspected and the cost will be absorbed as a part of the operating budget.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The division will review and issue permits for newly affected sources and will issue reports of inspections and emissions data as in 1. and 2. above.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were considered for the amendments which contain the same provisions as federal requirements.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is conflict in the capture efficiency procedures between this regulation and 401 KAR 50:016, Policies incorporated by reference. There is also duplication, because 401 KAR 50:016 is not part of Kentucky's SIP.

(a) Necessity of proposed regulation if in conflict: This regulation references 401 KAR 50:047, Test procedures for capture efficiency. 401 KAR 50:047 requires the U.S. EPA's new capture efficiency protocols. 401 KAR 50:016 requires the previous U.S. EPA capture efficiency procedures.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: 401 KAR 50:016 will be amended or repealed to eliminate the conflict. 401 KAR 50:016 is not part of Kentucky's SIP, therefore, amending only 401 KAR 50:016 would not satisfy the deviation between EPA's new policy and Kentucky's SIP.

(6) Any additional information or comments: These amendments were made in response to the requirements discussed under (1) above.

TIERING: Was tiering applied? No. The amendments eliminate deviations between the SIP and federal requirements. However, Section 6(2) of the amended regulation allows for an exemption based on low emissions. Section 6(3) has an exemption for low-use coatings.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Clean Air Act as amended November 15, 1990.

2. State compliance standards. These amendments change the applicability and eliminate the deviations between Kentucky's SIP and U.S. EPA policy, but do not change the standards.

3. Minimum or uniform standards contained in the federal mandate. These amendments do not change the standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. These amendments are proposed to eliminate deviations from U.S. EPA policy and the Clean Air Act.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The proposed amendments do not impose stricter standards, or additional or different responsibilities or requirements.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(Proposed Amendment)

401 KAR 61:105. Existing metal furniture surface coating operations.

RELATES TO: KRS [~~Chapter~~] 224.20-100, 224.20-110, 224.20-120

STATUTORY AUTHORITY: KRS 224.10-100 [224.033]
NECESSITY AND FUNCTION: KRS 224.10-100 [224.033] requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides for the control of volatile organic compound emissions from existing metal furniture surface coating operations.

[Section 1. Applicability. The provisions of this regulation shall apply to each affected facility commenced before the classification date defined below which is located:]
[(1) In an urban county designated nonattainment for ozone under 401 KAR 51:010; or]
[(2) In any county which is designated nonattainment or unclassified under 401 KAR 51:010 and is a part of a major source of volatile organic compounds.]

Section 1. [2.] Definitions. As used in this regulation, all terms not defined in this section [herein] shall have the meaning given to them in 401 KAR 50:010.
(1) "Affected facility" means a coating line for indoor [and/]or outdoor metal furniture.
(2) "Applicator" means the mechanism or device used to apply the coating, including, but not limited to, [:] dipping, spraying, or flow coating.
(3) "Flash-off area" means the space between the applicator and the oven.
(4) "Prime coat" means the first film of coating applied in a two (2) coat operation which is responsible for protecting the surface from corrosion and providing for good adhesion of the topcoat.
(5) "Topcoat" means the final film of coating applied in a two (2) coat operation to obtain desired aesthetic effects.
(6) "Single coat" means a single film coating applied directly to the metal substrate omitting the prime coat.
(7) "Coating line" means a series of equipment [and/]or operations used to apply, dry, or cure any prime, topcoat or single coatings containing volatile organic compounds (VOCs). This shall include, but is not limited to:
(a) Mixing operations;
(b) Process storage;
(c) Applicators;
(d) Drying operations including, but not limited to, flash-off area evaporation, oven drying, baking, curing, and polymerization;
(e) Clean up operations;
(f) Leaks, spills and disposal of VOCs [volatile organic compounds];
(g) Processing and handling of recovered VOCs [volatile organic compounds];
(h) For the purposes of determining compliance with this regulation, if any equipment or operation is [could be] considered to be a part of more than one (1) coating line, its VOC [volatile organic compound] emissions shall be assigned to each coating line of which it is a part proportionally to the throughput of VOCs [volatile organic compounds] it receives from or distributes to each coating line;
(i) If any portion of the series of equipment [and/]or operations qualifies [qualify] for an exemption according to Section 6 of this regulation, then that portion shall be considered to be a separate coating line.
[(8) "Volatile organic compounds" means chemical compounds of carbon (excluding methane, ethane, carbon monoxide, carbon dioxide, carbonic acid, metallic carbides, and ammonium carbonate) which have a vapor pressure greater than one tenth (0.1) mm Hg at conditions of twenty (20) degrees Celsius and 760 mm Hg.]
(8) [(9)] "Process storage" means mixing tanks, holding tanks, and other tanks, drums, or other containers which contain surface coatings, VOCs [volatile organic compounds], or recovered VOCs [volatile organic compounds]; but does not mean storage tanks of petroleum liquids which are subject to 401 KAR 59:050, 401 KAR 59:052, or 401 KAR 61:050.
(9) [(10)] "Metal furniture" means household and business items including but not limited to tables, chairs, waste baskets, beds, desks, lockers, benches, shelving, file cabinets, lamps and room dividers.
(10) [(11)] "Classification date" means June 29, 1979 [the effective date of this regulation].
(11) [(12)] "VOCs [Volatile organic compounds] net input" means the total amount of VOCs [volatile organic compounds] input to the affected facility minus the amount of VOCs [volatile organic compounds] that are not emitted into the atmosphere. VOCs [Volatile organic compounds] that are prevented from being emitted to the atmosphere by the use of control devices shall not be subtracted from the total for the purposes of determining VOCs [volatile organic compounds] net input. When the nature of any operation or design of equipment [is such as] to permit more than one (1) interpretation of this definition, the interpretation that results in the minimum value for allowable emission shall apply.

Section 2. Applicability. This regulation shall apply to each affected facility commenced before the classification date defined in Section 1 of this regulation which is located in a county or portion of a county which is designated ozone nonattainment, for any nonattainment classification except marginal, under 401 KAR 51:010.

Section 3. Standard for VOCs [Volatile Organic Compounds]. No person shall cause, allow, or permit an affected facility to discharge into the atmosphere more than fifteen (15) percent by weight of the VOCs [volatile organic compounds] net input into the affected facility.

Section 4. Compliance. (1) In all cases the design of any control system shall be [is] subject to approval by the cabinet.
(2) Compliance with the standard in Section 3 of this regulation shall be demonstrated by a material balance unless [except in those cases where] the cabinet determines that a material balance is not possible. If [For those cases where] a material balance is not possible, compliance shall [will] be determined based upon an engineering analysis by the cabinet of the control system design, control device efficiency, control system capture efficiency, and any other factors that may [could] influence the performance of the system. If [so] requested by the cabinet, performance tests [as] specified by the cabinet shall be conducted [in order] to determine the efficiency of the control device. Capture efficiency shall be determined by procedures specified in 401 KAR 50:047.
(3) With the prior approval of the cabinet, the owner or operator may elect to effect all [such] changes [in the affected facility as are] necessary to qualify for an exemption under Section 6 of this regulation.
(4) If [Whenever] deemed necessary by the cabinet, the cabinet shall obtain samples of the coatings used at an affected facility to verify that the coatings meet the requirements in Section 6 of this regulation. Method 24, which has been incorporated [The following methods of analyses, filed] by reference in 401 KAR 50:015, [for coatings] shall be used as applicable to determine compliance of the coatings, unless [except in those cases where] the cabinet determines that other methods would be more appropriate. Case-by-case alternatives approved by the cabinet, but not previously authorized by the U.S. EPA, shall be submitted to the U.S. EPA as a SIP revision. [:]
[(a) ASTM D-1644-75 Method A;]
[(b) ASTM D-1475-60(74);]
[(c) ASTM D-2369-73; or]
[(d) Federal Standard 141-a, Method 4082.1.]
(5) Compliance on one (1) coating line with VOC emission limits shall be based on an averaging period not to exceed twenty-four (24) hours. If it is not economically or technically feasible to determine emissions on a daily basis, alternatives expressing emission limits for longer averaging times may be accepted if approved by the cabinet. Case-by-case alterna-

tives approved by the cabinet, but not previously authorized by the U.S. EPA, shall be submitted to the U.S. EPA as a SIP revision.

(6) The amount of exempt solvents shall be subtracted from the amount of coatings, just like water, with the ultimate value of interest being the mass of VOC per unit volume of coating less exempt solvent or water or both.

(7) Calculations to determine equivalency on one (1) coating line shall be based on mass of VOC per volume of solids.

(8) Daily records shall be maintained by the source for the most recent two (2) year period. These records shall be made available to the cabinet or the U.S. EPA upon request. The records shall include, but not be limited to, the following:

(a) Applicable regulation number;

(b) Application method and substrate type;

(c) Amount and type of adhesive, coating (including catalyst and reducer for multicomponent coatings), or solvent used at each point of application, including exempt compounds;

(d) The VOC content as applied in each adhesive, coating, or solvent;

(e) The date for each application for adhesive, coating, or solvent;

(f) The amount of surface preparation, cleanup, or washup solvent (including exempt compounds) used and the VOC content of each; and

(g) Oven temperature, if applicable.

Section 5. Compliance Timetable. (1) Affected facilities which were subject to this regulation as in effect on June 29, 1979, shall have achieved final compliance by August 1, 1981.

(2) The owner or operator of an affected facility that becomes subject to this regulation on or after the effective date of this regulation shall be required to complete the following:

(a) [~~(1) Submit~~] A final control plan for achieving compliance with this regulation shall be submitted no later than nine (9) months after the date the affected facility becomes subject to this regulation [~~September 1, 1979~~].

(b) [~~(2) Award~~] The control system contract or the exempt coatings and any accompanying process change contracts shall be awarded no later than eleven (11) months after the date the affected facility becomes subject to this regulation [~~January 1, 1980~~].

(c) [~~(3) Initiate~~] On-site construction or installation of emission control equipment or process changes for exempt coatings shall be initiated no later than thirteen (13) months after the date the affected facility becomes subject to this regulation [~~May 1, 1980~~].

(d) [~~(4)~~] On-site construction or installation of emission control equipment or process changes for exempt coatings shall be completed no later than seventeen (17) months after the date the affected facility becomes subject to this regulation [~~May 1, 1981~~].

(e) [~~(5)~~] Final compliance shall be achieved no later than eighteen (18) months after the affected facility becomes subject to this regulation [~~August 1, 1981~~].

(f) If an affected facility becomes subject to this regulation because it is located in a county previously designated nonurban nonattainment or redesignated in 401 KAR 51:010 after November 15, 1990, final compliance may be extended to May 31, 1995, and the schedule in paragraphs (a) through (d) of this subsection adjusted by the cabinet.

Section 6. Exemptions. (1) Any affected facility shall be exempt from [~~the provisions of~~] Section 3 of this regulation if the VOC [~~volatile organic compound~~] content of the coating is less than 0.36 kg/l of coating (three (3.0) lb/gal), excluding water or exempt solvent or both, delivered to the applicators associated with the prime, single or topcoat coating line.

(2) An affected facility shall be exempt from this regulation if the total VOC emissions from all affected facilities subject to this regulation are less than or equal to:

(a) Three (3) lb/hr actual emissions before add-on control;

(b) Fifteen (15) lb/day actual emissions before add-on control; or

(c) Ten (10) tons per year theoretical potential emissions based on design capacity (or maximum production) and 8760 hr/yr before add-on control.

(3) Low-use coatings shall be exempt from Section 3 of this regulation if the plantwide consumption of these coatings in the aggregate is less than or equal to fifty-five (55) gallons during the previous twelve (12) months.

PHILLIP J. SHEPHERD, Secretary
RONALD P. MILLS, Acting Commissioner
APPROVED BY AGENCY: January 7, 1992
FILED WITH LRC: January 15, 1992 at noon

PUBLIC HEARING: A public hearing to receive comments on this proposed regulation and proposed amendments will be conducted on February 28, 1992, at 10 a.m. (ET) in the Auditorium of the State Office Building, Clinton and High Streets, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing: Hisham M. Saaid, Acting Director, Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Hisham M. Saaid

(1) Type and number of entities affected: A review of the division's records indicates that there are currently two entities under this regulation. These entities are existing metal furniture surface coating operations. The amendments to this regulation have been made to eliminate deviations between state regulations which are a part of the state implementation plan (SIP) and U.S. EPA policy; to update the applicability; and to comply with KRS Chapter 13A. Many of the SIP deviations are requirements that already appear in 401 KAR 50:016, Policies incorporated by reference, which is a state regulation but not part of the SIP, and therefore no federally enforceable. SIP deviations identified by the U.S. EPA include changes in the definition of volatile organic compounds, test methods, and capture deficiency. The applicability is updated to be compatible with the requirements of the Clean Air Act as amended November 15, 1990. This amendment will not impact the two entities currently under this regulation. However, the Clean Air Act amendments eliminate the distinction between urban and nonurban ozone nonattainment areas. Previously, for example, minor sources in Boone, Campbell, and Kenton Counties (an urban nonattainment area) were subject to this regulation while similar sources in Boyd County (a nonurban nonattainment area) were not. The amendments will eliminate that distinction. This will make minor sources in Boyd County subject to this regulation. Further, the Clean Air Act amendments define 5 classifications of nonattainment. The redesignation of a county from attainment to any of the nonattainment classifications, except marginal nonattainment, would make additional entities subject to this regulation. Sources which become subject to this regulation because of the changes in applicability required by the Clean Air Act amendments shall achieve final compliance by May 31, 1995. The amendments made to comply with KRS Chapter 13A do not impact any sources.

(a) Direct and indirect costs or savings to those affected: If Kentucky does not make the federally required amendments to this regulation, the U.S. EPA will promulgate the requirements in federal regulations. There are no additional costs associated with complying with the state's regulation over complying with the same requirements in a federal regulation.

1. First year: There are no costs or savings associated with KRS Chapter 13A amendments. The costs associated with the SIP deviation amendments are of the nature of more

recordkeeping, a different test method, and a different capture efficiency procedure. A chemical that was previously uncontrolled because of its low vapor pressure could now be classified as a VOC or vice versa under the new definition of VOC. The applicability amendment required by the Clean Air Act will bring additional sources under this regulation for the first time. The number and size of entities will not be known until the redesignations of nonattainment status for individual counties or portions of counties have been made or new sources constructed. A full cost analysis for the initial and continuing impact of this regulation was originally given in the U.S. EPA document EPA-450/2-77-032, pages 3-1 through 3-15, December 1977. The document presents estimates of costs for controlling VOCs from application areas and curing ovens associated with electrostatic spray and dip coating lines applying a single coat to metal shelves. Multicolor coating is not analyzed and is expected to cost more. Five control strategies for various production rates are considered. In one case the conversion to waterborne coating was $444/Mg of VOC controlled. However, in the consideration of the various applicable control options, a range from $226 saved to $3,000 cost per megagram of VOC controlled is presented. Installed capital costs for conversion or control ranged from $15,000 to $650,000. Net annualized costs ranged from $69,000 credit to $402,000 cost. Although inflation can be taken into consideration, the size of the entities affected is not available for an accurate evaluation. A typical cost multiplier factor for 1977 to 1991 is 1.8. This means that 1977 costs should be multiplied by 1.8 to obtain 1991 costs.

2. Continuing costs or savings: Please see discussion under first year, 1, above.

3. Additional factors increasing or decreasing costs (note any effects upon competition): Minor sources in nonattainment areas (except marginal nonattainment) are subject to this regulation, while minor sources in attainment areas are not.

(b) Reporting and paperwork requirements: The U.S. EPA identified recordkeeping as a SIP deficiency. Section 4(8) was added to comply with this federal requirement.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division will review and process permits for any sources newly affected. Costs will be recovered by a permit fee.

2. Continuing costs or savings: The division presently inspects all permitted sources of air pollutants and maintains plant and emissions data for emissions inventory purposes. Such activities are part of the division's normal day-to-day operations and are budgeted accordingly. Any newly affected source will be inspected and the cost will be absorbed as a part of the operating budget.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The division will review and issue permits for newly affected sources and will issue reports of inspections and emissions data as in 1. and 2. above.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were considered for the amendments which contain the same provisions as federal requirements.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is conflict in the capture efficiency procedures between this regulation and 401 KAR 50:016, Policies incorporated by reference. There is also duplication, because 401 KAR 50:016 is not part of Kentucky's SIP.

(a) Necessity of proposed regulation if in conflict: This regulation references 401 KAR 50:047, Test procedures for capture efficiency. 401 KAR 50:047 requires the U.S. EPA's new capture efficiency protocols. 401 KAR 50:016 requires the previous U.S. EPA capture efficiency procedures.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: 401 KAR 50:016 will be amended or repealed to eliminate the conflict. 401 KAR 50:016 is not part of Kentucky's SIP, therefore, amending only 401 KAR 50:016 would not satisfy the deviation between EPA's new policy and Kentucky's SIP.

(6) Any additional information or comments: These amendments were made in response to the requirements discussed under (1) above.

TIERING: Was tiering applied? No. The amendments eliminate deviations between the SIP and federal requirements. However, Section 6(2) of the amended regulation allows for an exemption based on low emissions. Section 6(3) has an exemption for low-use coatings.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Clean Air Act as amended November 15, 1990.

2. State compliance standards. These amendments do not change the standards.

3. Minimum or uniform standards contained in the federal mandate. These amendments change the applicability and eliminate the defiations between Kentucky's SIP and U.S. EPA policy, but do not change the standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. These amendments are proposed to eliminate deviations from U.S. EPA policy and the Clean Air Act.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The proposed amendments do not impose stricter standards, or additional or different responsibilities or requirements.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(Proposed Amendment)

401 KAR 61:110. Existing large appliance surface coating operations.

RELATES TO: KRS 224.20-100, 224.20-110, 224.20-120 [~~Chapter 224~~]

STATUTORY AUTHORITY: KRS 224.10-100 [~~224.033~~]

NECESSITY AND FUNCTION: KRS 224.10-100 [224.033] requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides for the control of volatile organic compound emissions from existing large appliance surface coating operations.

~~[Section 1. Applicability. The provisions of this regulation shall apply to each affected facility commenced before the classification date defined below which is located:]~~

~~[(1) In an urban county designated nonattainment for ozone under 401 KAR 51:010; or]~~

~~[(2) In any county which is designated nonattainment or unclassified under 401 KAR 51:010 and is a part of a major source of volatile organic compounds.]~~

Section 1. [~~2.~~] Definitions. As used in this regulation, all terms not defined in this section [~~herein~~] shall have the meaning given to them in 401 KAR 50:010.

(1) "Affected facility" means a coating line for large appliances such as, but not limited to, doors, cases, lids, panels and interior support parts of residential and commercial washers, dryers, ranges, refrigerators, freezers, water heaters, dishwashers, trash compactors, and air conditioners.

(2) "Applicator" means the mechanism or device used to apply the coating, including but not limited to dipping or spraying.

(3) "Flash-off area" means the space between the applicator and the oven.

(4) "Prime coat" means the first film of coating applied in a two (2) coat operation.

(5) "Topcoat" means the final film of coating applied in a two (2) coat operation.

(6) "Single coat" means a single film coating applied directly to the metal substrate omitting the prime coat.

(7) "Coating line" means a series of equipment [~~and~~/]or operations used to apply, dry, or cure any prime, topcoat or single coatings containing volatile organic compounds (VOCs). This shall include, but is not limited to:

(a) Mixing operations;

(b) Process storage;

(c) Applicators;

(d) Drying operations including, but not limited to, flash-off area evaporation, oven drying, baking, curing, and polymerization;

(e) Clean up operations;

(f) Leaks, spills, and disposal of VOCs [~~volatile organic compounds~~];

(g) Processing and handling of recovered VOCs [~~volatile organic compounds~~];

(h) For the purposes of determining compliance with this regulation, if any equipment or operation is [~~could be~~] considered to be a part of more than one (1) coating line, its VOC [~~volatile organic compound~~] emissions shall be assigned to each coating line of which it is a part proportionally to the throughput of VOCs [~~volatile organic compounds~~] it receives from or distributes to each coating line;

(i) If any portion of the series of equipment [~~and~~/]or operations qualifies [~~qualify~~] for an exemption according to Section 6 of this regulation, then that portion shall be considered to be a separate coating line.

[~~(8) "Volatile organic compounds" means chemical compounds of carbon (excluding methane, ethane, carbon monoxide, carbon dioxide, carbonic acid, metallic carbides, and ammonium carbonate) which have a vapor pressure greater than one tenth (0.1) mm Hg at conditions of twenty (20) degrees Celsius and 760 mm Hg.~~]

(8) [~~(9)~~] "Process storage" means mixing tanks, holding tanks, and other tanks, drums, or other containers which contain surface coatings, VOCs [~~volatile organic compounds~~], or recovered VOCs [~~volatile organic compounds~~]; but does not mean storage tanks of petroleum liquids which are subject to 401 KAR 59:050, 401 KAR 59:052, or 401 KAR 61:050.

(9) [~~(10)~~] "Classification date" means June 29, 1979 [~~the effective date of this regulation~~].

(10) [~~(11)~~] "VOCs [~~Volatile organic compounds~~] net input" means the total amount of VOCs [~~volatile organic compounds~~] input to the affected facility minus the amount of VOCs [~~volatile organic compounds~~] that are not emitted into the atmosphere. VOCs [~~Volatile organic compounds~~] that are prevented from being emitted to the atmosphere by the use of control devices shall not be subtracted from the total for the purposes of determining VOCs [~~volatile organic compounds~~] net input. If [~~When~~] the nature of any operation or design of equipment [~~is such as to~~] permits more than one (1) interpretation of this definition, the interpretation that results in the minimum value for allowable emission shall apply.

Section 2. Applicability. This regulation shall apply to each affected facility commenced before the classification date defined in Section 1 of this regulation which is located in a county or portion of a county which is designated ozone nonattainment, for any nonattainment classification except marginal, under 401 KAR 51:010.

Section 3. Standard for VOCs [~~Volatile Organic Compounds~~]. No person shall cause, allow, or permit an affected facility to discharge into the atmosphere more than fifteen (15) percent by weight of the VOCs [~~volatile organic compounds~~] net input into the affected facility.

Section 4. Compliance. (1) In all cases the design of any control system shall be [~~is~~] subject to approval by the cabinet.

(2) Compliance with the standard in Section 3 of this regulation shall be demonstrated by a material balance, unless [~~except in these cases where~~] the cabinet determines that a material balance is not possible. If [~~For these cases where~~] a material balance is not possible, compliance shall [~~will~~] be determined based upon an engineering analysis by the cabinet of the control system design, control device efficiency, control system capture efficiency, and any other factors that may [~~could~~] influence the performance of the system. If [~~so~~] requested by the cabinet, performance tests [~~as~~] specified by the cabinet shall be conducted [~~in order~~] to determine the efficiency of the control device. Capture efficiency shall be determined by procedures specified in 401 KAR 50:047.

(3) With the prior approval of the cabinet, the owner or operator may elect to effect all [~~such~~] changes [~~in the affected facility as are~~] necessary to qualify for an exemption under Section 6 of this regulation.

(4) If [~~Whenever~~] deemed necessary by the cabinet, the cabinet shall obtain samples of the coatings used at an affected facility to verify that the coatings meet the requirements in Section 6 of this regulation. Method 24, which has been incorporated [~~The following methods of analyses, filed~~] by reference in 401 KAR 50:015, [~~for coatings~~] shall be used as applicable to determine compliance of the coatings unless [~~except in these cases where~~] the cabinet determines that other methods would be more appropriate. Case-by-case alternatives approved by the cabinet, but not previously authorized by the U.S. EPA, shall be submitted to the U.S. EPA as a SIP revision. [:]

[~~(a) ASTM D 1644-75 Method A;~~]

[~~(b) ASTM D 1475-60(74);~~]

[~~(c) ASTM D 2369-73; or~~]

[~~(d) Federal Standard 141-a, Method 4082.1.~~]

(5) Compliance on one (1) coating line with VOC emission limits shall be based on an averaging period not to exceed twenty-four (24) hours. If it is not economically or technically feasible to determine emissions on a daily basis, alternatives expressing emissions limits for longer averaging times may be accepted if approved by the cabinet. Case-by-case alternatives approved by the cabinet, but not previously authorized by the U.S. EPA, shall be submitted to the U.S. EPA as a SIP revision.

(6) The amount of exempt solvents shall be subtracted from the amount of coatings, just like water, with the ultimate value of interest being the mass of VOC per unit volume of coating less exempt solvent or water or both.

(7) Calculations to determine equivalency on one (1) coating line shall be based on mass of VOC per volume of solids.

(8) Daily records shall be maintained by the source for the most recent two (2) year period. These records shall be made available to the cabinet or the U.S. EPA upon request. The records shall include, but not be limited to, the following:

(a) Applicable regulation number;

(b) Application method and substrate type;

(c) Amount and type of adhesive, coating (including catalyst and reducer for multicomponent coatings), or solvent used at each point of application, including exempt compounds;

(d) The VOC content as applied in each adhesive, coating, or solvent;

(e) The date for each application for adhesive, coating, or solvent;

(f) The amount of surface preparation, cleanup, or washup solvent (including exempt compounds) used and the VOC content of each; and

(g) Oven temperature, if applicable.

Section 5. Compliance Timetable. (1) Affected facilities which were subject to this regulation as in effect on June 29, 1979, shall have achieved final compliance by January 1, 1982.

(2) The owner or operator of an affected facility that becomes subject to this regulation on or after the effective date of this regulation shall be required to complete the following:

(a) [~~(1) Submit~~] A final control plan for achieving compliance with this regulation shall be submitted no later than nine (9) months after the date the affected facility becomes subject to this regulation [~~October 1, 1979~~].

(b) [~~(2) Award~~] The control system contract or the exempt coatings and any accompanying process change contracts shall be awarded no later than eleven (11) months after the date the affected facility becomes subject to this regulation [~~January 1, 1980~~].

(c) [~~(3) Initiate~~] On-site construction or installation of emission control equipment or process changes for exempt coatings shall be initiated no later than thirteen (13) months after the date the affected facility becomes subject to this regulation [~~March 1, 1980~~].

(d) [~~(4)~~] On-site construction or installation of emission control equipment or process changes for exempt coatings shall be completed no later than seventeen (17) months after the date the affected facility becomes subject to this regulation [~~October 1, 1981~~].

(e) [~~(5)~~] Final compliance shall be achieved no later than eighteen (18) months after the date the affected facility becomes subject to this regulation [~~January 1, 1982~~].

(f) If an affected facility becomes subject to this regulation because it is located in a county previously designated nonurban nonattainment or redesignated in 401 KAR 51:010 after November 15, 1990, final compliance may be extended to May 31, 1995, and the schedule in paragraphs (a) through (d) of this subsection adjusted by the cabinet.

Section 6. Exemptions. (1) Any affected facility shall be exempt from [~~the provisions of~~] Section 3 of this regulation if the VOC [~~volatile organic compound~~] content of the coating is less than 0.34 kg/l of coating (two and eight-tenths (2.8) lb/gal), excluding water or exempt solvent or both, delivered to the applicators associated with the prime, single or topcoat coating line.

(2) Repair coating operations for the purpose of repairing scratches and nicks that occur during assembly shall be exempt from [~~the provisions of~~] Section 3 of this regulation.

(3) An affected facility shall be exempt from this regulation if the total VOC emissions from all affected facilities subject to this regulation are less than or equal to:

(a) Three (3) lb/hr actual emissions before add-on control;

(b) Fifteen (15) lb/day actual emissions before add-on control; or

(c) Ten (10) tons per year theoretical potential emissions based on design capacity for maximum production) and 8760 hr/yr before add-on control.

(4) Low-use coatings shall be exempt from Section 3 of this regulation if the plantwide consumption of these coatings in the aggregate is less than or equal to fifty-five (55) gallons during the previous twelve (12) months.

PHILLIP J. SHEPHERD, Secretary
RONALD P. MILLS, Acting Commissioner
APPROVED BY AGENCY: January 7, 1992
FILED WITH LRC: January 15, 1992 at noon

PUBLIC HEARING: A public hearing to receive comments on this proposed regulation and proposed amendments will be conducted on February 28, 1992, at 10 a.m. (ET) in the Auditorium of the State Office Building, Clinton and High Streets, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing: Hisham M. Saaid, Acting Director, Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Hisham M. Saaid

(1) Type and number of entities affected: A review of the division's records indicates that there are currently 2 entities under this regulation. These entities are existing large appliance surface coating operations. The amendments to this regulation have been made to eliminate deviations between state regulations which are a part of the state implementation plan (SIP) and U.S. EPA policy; to update the applicability; and to comply with KRS Chapter 13A. Many of the SIP deviations are requirements that already appear in 401 KAR 50:016, Policies incorporated by reference, which is a state regulation but not part of the SIP, and therefore not federally enforceable. SIP deviations identified by the U.S. EPA include changes in the definition of volatile organic compounds, test methods, and capture efficiency. The applicability is updated to be compatible with the requirements of the Clean Air Act as amended November 15, 1990. This amendment will not impact the 2 entities currently under this regulation. However, the Clean Air Act amendments eliminate the distinction between urban and nonurban ozone nonattainment areas. Previously, for example, minor sources in Boone, Campbell, and Kenton Counties (an urban nonattainment area) were subject to this regulation while similar sources in Boyd County (a nonurban nonattainment area) were not. The amendments will eliminate that distinction. This will make minor sources in Boyd County subject to this regulation. Further, the Clean Air Act amendments define 5 classifications of nonattainment. The redesignation of a county from attainment to any of the nonattainment classifications, except marginal nonattainment, would make additional entities subject to this regulation. Sources which become subject to this regulation because of the changes in applicability required by the Clean Air Act amendments shall achieve final compliance by May 31, 1995. The amendments made to comply with KRS Chapter 13A do not impact any sources.

(a) Direct and indirect costs or savings to those affected: If Kentucky does not make the federally required amendments to this regulation, the U.S. EPA will promulgate the requirements in federal regulations. There are no additional costs associated with complying with the state's regulation over complying with the same requirements in a federal regulation.

1. First year: There are no costs or savings associated with KRS Chapter 13A amendments. The costs associated with the SIP deviation amendments are of the nature of more recordkeeping, a different test method, and a different capture efficiency procedure. A chemical that was previously uncontrolled because of its low vapor pressure could now be classified as a VOC or vice versa under the new definition of VOC. The applicability amendment required by the Clean Air Act will bring additional sources under this regulation for the first time. The number and size of entities will not be known until the redesignations of nonattainment status for individual counties or portions of counties have been made or new sources constructed. A full cost analysis for the initial and continuing impact of this regulation was originally given in the U.S. EPA document EPA-450/2-77-034, pages 3-1 through 3-17, December 1977. Cost analyses are presented for controlling solvent emissions from application areas and curing ovens in prime and topcoat electrostatic spray coating lines. Process modifications and add-on control systems are considered for various types of coating and control equipment for several production rates. The installed capital costs presented for a model existing electrostatic spray topcoat line vary for $30,000 to $750,000. Total annualized costs range from a credit of $237,000/year to a cost of $397,000/year. The cost-effectiveness figures were given as varying from a credit of $872/Mg to a cost of $2,090/Mg of solvent controlled. For

a model existing electgrostatic spray prime coat line installed capital costs are given as $40,000 to $500,000; total annualized costs as a credit of $912,000/year to a cost of $328,000/year; and cost-effectiveness as a credit of $1,780/Mg to a cost of $732/Mg of solvent controlled. Costs for converting model existing electrostatic spray coating lines to powder coating (since no prime coat is needed, these are incremental costs for converting both coating lines) were $1,180,000 for installed capital cost, a range from $272,000/year credit to $72,000/year cost for total annualized cost, and a range from $293/Mg credit to $233/Mg cost of solvent controlled. Although inflation can be taken into consideration, the size of the entities affected is not available for an accurate evaluation. A typical cost multiplier factor for 1977 to 1991 is 1.8. This means that 1977 costs should be multiplied by 1.8 to obtain 1991 costs.

2. Continuing costs or savings: Please see discussion under first year, 1, above.

3. Additional factors increasing or decreasing costs (note any effects upon competition): Minor sources in nonattainment areas (except marginal nonattainment) are subject to this regulation, while minor sources in attainment areas are not.

(b) Reporting and paperwork requirements: The U.S. EPA identified recordkeeping as a SIP deficiency. Section 4(8) was added to comply with this federal requirement.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division will review and process permits for any sources newly affected. Costs will be recovered by a permit fee.

2. Continuing costs or savings: The division presently inspects all permitted sources of air pollutants and maintains plant and emissions data for emissions inventory purposes. Such activities are part of the division's normal day-to-day operations and are budgeted accordingly. Any newly affected source will be inspected and the cost will be absorbed as a part of the operating budget.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The division will review and issue permits for newly affected sources and will issue reports of inspections and emissions data as in 1. and 2. above.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered since these amendments contain the same provisions as federal requirements.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is conflict in the capture efficiency procedures between this regulation and 401 KAR 50:016, Policies incorporated by reference. There is also duplication, because 401 KAR 50:016 is not part of Kentucky's SIP.

(a) Necessity of proposed regulation if in conflict: This regulation references 401 KAR 50:047, Test procedure for capture efficiency. 401 KAR 50:047 requires the U.S. EPA's new capture efficiency protocols. 401 KAR 50:016 requires the previous U.S. EPA capture efficiency procedure.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: 401 KAR 50:016 will be amended or repealed to eliminate the conflict. 401 KAR 50:016 is not part of Kentucky's SIP, therefore, amending only 401 KAR 50:016 would not satisfy the deviation between EPA's new policy and Kentucky's SIP.

(6) Any additional information or comments: These amendments were made in response to the requirements discussed under (1) above.

TIERING: Was tiering applied? No. The amendments eliminate deviations between the SIP and federal requirements. However, Section 6(3) of the amended regulation allows for an exemption based on low emissions. Section 6(4) has an exemption for low-use coatings.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Clean Air Act as amended November 15, 1990.

2. State compliance standards. These amendments change the applicability and eliminate the deviations between Kentucky's SIP and U.S. EPA policy, but do not change the standards.

3. Minimum or uniform standards contained in the federal mandate. These amendments do not change the standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. These amendments are proposed to eliminate deviations from U.S. EPA policy and the Clean Air Act.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The proposed amendments do not impose stricter standards, or additional or different responsibilities or requirements.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(Proposed Amendment)

401 KAR 61:120. Existing fabric, vinyl and paper surface coating operations.

RELATES TO: KRS [~~Chapter~~] 224.20-100, 224.20-110, 224.20-120

STATUTORY AUTHORITY: KRS 224.10-100 [~~224.033~~]

NECESSITY AND FUNCTION: KRS 224.10-100 [~~224.033~~] requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides for the control of volatile organic compound emissions from existing fabric, vinyl or paper surface coating operations.

~~[Section 1. Applicability. The provisions of this regulation shall apply to each affected facility commenced before the classification date defined below which is located:]~~

~~[(1) In an urban county designated nonattainment for ozone under 401 KAR 51:010; or]~~

~~[(2) In any county which is designated nonattainment or unclassified under 401 KAR 51:010 and is a part of a major source of volatile organic compounds.]~~

Section 1. [~~2.~~] Definitions. As used in this regulation, all terms not defined in this section [~~herein~~] shall have the meaning given to them in 401 KAR 50:010.

(1) "Affected facility" means a coating line for fabric, vinyl, or paper.

(2) "Applicator" means the mechanism or device used to apply the coating including, but not limited to, roll, knife, or rotogravure coater.

(3) "Flash-off area" means the space between the applicator and the oven.

(4) "Coating line" means a series of equipment [~~and~~]or operations used to apply, dry, or cure any coatings containing volatile organic compounds (VOCs). This shall include, but is not limited to:

(a) Mixing operations;

(b) Process storage;

(c) Applicators;

(d) Drying operations including, but not limited to, flash-off area evaporation, oven drying, baking, curing, and polymerization;

(e) Clean up operations;

(f) Leaks, spills and disposal of VOCs [~~volatile organic compounds~~];

(g) Processing and handling of recovered VOCs [~~volatile organic compounds~~];

(h) For the purpose[~~s~~] of determining compliance with this regulation, if any equipment or operation is [~~could be~~] considered to be a part of more than one (1) coating line, its VOC [~~volatile organic compound~~] emissions shall be assigned to each coating line to which it is a part proportionally to the throughput of VOCs [~~volatile organic compounds~~] it receives from or distributes to each coating line;

(i) If any portion of the series of equipment [~~and~~/]or operations qualifies [~~qualify~~] for an exemption according to Section 6 of this regulation, then that portion shall be considered to be a separate coating line.

(j) An affected facility which is capable of performing both paper coating and paper printing shall [~~will~~] be considered as performing a paper printing operation subject to 401 KAR 61:122.

[~~(5) "Volatile organic compounds" means chemical compounds of carbon (excluding methane, ethane, carbon monoxide, carbon dioxide, carbonic acid, metallic carbides, and ammonium carbonate) which have a vapor pressure greater than one tenth (0.1) mm Hg at conditions of twenty (20) degress Celsius and 760 mm Hg.~~]

(5) [~~(6)~~] "Process storage" means mixing tanks, holding tanks, and other tanks, drums, or other containers which contain surface coatings, VOCs [~~volatile organic compounds~~], or recovered VOCs [~~volatile organic compounds~~]; but does not mean storage tanks of petroleum liquids which are subject to 401 KAR 59:050, 401 KAR 59:052, or 401 KAR 61:050.

(6) [~~(7)~~] "Fabric coating" means the coating or saturation of a textile substrate to impart properties that are not initially present, such as strength, stability, water or acid repellency, functionality, or appearance.

(7) [~~(8)~~] "Vinyl coating" means the coating of vinyl coated fabric or vinyl sheets, which includes decorative, functional, or protective topcoats or printing.

(8) [~~(9)~~] "Paper coating" means saturation or the application of a uniform layer of material across the entire width of a web of paper, pressure sensitive tapes regardless of substrate, related web coating processes on plastic film such as typewriter ribbons, photographic film, magnetic tape, functional films, and decorative coatings on metal foil such as gift wrap and packaging, but does not include the printing of paper.

(9) [~~(10)~~] "Knife coating" means the application of a coating material to a substrate by means of drawing the substrate beneath a knife that spreads the coating evenly over the full width of the substrate.

(10) [~~(11)~~] "Roll coating" means the application of a coating material to a substrate by means of hard rubber or steel rolls.

(11) [~~(12)~~] "Rotogravure coating" means the application of a uniform layer of material across a substrate by means of a roll coating technique in which the entire coating roll is uniformly etched with recessed cells and no pattern or design is present. The coating material is picked up in these recessed cells and is transferred to the substrate.

(12) [~~(13)~~] "Classification date" means June 29, 1979.

(13) [~~(14)~~] "VOCs [~~Volatile organic compounds~~] net input" means the total amount of VOCs [~~volatile organic compounds~~] input to the affected facility minus the amount of VOCs [~~volatile organic compounds~~] that are not emitted into the atmosphere. VOCs [~~Volatile organic compounds~~] that are prevented from being emitted to the atmosphere by the use of control devices shall not be subtracted from the total for the purposes of determining VOCs [~~volatile organic compounds~~] net input. If [~~When~~] the nature of any operation or design of equipment is such as to permit more than one (1) interpretation of this definition, the interpretation that results in the minimum value for allowable emission shall apply.

(14) [~~(15)~~] "Printing" means the formation of words, designs and pictures, usually by a series of application rolls each with only partial coverage. It applies to flexographic and rotogravure processes as applied to publication, specialty, and packaging printing as defined in 401 KAR 61:122.

Section 2. Applicability. (1) This regulation shall apply to each affected facility commenced before the classification date defined in Section 1 of this regulation which is located in a county or portion of a county which is designated ozone nonattainment, for any nonattainment classification except marginal, under 401 KAR 51:010.

Section 3. Standard for VOCs [~~Volatile Organic Compounds~~]. No person shall cause, allow, or permit an affected facility to discharge into the atmosphere more than fifteen (15) percent by weight of the VOCs [~~volatile organic compounds~~] net input into the affected facility.

Section 4. Compliance. (1) In all cases the design of any control system shall be [~~is~~] subject to approval by the cabinet.

(2) Compliance with the standard in Section 3 of this regulation shall be demonstrated by a material balance unless [~~except in these cases where~~] the cabinet determines that a material balance is not possible. If [~~For these cases where~~] a material balance is not possible, compliance shall [~~will~~] be determined based upon an engineering analysis by the cabinet of the control system design, control device efficiency, control system capture efficiency, and any other factors that may [~~could~~] influence the performance of the system. If [~~so~~] requested by the cabinet, performance tests [~~as~~] specified by the cabinet shall be conducted [~~in order~~] to determine the efficiency of the control device. Capture efficiency shall be determined by procedures specified in 401 KAR 50:047.

(3) With the prior approval of the cabinet, the owner or operator may elect to effect all [~~such~~] changes [~~in the affected facility as are~~] necessary to qualify for an exemption under Section 6 of this regulation.

(4) If [~~Whenever~~] deemed necessary by the cabinet, the cabinet shall obtain samples of the coatings used at an affected facility to verify that the coatings meet the requirements in Section 6 of this regulation. Method 24, which has been incorporated [~~The following methods of analyses, filed~~] by reference in 401 KAR 50:015, [~~for coatings~~] shall be used as applicable to determine compliance of the coatings unless [~~except in these cases where~~] the cabinet determines that other methods would be more appropriate. Case-by-case alternatives approved by the cabinet, but not previously authorized by the U.S. EPA, shall be submitted to the U.S. EPA as a SIP revision. [~~:~~]

[~~(a) ASTM D 1644-75 Method A;~~]

[~~(b) ASTM D 1475-60(74);~~]

[~~(c) ASTM D 2369-73; or~~]

[~~(d) Federal Standard 141-a, Method 4082.1.~~]

(5) Compliance on one (1) coating line with VOC emission limits shall be based on an averaging period not to exceed twenty-four (24) hours. If it is not economically or technically feasible to determine emissions on a daily basis, alternatives expressing emission limits for longer averaging times may be accepted if approved by the cabinet. Case-by-case alternatives approved by the cabinet, but not previously authorized by the U.S. EPA, shall be submitted to the U.S. EPA as a SIP revision.

(6) The amount of exempt solvents shall be subtracted from the amount of coatings, just like water, with the ultimate value of interest being the mass of VOC per unit volume of coating less exempt solvent or water or both.

(7) Calculations to determine equivalency on one (1) coating line shall be based on mass of VOC per volume of solids. Vinyl plastisols and organisols shall not be included in VOC equivalency calculations that are required to be included in applications for VOC bubbles.

(8) Daily records shall be maintained by the source for the most recent two (2) year period. These records shall be made available to the cabinet or the U.S. EPA upon request. The

records shall include, but not be limited to, the following:

(a) Applicable regulation number;

(b) Application method and substrate type;

(c) Amount and type of adhesive, coating (including catalyst and reducer for multicomponent coatings), or solvent used at each point of application, including exempt compounds;

(d) The VOC content as applied in each adhesive, coating, or solvent;

(e) The date for each application for adhesive, coating, or solvent;

(f) The amount of surface preparation, cleanup, or washup solvent (including exempt compounds) used and the VOC content of each; and

(g) Oven temperature, if applicable.

Section 5. Compliance Timetable. (1) Affected facilities which were subject to this regulation as in effect on June 29, 1979, shall have achieved final compliance by December 1, 1981.

(2) The owner or operator of an affected facility that becomes subject to this regulation on or after the effective date of this regulation shall be required to complete the following:

(a) [~~(1) Submit~~] A final control plan for achieving compliance with this regulation shall be submitted no later than nine (9) months after the date the affected facility becomes subject to this regulation [~~September 1, 1979~~].

(b) [~~(2) Award~~] The control system contract or the exempt coatings and any accompanying process change contracts shall be awarded no later than eleven (11) months after the affected facility becomes subject to this regulation [~~May 1, 1980~~].

(c) [~~(3)~~] On-site construction or installation of emission control equipment or process changes for exempt coatings shall be initiated no later than thirteen (13) months after the affected facility becomes subject to this regulation [~~November, 1, 1980~~].

(d) [~~(4)~~] On-site construction or installation of emission control equipment or process changes for exempt coatings shall be completed no later than seventeen (17) months after the affected facility becomes subject to this regulation [~~August 1, 1981~~].

(e) [~~(5)~~] Final compliance shall be achieved no later than eighteen (18) months after the affected facility becomes subject to this regulation [~~December 1, 1981~~].

(f) If an affected facility becomes subject to this regulation because it is located in a county previously designated nonurban nonattainment or redesignated in 401 KAR 51:010 after November 15, 1990, final compliance may be extended to May 31, 1995, and the schedule in paragraphs (a) through (d) of this subsection adjusted by the cabinet.

Section 6. Exemptions. (1) Any affected facility coating fabric or paper shall be exempt from [~~the provisions of~~] Section 3 of this regulation if the VOC [~~volatile organic compound~~] content of the coating is less than 0.35 kg/l of coating (two and nine-tenths (2.9) lb/gal), excluding water or exempt solvent or both, delivered to the applicators associated with the coating line.

(2) Any affected facility coating vinyl shall be exempt from [~~the provisions of~~] Section 3 of this regulation if the VOC [~~volatile organic compound~~] content of the coating is less than 0.45 kg/l of coating (three and eight-tenths (3.8) lb/gal) excluding water or exempt solvent or both, delivered to the applicators associated with the coating line.

(3) An affected facility shall be exempt from this regulation if the total VOC emissions from all affected facilities subject to this regulation are less than or equal to:

(a) Three (3) lb/hr actual emissions before add-on control;

(b) Fifteen (15) lb/day actual emissions before add-on control; or

(c) Ten (10) tons per year theoretical potential emissions based on design capacity for maximum production) and 8760 hr/yr before add-on control.

(4) Low-use coatings shall be exempt from Section 3 of this regulation if the plantwide consumption of these coatings in the aggregate is less than or equal to fifty-five (55) gallons during the previous twelve (12) months.

[~~Section 7. Variances. Variation with the standards and limitations contained in this regulation, when supported by adequate technical information, will be considered by the cabinet on a case by case basis to allow for technological or economic circumstances which are unique to a source.~~]

PHILLIP J. SHEPHERD, Secretary
RONALD P. MILLS, Acting Commissioner
APPROVED BY AGENCY: January 7, 1992
FILED WITH LRC: January 15, 1992 at noon

PUBLIC HEARING: A public hearing to receive comments on this proposed regulation and proposed amendments will be conducted on February 28, 1992, at 10 a.m. (ET) in the Auditorium of the State Office Building, Clinton and High Streets, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing: Hisham M. Saaid, Acting Director, Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Hisham M. Saaid

(1) Type and number of entities affected: A review of the division's records indicates that there are currently 2 entities under this regulation. These entities are existing fabric, vinyl, and paper surface coating operations. The amendments to this regulation have been made to eliminate deviations between state regulations which are a part of the state implementation plan (SIP) and U.S. EPA policy; to update the applicability; and to comply with KRS Chapter 13A. Many of the SIP deviations are requirements that already appear in 401 KAR 50:016, Policies incorporated by reference, which is a state regulation but not part of the SIP, and therefore not federally enforceable. SIP deviations identified by the U.S. EPA include changes in the definition of VOCs, test methods, and variance. The applicability is updated to be compatible with the requirements of the Clean Air Act as amended November 15, 1990. This amendment will not impact the 2 entities currently under this regulation. However, the Clean Air Act amendments eliminate the distinction between urban and nonurban ozone nonattainment areas. Previously, for example, minor sources in Boone, Campbell, and Kenton Counties (an urban nonattainment area) were subject to this regulation while similar sources in Boyd County (a nonurban nonattainment area) were not. The amendments will eliminate that distinction. This will make minor sources in Boyd County subject to this regulation. Further, the Clean Air Act amendments define 5 classifications of nonattainment. The redesignation of a county from attainment to any of the nonattainment classifications, except marginal nonattainment, would make additional entities subject to this regulation. Sources which become subject to this regulation because of the changes in applicability required by the Clean Air Act amendments shall achieve final compliance by May 31, 1995. The amendments made to comply with KRS Chapter 13A do not impact any sources.

(a) Direct and indirect costs or savings to those affected: If Kentucky does not make the federally required amendments to this regulation, the U.S. EPA will promulgate the requirements in federal regulations. There are no additional costs associated with complying with the state's regulation over complying with the same requirements in a federal regulation.

1. First year: There are no costs or savings associated with KRS Chapter 13A amendments. There are no additional costs associated with complying with the state's amendments

over complying with the same requirements in a federal regulation. The costs associated with the SIP deviation amendments are of the nature of more recordkeeping, a different test method, and a different capture efficiency procedure. A chemical that was previously uncontrolled because of its low vapor pressure could now be classified as a VOC or vice versa under the new definition of VOC. The applicability amendment required by the Clean Air Act will bring additional sources under this regulation for the first time. The number and size of entities will not be known until the redesignations of nonattainment status for individual counties or portions of counties have been made or new sources constructed. A full cost analysis for the initial and continuing impact of this regulation was originally given in the U.S. EPA document EPA-450/2-77-008, Volume II, pages 4-13 through 4-19 and pages 5-17 through 5-28, May 1977. Three options (incineration, carbon adsorption, and low organic solvent coatings) were presented for several cases. For a typical fabric coating operation the costs for the incineration option for various cases ranged from $125,000 to $220,000 for installed costs, from $26,000 to $105,000 per year for annualized costs, and from $13 to $54 per ton of solvents recovered. For the carbon adsorption option for various cases costs presented were $320,000 for installed costs; $100,000 (credit) to $127,000 (cost) per year for annualized operating costs; and $57 (credit) to $72 (cost) per ton of solvents recovered. A recovered solvent does not always mean it can be recycled. For a typical paper coating operation the costs for the incineration option for various cases ranged from $125,000 to $220,000 for installed costs, from $26,000 to $105,000 per year for annualized costs, and from $13 to $51 per ton of solvent burned. For the carbon adsorption option for various cases costs presented were $320,000 for installed costs; $100,000 (credit) to $127,000 (cost) per year for annualized costs; and $50 (credit) to $125 (cost) per ton of solvent recovered. Costs for converting to low solvent or water-borne coatings are difficult to compare because this strategy is dependent upon such factors as research and development costs as well as the cost of learning to apply the coatings. Although inflation can be taken into consideration, the size of the entities affected is not available for an accurate evaluation. A typical cost multiplier factor for 1977 to 1991 is 1.8. This means that 1977 costs should be multiplied by 1.8 to obtain 1991 costs.

2. Continuing costs or savings: Please see discussion under first year, 1, above.

3. Additional factors increasing or decreasing costs (note any effects upon competition): Minor sources in nonattainment areas (except marginal nonattainment) are subject to this regulation, while minor sources in attainment areas are not.

(b) Reporting and paperwork requirements: The U.S. EPA identified recordkeeping as a SIP deficiency. Section 4(8) was added to comply with this federal requirement.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division will review and process permits for any sources newly affected. Costs will be recovered by a permit fee.

2. Continuing costs or savings: The division presently inspects all permitted sources of air pollutants and maintains plant and emissions data for emissions inventory purposes. Such activities are part of the division's normal day-to-day operations and are budgeted accordingly. Any newly affected source will be inspected and the cost will be absorbed as a part of the operating budget.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The division will review and issue permits for newly affected sources and will issue reports of inspections and emissions data as in 1. and 2. above.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were considered for the amendments which contain the same provisions as federal requirements.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is conflict in the capture efficiency procedures between this regulation and 401 KAR 50:016, Policies incorporated by reference. There is also duplication, because 401 KAR 50:016 is not part of Kentucky's SIP.

(a) Necessity of proposed regulation if in conflict: This regulation references 401 KAR 50:047, Test procedures for capture efficiency. 401 KAR 50:047 requires the U.S. EPA's new capture efficiency protocols. 401 KAR 50:016 requires the previous U.S. EPA capture efficiency procedures.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: 401 KAR 50:016 will be amended or repealed to eliminate the conflict. 401 KAR 50:016 is not part of Kentucky's SIP, therefore, amending only 401 KAR 50:016 would not satisfy the deviation between EPA's new policy and Kentucky's SIP.

(6) Any additional information or comments: These amendments were made in response to the requirements discussed under (1) above.

TIERING: Was tiering applied? No. The amendments eliminate deviations between the SIP and federal requirements. However, Section 6(3) of the amended regulation allows for an exemption based on low emissions. Section 6(4) has an exemption for low-use coatings.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Clean Air Act as amended November 15, 1990.

2. State compliance standards. These amendments change the applicability and eliminate the deviations between Kentucky's SIP and U.S. EPA policy, but do not change the standards.

3. Minimum or uniform standards contained in the federal mandate. These amendments do not change the standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. These amendments are proposed to eliminate deviations from U.S. EPA policy and the Clean Air Act.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The proposed amendments do not impose stricter standards, or additional or different responsibilities or requirements.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(Proposed Amendment)

401 KAR 61:122. Existing graphic arts facilities using rotogravure and flexography.

RELATES TO: KRS 224.20-100, 224.20-110, 224.20-120 [~~Chapter 224~~]

STATUTORY AUTHORITY: KRS 224.10-100 [~~224.033~~]

NECESSITY AND FUNCTION: KRS 224.10-100 [~~224.033~~] requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement and control of air pollution. This regulation provides for the control of volatile organic compound emissions from existing graphic arts facilities which use rotogravure and flexography.

~~[Section 1. Applicability. The provisions of this regulation shall apply to each affected facility commenced before the classification date defined below which is located:]~~

~~[(1) In an urban county designated nonattainment for~~

~~ozone under 401 KAR 51:010; or~~]

~~[(2) In any county which is designated nonattainment or unclassified for ozone under 401 KAR 51:010 and is a part of a major source of volatile organic compounds.]~~

~~[(3) The provisions of this regulation shall not apply to affected facilities in the following counties: Garrard, Graves, Hopkins, Laurel, Montgomery, Nelson, Pulaski, Scott, Taylor, Trigg, and Union prior to designation of such counties nonattainment for ozone under 401 KAR 51:010.~~]

Section 1. [~~2.~~] Definitions. As used in this regulation, all terms not defined in this section [~~herein~~] shall have the meaning given to them in 401 KAR 50:010.

(1) "Affected facility" means a printing line for packaging rotogravure, publication rotogravure, specialty rotogravure, and flexographic printing.

(2) "Applicator" means the mechanism or device used to apply the ink.

(3) "Flash-off area" means the space between the applicator and the oven.

(4) "Printing line" means a series of equipment [~~and/~~]or operations used to apply, dry, or cure any inks containing VOCs [~~volatile organic compounds~~]. This shall include, but is not limited to:

(a) Mixing operations;

(b) Process storage;

(c) Applicators;

(d) Drying operations including, but not limited to, flash-off area evaporation, oven drying, baking, curing, and polymerization;

(e) Clean up operations;

(f) Leaks, spills and disposal of VOCs [~~volatile organic compounds~~];

(g) Processing and handling of recovered VOCs [~~volatile organic compounds~~];

(h) For the purposes of determining compliance with this regulation, if any equipment or operation is [~~could be~~] considered to be a part of more than one (1) printing line, its VOC [~~volatile organic compound~~] emissions shall be assigned to each printing line of which it is a part proportionally to the throughput of VOCs [~~volatile organic compounds~~] it receives from or distributes to each printing line;

(i) If any portion of the series of equipment [~~and/~~]or operations qualifies [~~qualify~~] for an exemption according to Section 6 of this regulation, then that portion shall be considered to be a separate printing line;

(j) All units in a machine which has both coating and printing units shall [~~will~~] be considered as performing a printing operation.

~~[(5) "Volatile organic compounds" means chemical compounds of carbon (excluding methane, ethane, carbon monoxide, carbon dioxide, carbonic acid, metallic carbides, and ammonium carbonate) which have a vapor pressure greater than one tenth (0.1) mm Hg at conditions of twenty (20) degrees Celsius and 760 mm Hg.~~]

(5) [~~(6)~~] "Process storage" means mixing tanks, holding tanks, and other tanks, drums, or other containers which contain inks, VOCs [~~volatile organic compounds~~], or recovered VOCs [~~volatile organic compounds~~]; but does not mean storage tanks of petroleum liquids which are subject to 401 KAR 59:050, 401 KAR 59:052, or 401 KAR 61:050.

(6) [~~(7)~~] "Printing" means the formation of words, designs, and pictures, usually by a series of application rolls each with only partial coverage. It applies to flexographic and rotogravure processes as applied to publication, specialty, and packaging printing.

(7) [~~(8)~~] "Coating" means the application of a uniform layer of material across the entire width of a web.

(8) [~~(9)~~] "Classification date" means February 4, 1981.

(9) [~~(10)~~] "VOCs [~~Volatile organic compounds~~] net input" means the total amount of VOCs [~~volatile organic compounds~~] input to the affected facility minus the amount of VOCs [~~volatile organic compounds~~] that are not emitted into the atmosphere. VOCs [~~Volatile organic compounds~~] that are prevented from being emitted to the atmosphere by the use of control devices shall not be subtracted from the total for the purposes of determining VOCs [~~volatile organic compounds~~] net input. If [~~When~~] the nature of any operation or design of equipment [~~is such as to~~] permits more than one (1) interpretation of this definition, the interpretation that results in the minimum value for allowable emissions shall apply.

(10) [~~(11)~~] "Packaging rotogravure printing" means rotogravure printing upon paper, paper board, metal foil, plastic film, and other substrates, which are, in subsequent operations, formed into packaging products and labels for articles to be sold.

(11) [~~(12)~~] "Publication rotogravure printing" means rotogravure printing upon paper which is subsequently formed into books, magazines, catalogs, brochures, directories, newspaper supplements, and other types of printed materials.

(12) [~~(13)~~] "Flexographic printing" means the application of words, designs and pictures to a substrate by means of a roll printing technique in which the pattern to be applied is raised above the printing roll and the image carrier is made of rubber or other elastomeric materials.

(13) [~~(14)~~] "Rotogravure printing" means the application of words, designs, and pictures to a substrate by means of a roll printing technique which involves intaglio or recessed image areas in the form of cells.

(14) [~~(15)~~] "Roll printing" means the application of words, designs and pictures to a substrate usually by means of a series of hard rubber or steel rolls each with only partial coverage.

(15) [~~(16)~~] "Specialty rotogravure printing" means all rotogravure printing except packaging rotogravure and publication rotogravure printing. It includes, but is not limited to, rotogravure printing on paper cups and plates, patterned gift wrap, wallpaper and floor coverings.

Section 2. Applicability. This regulation shall apply to each affected facility commenced before the classification date defined in Section 1 of this regulation which is located in a county or portion of a county which is designated ozone nonattainment, for any nonattainment classification except marginal, under 401 KAR 51:010.

Section 3. Standard for VOCs [~~Volatile Organic Compounds~~]. (1) No person shall cause, allow, or permit an affected facility for publication rotogravure printing to discharge into the atmosphere more than twenty-five (25) percent by weight of the VOCs [~~volatile organic compounds~~] net input into the affected facility.

(2) No person shall cause, allow, or permit an affected facility for packaging rotogravure printing or specialty rotogravure printing to discharge into the atmosphere more than thirty-five (35) percent by weight of the VOCs [~~volatile organic compounds~~] net input into the affected facility.

(3) No person shall cause, allow, or permit an affected facility for flexographic printing to discharge into the atmosphere more than forty (40) percent by weight of the VOCs [~~volatile organic compounds~~] net input into the affected facility.

Section 4. Compliance. (1) In all cases the design of any control system shall be [~~is~~] subject to approval by the cabinet.

(2) Compliance with the standard in Section 3 of this regulation shall be demonstrated by a material balance unless [~~except in those cases where~~] the cabinet determines that a material balance is not possible. If [~~For those cases where~~] a material balance is not possible, compliance shall [~~will~~] be determined based upon an engineering analysis by the cabinet of the control system design, control device efficiency, control system capture efficiency, and any other factors that may [~~could~~] influence the performance of the system. If [~~so~~] requested by the cabinet, performance tests [~~as~~] specified by the cabinet shall be conducted [~~in order~~] to determine the efficiency of the control device. Capture efficiency shall be

determined by procedures specified in 401 KAR 50:047.

(3) With the prior approval of the cabinet, the owner or operator may elect to effect all [~~such~~] changes [~~in the affected facility as are~~] necessary to qualify for an exemption under Section 6 of this regulation.

(4) If [~~Whenever~~] deemed necessary by the cabinet, the cabinet shall obtain samples of the inks used at an affected facility to verify that the inks meet the requirements in Section 6 of this regulation. Method 24A, which has been incorporated [~~The following methods of analyses, filed~~] by reference in 401 KAR 50:015, [~~for inks~~] shall be used as applicable unless [~~except in those cases where~~] the cabinet determines that other methods would be more appropriate. Case-by-case alternatives approved by the cabinet, but not previously authorized by the U.S. EPA, shall be submitted to the U.S. EPA as a SIP revision. [~~:~~]

[~~(a) ASTM D 1644-75 Method A;~~]

[~~(b) ASTM D 1475-60(74);~~]

[~~(c) ASTM D 2369-73; or~~]

[~~(d) Federal Standard 141 a, Method 4082.1.~~]

(5) The amount of exempt solvents shall be subtracted from the amount of inks, just like water, with the ultimate value of interest being the mass of VOC per unit volume of ink less exempt solvent or water or both.

(6) Daily records shall be maintained by the source for the most recent two (2) year period. These records shall be made available to the cabinet or the U.S. EPA upon request. The records shall include, but not be limited to, the following:

(a) Applicable regulation number;

(b) Application method and substrate type;

(c) Amount and type of graphic arts material or solvent used at each point of application, including exempt compounds;

(d) The VOC content as applied in each graphic arts material or solvent;

(e) The date for each application for graphic arts material or solvent;

(f) The amount of surface preparation, cleanup, or washup solvent (including exempt compounds) used and the VOC content of each; and

(g) Oven temperature, if applicable.

Section 5. Compliance Timetable. (1) Affected facilities which were subject to this regulation as in effect on February 4, 1981, shall have achieved final compliance by December 31, 1982.

(2) The owner or operator of an affected facility shall be required to complete the following:

(a) [~~(1) Submit~~] A final control plan for achieving compliance with this regulation shall be submitted no later than nine (9) months after the date the affected facility becomes subject to this regulation [~~April 15, 1981~~].

(b) [~~(2) Award~~] The control system contract or the exempt inks and any accompanying process change contracts shall be awarded no later than eleven (11) months after the date the affected facility becomes subject to this regulation [~~June 15, 1981~~].

(c) [~~(3) Initiate~~] On-site construction or installation of emission control equipment or process changes for exempt inks shall be initiated no later than thirteen (13) months after the date the affected facility becomes subject to this regulation [~~December 1, 1981~~].

(d) [~~(4)~~] On-site construction or installation of emission control equipment or process changes for exempt inks shall be completed no later than seventeen (17) months after the date the affected facility becomes subject to this regulation [~~December 1, 1982~~].

(e) [~~(5)~~] Final compliance shall be achieved no later than eighteen (18) months after the date the affected facility becomes subject to this regulation [~~December 31, 1982~~].

(f) If an affected facility becomes subject to this regulation because it is located in a county previously designated nonurban nonattainment or redesignated in 401 KAR 51:010 after November 15, 1990, final compliance may be extended to May 31, 1995, and the schedule in paragraphs (a) through (d) of this subsection adjusted by the cabinet.

Section 6. Exemptions. Any affected facility shall be exempt from [~~the provisions of~~] Section 3 of this regulation if the printing systems:

(1) Utilize a waterborne ink whose volatile portion consists of seventy-five (75) volume percent water and twenty-five (25) volume percent organic solvent (or a lower VOC [~~volatile organic compound~~] content) in all printing units;

(2) Achieve a seventy (70) volume percent overall reduction of solvent usage (compared to all solvent-borne ink usage); [~~or~~]

(3) Utilize inks which, excluding water, contain sixty (60) percent or more by volume nonvolatile material as applied to the substrate; or

(4) Utilize inks with an emission limit of five-tenths (0.5) VOC/lb solids as delivered to the applicator.

[~~Section 7. Variances. Variation with the standards and limitations contained in this regulation, when supported by adequate technical information, will be considered by the cabinet on a case by case basis to allow for technological or economic circumstances which are unique to a source.~~]

PHILLIP J. SHEPHERD, Secretary
RONALD P. MILLS, Acting Commissioner
APPROVED BY AGENCY: January 7, 1992
FILED WITH LRC: January 15, 1992 at noon
PUBLIC HEARING: A public hearing to receive comments on this proposed regulation and proposed amendments will be conducted on February 28, 1992, at 10 a.m. (ET) in the Auditorium of the State Office Building, Clinton and High Streets, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing: Hisham M. Saaid, Acting Director, Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Hisham M. Saaid

(1) Type and number of entities affected: A review of the division's records indicates that there is currently one entity under this regulation. The entity is an existing graphic arts facility. The amendments to this regulation have been made to eliminate deviations between state regulations which are a part of the state implementation plan (SIP) and U.S. EPA policy; to update the applicability; and to comply with KRS Chapter 13A. Some of the SIP deviations are requirements that already appear in 401 KAR 50:016, Policies incorporated by reference, which is a state regulation but not part of the SIP, and therefore not federally enforceable. SIP deviations identified by the U.S. EPA include changes in the definition of volatile organic compounds, test methods, and variance. The applicability is updated to be compatible with the requirements of the Clean Air Act as amended November 15, 1990. This amendment will not impact the one entity currently under this regulation. However, the Clean Air Act amendments eliminate the distinction between urban and nonurban ozone nonattainment areas. Previously, for example, minor sources in Boone, Campbell, and Kenton Counties (an urban nonattainment area) were subject to this regulation while similar sources in Boyd County (a nonurban nonattainment area) were not. The amendments will eliminate that distinction. This will make minor sources in Boyd County subject to this regulation. Further, the Clean Air Act amendments define 5 classifications of nonattainment. The redesignation of a county from attainment to any of the nonattainment classifications, except marginal nonattainment, would make additional entities subject to this regulation. Sources which become subject to this regulation because of the changes in applicability required

by the Clean Air Act amendments shall achieve final compliance by May 31, 1995. The amendments made to comply with KRS Chapter 13A do not impact any sources.

(a) Direct and indirect costs or savings to those affected: If Kentucky does not make the federally required amendments to this regulation, the U.S. EPA will promulgate the requirements in federal regulations. There are no additional costs associated with complying with the state's regulation over complying with the same requirements in a federal regulation.

1. First year: There are no costs or savings associated with KRS Chapter 13A amendments. The costs associated with the SIP deviation amendments are of the nature of more recordkeeping, a different test method, and a different capture efficiency procedure. A chemical that was previously uncontrolled because of its low vapor pressure could now be classified as a VOC or vice versa under the new definition of VOC. The applicability amendment required by the Clean Air Act will bring additional sources under this regulation for the first time. The number and size of entities will not be known until the redesignations of nonattainment status for individual counties or portions of counties have been made. A full cost analysis for the initial and continuing impact of this regulation was originally given in the U.S. EPA document EPA-450/2-78--033, pages 4-1 through 4-25, December 1978. Three control options are analyzed for various plant sizes. For thermal incinerators the installed capital costs ranged from $85,000 to $1,704,000; total annualized costs ranged from $20,100 to $1,665,500; and cost-effectiveness of pollutant controlled ranged from $250/ton to $11,370/ton. For carbon adsorbers for publications rotogravure printing the installed capital costs ranged from $435,000 to $1,262,000; total annualized costs ranged from a credit of $41,700 to a cost of $107,800; and the cost-effectiveness ranged from a credit of $13/ton to a cost of $46/ton. For pebble bed incinerators, the installed capital cost ranged from $118,000 to $1,500,000; total annualized costs ranged from $26,600 to $478,000; and cost-effectiveness ranged from $120/ton to $8,400/ton. Although inflation can be taken into consideration, the size of the entities affected is not available for an accurate evaluation. A typical cost multiplier factor for 1978 to 1991 is 1.7. This means that 1978 costs should be multiplied by 1.7 to obtain 1991 costs.

2. Continuing costs or savings: Please see discussion under first year, 1, above.

3. Additional factors increasing or decreasing costs (note any effects upon competition): Minor sources in nonattainment areas (except marginal nonattainment) are subject to this regulation, while minor sources in attainment areas are not.

(b) Reporting and paperwork requirements: The U.S. EPA identified recordkeeping as a SIP deficiency. Section 4(6) was added to comply with this federal requirement.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division will review and process permits for any sources newly affected. Costs will be recovered by a permit fee.

2. Continuing costs or savings: The division presently inspects all permitted sources of air pollutants and maintains plant and emissions data for emissions inventory purposes. Such activities are part of the division's normal day-to-day operations and are budgeted accordingly. Any newly affected source will be inspected and the cost will be absorbed as a part of the operating budget.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The division will review and issue permits for newly affected sources and will issue reports of inspections and emissions data as in 1. and 2. above.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were considered for the amendments which contain the same provisions as federal requirements.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is conflict in the capture efficiency procedures between this regulation and 401 KAR 50:016, Policies incorporated by reference. There is also duplication, because 401 KAR 50:016 is not part of Kentucky's SIP.

(a) Necessity of proposed regulation if in conflict: This regulation references 401 KAR 50:047, Test procedures for capture efficiency. 401 KAR 50:047 requires the U.S. EPA's new capture efficiency protocols. 401 KAR 50:016 requires the previous U.S. EPA capture efficiency procedures.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: 401 KAR 50:016 will be amended or repealed to eliminate the conflict. 401 KAR 50:016 is not part of Kentucky's SIP, therefore, amending only 401 KAR 50:016 would not satisfy the deviation between EPA's new policy and Kentucky's SIP.

(6) Any additional information or comments: These amendments were made in response to the requirements discussed under (1) above.

TIERING: Was tiering applied? No. The amendments eliminate deviations between the SIP and federal requirements.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Clean Air Act as amended November 15, 1990.

2. State compliance standards. These amendments change the applicability and eliminate the deviations between Kentucky's SIP and U.S. EPA policy, but do not change the standards.

3. Minimum or uniform standards contained in the federal mandate. These amendments do not change the standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. These amendments are proposed to eliminate deviations from U.S. EPA policy and the Clean Air Act.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The proposed amendments do not impose stricter standards, or additional or different responsibilities or requirements.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(Proposed Amendment)

401 KAR 61:124. Existing factory surface coating operations of flat wood paneling.

RELATES TO: KRS [~~Chapter~~] 224.20-100, 224.20-110, 224.20-120

STATUTORY AUTHORITY: KRS 224.10-100 [~~224.033~~]

NECESSITY AND FUNCTION: KRS 224.10-100 [~~224.033~~] requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement and control of air pollution. This regulation provides for the control of volatile organic compound emissions from existing factory surface coating operations of flat wood paneling.

~~[Section 1. Applicability. The provisions of this regulation shall apply to each affected facility commenced before the classification date defined below which is located:]~~

~~[(1) In an urban county designated nonattainment for ozone under 401 KAR 51:010; or]~~

~~[(2) In any county which is designated nonattainment or unclassified for ozone under 401 KAR 51:010 and is a part of~~

~~a major source of volatile organic compounds.~~]

~~[(3) The provisions of this regulation shall not apply to affected facilities in the following counties: Garrard, Graves, Hopkins, Laurel, Montgomery, Nelson, Pulaski, Scott, Taylor, Trigg, and Union prior to designation of such counties nonattainment for ozone under 401 KAR 51:010.~~]

Section 1. [~~2.~~] Definitions. As used in this regulation, all terms not defined in this section [~~herein~~] shall have the meaning given to them in 401 KAR 50:010.

(1) "Affected facility" means a coating line for the factory surface coating of interior flat wood paneling.

(2) "Applicator" means the mechanism or device used to apply the coating including but not limited to roll coaters, curtain coaters, sprays and brushes.

(3) "Flash-off area" means the space between the applicator and the oven.

(4) "Coating line" means a series of equipment [~~and/~~]or operations used to apply, dry, or cure [~~any~~] coatings containing volatile organic compounds (VOCs). This shall include, but is not limited to:

(a) Mixing operations;

(b) Process storage;

(c) Applicators;

(d) Drying operations including, but not limited to, flash-off area evaporation, oven drying, baking, curing, and polymerization;

(e) Clean up operations;

(f) Leaks, spills and disposal of VOCs [~~volatile organic compounds~~];

(g) Processing and handling of recovered VOCs [~~volatile organic compounds~~];

(h) For the purposes of determining compliance with this regulation, if [~~any~~] equipment or an operation is [~~could be~~] considered to be a part of more than one (1) coating line, its VOC [~~volatile organic compound~~] emissions shall be assigned to each coating line of which it is a part proportionally to the throughput of VOC [~~volatile organic compounds~~] it receives from or distributes to each coating line;

(i) If a [~~any~~] portion of the series of equipment [~~and/~~]or operations qualifies [~~qualify~~] for an exemption according to Section 6 of this regulation, then that portion shall be considered to be a separate coating line;

~~[(5) "Volatile organic compounds" means chemical compounds of carbon (excluding methane, ethane, carbon monoxide, carbon dioxide, carbonic acid, metallic carbides, and ammonium carbonate) which have a vapor pressure greater than one tenth (0.1) mm Hg at conditions of twenty (20) degrees Celsius and 760 mm Hg.~~]

(5) [~~(6)~~] "Process storage" means mixing tanks, holding tanks, and other tanks, drums, or other containers which contain surface coatings, VOCs [~~volatile organic compounds~~], or recovered VOCs, [~~volatile organic compounds;~~] but does not mean storage tanks of petroleum liquids which are subject to 401 KAR 59:050, 401 KAR 59:052, or 401 KAR 61:050.

(6) [~~(7)~~] "Interior flat wood paneling" means printed interior wall panels made of hardwood plywood and thin particle board, natural finish hardwood plywood panels, or hardboard paneling with Class II finishes.

(7) [~~(8)~~] "Printed panels" means panels whose grain or natural surface is obscured by fillers and basecoats upon which a simulated grain or decorative pattern is printed.

(8) [~~(9)~~] "Hardwood plywood" means plywood whose surface layer is a veneer of hardwood.

(9) [~~(10)~~] "Particle board" means a manufactured board made of individual wood particles which have been coated with a binder and formed into flat sheets by pressure. Thin particle board has a thickness of one-fourth (1/4) inch or less.

(10) [~~(11)~~] "Natural finish hardwood plywood panels" means panels whose original grain pattern is enhanced by essentially transparent finishes frequently supplemented by fillers and toners.

(11) [~~(12)~~] "Hardboard" means a panel manufactured primarily from interfelted lignocellulosic fibers which are consolidated under heat and pressure in a hot-press.

(12) [~~(13)~~] "Class II hardboard paneling finishes" means finishes which meet the specifications of Voluntary Product Standard PS-59-73, which has been incorporated [~~filed~~] by reference in 401 KAR 50:015, as approved by the American National Standards Institute.

(13) [~~(14)~~] "Classification date" means February 4, 1981 [~~the effective date of this regulation~~].

(14) "VOCs [~~(15) "Volatile organic compounds~~] net input" means the total amount of VOCs [~~volatile organic compounds~~] input to the affected facility minus the amount of VOCs [~~volatile organic compounds~~] that are not emitted into the atmosphere. VOCs [~~Volatile organic compounds~~] that are prevented from being emitted to the atmosphere by the use of control devices shall not be subtracted from the total for the purposes of determining VOCs [~~volatile organic compounds~~] net input. If [~~When~~] the nature of an [~~any~~] operation or a design of equipment [~~is such as to~~] permits more than one (1) interpretation of this definition, the interpretation that results in the minimum value for allowable emissions shall apply.

Section 2. Applicability. This regulation shall apply to each affected facility commenced before the classification date defined in Section 1 of this regulation which is located in a county or portion of a county which is designated ozone nonattainment, for any nonattainment classification except marginal, under 401 KAR 51:010.

Section 3. Standard for VOCs [~~Volatile Organic Compounds~~]. No person shall cause, allow, or permit an affected facility to discharge into the atmosphere more than fifteen (15) percent by weight of the VOCs [~~volatile organic compounds~~] net input into the affected facility.

Section 4. Compliance. (1) In all cases the design of a [~~any~~] control system is subject to approval by the cabinet.

(2) Compliance with the standard in Section 3 of this regulation shall be demonstrated by a material balance unless [~~except in those cases where~~] the cabinet determines that a material balance is not possible. If [~~For those cases where~~] a material balance is not possible, compliance shall [~~will~~] be determined based upon an engineering analysis by the cabinet of the control system design, control device efficiency, control system capture efficiency, and [~~any~~] other factors that could influence the performance of the system. If [~~so~~] requested by the cabinet, performance tests [~~as~~] specified by the cabinet shall be conducted [~~in order~~] to determine the efficiency of the control device. Capture efficiency shall be determined by procedures specified in 401 KAR 50:047.

(3) With the prior approval of the cabinet, the owner or operator may elect to effect all [~~such~~] changes [~~in the affected facility as are~~] necessary to qualify for an exemption under Section 6 of this regulation.

(4) If [~~Whenever~~] deemed necessary by the cabinet, the cabinet shall obtain samples of the coatings used at an affected facility to verify that the coatings meet the requirements in Section 6 of this regulation. Method 24, which has been incorporated [~~The following methods of analyses, filed~~] by reference in 401 KAR 50:015, [~~for coatings~~] shall be used as applicable to determine compliance of the coatings unless [~~except in those cases where~~] the cabinet determines that other methods would be more appropriate. Case-by-case alternatives approved by the cabinet, but not previously authorized by the U.S. EPA, shall be submitted to the U.S. EPA as a SIP revision. [~~:~~]

~~[(a) ASTM D 1644-75 Method A;]~~

~~[(b) ASTM D 1475-60(74);]~~

~~[(c) ASTM D 2369-73; or]~~

~~[(d) Federal Standard 141 a, Method 4082.1.]~~

(5) Compliance on one (1) coating line with VOC emission limits shall be based on an averaging period not to exceed twenty-four (24) hours. If it is not economically or technically

feasible to determine emissions on a daily basis, alternatives expressing emission limits for longer averaging time may be accepted if approved by the cabinet. Case-by-case alternatives approved by the cabinet, but not previously authorized by the U.S. EPA, shall be submitted to the U.S. EPA as a SIP revision.

(6) The amount of exempt solvents shall be subtracted from the amount of coatings, just like water, with the ultimate value of interest being the mass of VOC per unit volume of coating less exempt solvent or water or both.

(7) Calculations to determine equivalency on one (1) coating line shall be based on mass of VOC per volume of solids.

(8) Daily records shall be maintained by the source for the most recent two (2) year period. These records shall be made available to the cabinet or the U.S. EPA upon request. The records shall include, but not be limited to, the following:

(a) Applicable regulation number;

(b) Application method and substrate type;

(c) Amount and type of adhesive, coating (including catalyst and reducer for multicomponent coatings), or solvent used at each point of application, including exempt compounds;

(d) The VOC content as applied in each adhesive, coating, or solvent;

(e) The date for each application for adhesive, coating, or solvent;

(f) The amount of surface preparation, clean-up, or wash-up solvent (including exempt compounds) used and the VOC content of each; and

(g) Oven temperature, if applicable.

Section 5. Compliance Timetable. (1) Affected facilities which were subject to this regulation as in effect on February 4, 1981, shall have achieved final compliance by December 31, 1982.

(2) The owner or operator of an affected facility that becomes subject to this regulation on or after the effective date of this regulation shall be required to complete the following:

(a) [~~(1)~~] Submit a final control plan for achieving compliance with this regulation no later than nine (9) months after the date the affected facility becomes subject to this regulation [~~April 15, 1981~~].

(b) [~~(2)~~] Award a contract for the control system [~~contract~~] or for the exempt coatings and [~~any~~] accompanying process change [~~contracts~~] no later than eleven (11) months after the date the affected facility becomes subject to this regulation [~~June 15, 1981~~].

(c) [~~(3)~~] Initiate on-site construction or installation of emission control equipment or process changes for exempt coatings no later than thirteen (13) months after the date the affected facility becomes subject to this regulation [~~December 1, 1981~~].

(d) [~~(4)~~] On-site construction or installation of emission control equipment or process changes for exempt coatings shall be completed no later than seventeen (17) months after the date the affected facility becomes subject to this regulation [~~December 1, 1982~~].

(e) [~~(5)~~] Final compliance shall be achieved no later than eighteen (18) months after the date the affected facility becomes subject to this regulation [~~December 31, 1982~~].

(f) If an affected facility becomes subject to this regulation because it is located in a county previously designated nonurban nonattainment or redesignated in 401 KAR 51:010 after November 15, 1990, final compliance may be extended to May 31, 1995, and the schedule in paragraphs (a) through (d) of this subsection adjusted by the cabinet.

Section 6. Exemptions. (1) An [~~Any~~] affected facility shall be exempt from [~~the provision of~~] Section 3 of this regulation if the total VOC [~~volatile organic compound~~] content of all the coatings applied to a specific area of finished paneling product is:

(a) [~~(1)~~] Less than two and nine-tenths (2.9) kg of VOCs [~~volatile organic compounds~~] per 100 sq. m. of coated surface (six (6.0) lb/1,000 sq. ft.) for printed interior wall panels made of hardwood plywood and thin particle board;

(b) [~~(2)~~] Less than five and eight-tenths (5.8) [~~five and nine tenths~~] (5.9) kg of VOCs [~~volatile organic compounds~~] per 100 sq. m. of coated surface (twelve (12.0) lb/1,000 sq. ft.) for natural finish hardwood plywood panels; or

(c) [~~(3)~~] Less than four and eight-tenths (4.8) [~~four and nine tenths~~] (4.9) kg of VOCs [~~volatile organic compounds~~] per 100 sq. m. of coated surface (ten (10.0) lb/1,000 sq. ft.) for Class II finishes for hardboard paneling.

(2) Low-use coatings shall be exempt from Section 3 of this regulation if the plantwide consumption of these coatings in the aggregate is less than or equal to fifty-five (55) gallons during the previous twelve (12) months.

(3) An affected facility shall be exempt from this regulation if the total VOC emissions from all affected facilities subject to this regulation are less than or equal to:

(a) Three (3) lb/hour actual emissions before add-on control;

(b) Fifteen (15) lb/day actual emissions before add-on control; or

(c) Ten (10) tons per year theoretical potential emissions based on design capacity (or maximum production) and 8760 hr/yr before add-on control.

[~~Section 7. Variances. Variation with the standards and limitations contained in this regulation, when supported by adequate technical information, will be considered by the cabinet on a case by case basis to allow for technological or economic circumstances which are unique to a source.~~]

PHILLIP J. SHEPHERD, Secretary
RONALD P. MILLS, Acting Commissioner
APPROVED BY AGENCY: January 7, 1992
FILED WITH LRC: January 15, 1992 at noon

PUBLIC HEARING: A public hearing to receive comments on this proposed regulation and proposed amendments will be conducted on February 28, 1992, at 10 a.m. (ET) in the Auditorium of the State Office Building, Clinton and High Streets, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing: Mr. Kenneth M. Hines, Manager, Program Development Branch, Division for Air Quality, 315 St. Clair Mall, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Hisham M. Saaid

(1) Type and number of entities affected: A review of the division's records indicates that there are no entities presently affected by the amendments to this regulation. The amendments to this regulation have been made to eliminate deviations between state regulations which are a part of the State Implementation Plan (SIP) and U.S. EPA policy, to update the applicability, and to comply with KRS Chapter 13A. Many of the SIP deviations are requirements that already appear in 401 KAR 50:016, Policies incorporated by reference, which is a state regulation but not part of the SIP, and therefore not federally enforceable. The applicability has been updated to be compatible with the Clean Air Act as amended on November 15, 1990. The Clean Air Act eliminates the distinction between rural and urban nonattainment counties. Formerly, minor sources were controlled only in urban nonattainment counties. Now minor sources will be controlled in all nonattainment areas except those classified as marginal. The amendments made to comply with KRS Chapter 13A do not impact any sources.

(a) Direct and indirect costs or savings to those affected: There are currently no entities affected by these amendments; therefore, there are no direct and indirect costs or savings.

1. First year: There are no first year costs or savings.
2. Continuing costs or savings: There are no continuing costs or savings.
3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There are no entities affected by these amendments; therefore, reporting and paperwork requirements are not applicable.

(2) Effects on the promulgating administrative body: There are no entities affected by these amendments; therefore, there are no effects on the promulgating administrative body.

(a) Direct and indirect costs or savings: There are no direct and indirect costs or savings.

1. First year: There are no first year costs or savings.
2. Continuing costs or savings: There are no continuing costs or savings.
3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There are no entities affected by these amendments; therefore, reporting and paperwork requirements are not applicable.

(3) Assessment of anticipated effect on state and local revenues: There is no effect on state and local revenues because there are no entities affected by these amendments.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were not considered because no basis for an alternative exists since there are currently no entities affected by these amendments.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no entities affected by these amendments. Conflicts and duplication exist between this regulation and 401 KAR 50:016, Policies incorporated by reference. The conflict is in the capture efficiency procedures. This regulation references the new capture efficiency procedures required by the U.S. EPA which will take precedence over the old U.S. EPA capture efficiency procedures contained in 401 KAR 50:016. The duplication is in the control of VOCs. 401 KAR 50:016 is not part of Kentucky's SIP. The requirements are repeated in this regulation which is a part of Kentucky's SIP.

(a) Necessity of proposed regulation if in conflict: This regulation references 401 KAR 50:047, Capture efficiency test procedures. 401 KAR 50:047 requires the U.S. EPA's new capture efficiency protocols. 401 KAR 50:016 requires the previous U.S. EPA capture efficiency procedure.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: 401 KAR 50:016 will be amended or repealed to eliminate the conflict. 401 KAR 50:016 is not part of Kentucky's SIP, therefore, amending only 401 KAR 50:016 would not satisfy the deviation between EPA's new policy and Kentucky's SIP.

(6) Any additional information or comments: The compliance time schedule has been updated to allow for affected facilities which become subject to this regulation on or after the effective date of this regulation. For instance, the situation could occur if the attainment status of a county changes.

TIERING: Was tiering applied? No. There are no entities currently affected by these amendments; therefore, no basis for tiering exists.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Federal policy has changed subsequent to the promulgation of this regulation. The U.S. EPA is requiring these amendments to eliminate deviations between Kentucky's State Implementation Plan and federal policy. The applicability of this regulation has been updated to be compatible with the Clean Air Act as amended November 15, 1990.

2. State compliance standards. There are no changes in the standards. The federal policy refers to procedures, calculations, etc., to apply the standards.

3. Minimum or uniform standards contained in the federal mandate. The federal policy does not change the standards, but refers to procedures, calculations, etc., to apply the standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This regulation has been amended to eliminate deviations between Kentucky's SIP and federal policy.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There are no stricter standards or additional or different responsibilities or requirements imposed by these amendments.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(Proposed Amendment)

401 KAR 61:125. Existing can surface coating operations.

RELATES TO: KRS 224.20-100, 224.20-110, 224.20-120 [~~Chapter 224~~]

STATUTORY AUTHORITY: KRS 224.10-100 [~~224.033~~]

NECESSITY AND FUNCTION: KRS 224.10-100 [~~224.033~~] requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides for the control of volatile organic compound emissions from existing can surface coating operations.

[~~Section 1. Applicability. The provisions of this regulation shall apply to each affected facility commenced before the classification date defined below which is located:~~]

[~~(1) In an urban county designated nonattainment for ozone under 401 KAR 51:010; or~~]

[~~(2) In any county which is designated nonattainment or unclassified under 401 KAR 51:010 and is a part of a major source of volatile organic compounds.~~]

Section 1. [~~2.~~] Definitions. As used in this regulation, all terms not defined in this section [~~herein~~] shall have the meaning given to them in 401 KAR 50:010.

(1) "Affected facility" means a coating line for cans.

(2) "Applicator" means the mechanism or device used to apply the coating, including but not limited to spray or roller.

(3) "Flash-off area" means the space between the applicator and the oven.

(4) "End sealing compound" means a synthetic rubber compound which is coated onto can ends and functions as a gasket when the end is assembled on the can.

(5) "Exterior base coating" means a coating applied to the exterior of a can to provide exterior protection to the metal and background for the lithographic or printing operation.

(6) "Interior base coating" means a coating applied by roller coater or spray to the interior of a can to provide a protective lining between the can metal and product.

(7) "Interior body spray" means a coating sprayed on the interior of the can body to provide a protective film between the product and the can.

(8) "Overvarnish" means a coating applied directly over ink to reduce the coefficient of friction, to provide gloss and to protect the finish against abrasion and corrosion.

(9) "Three (3) piece can side-seam spray" means a coating sprayed on the exterior and interior of a welded, cemented or soldered seam to protect the exposed metal.

(10) "Two (2) piece can exterior end coating" means a coating applied by roller coating or spraying to the exterior end of a can to provide protection to the metal.

(11) "Coating line" means a series of equipment [and/]or operations used to apply, dry, or cure any coatings containing volatile organic compounds (VOCs). This shall include, but is not limited to:

(a) Mixing operations;

(b) Process storage;

(c) Applicators;

(d) Drying operations including, but not limited to: flash-off area evaporation, oven drying, baking, curing, and polymerization;

(e) Clean up operations;

(f) Leaks, spills and disposal of VOCs [volatile organic compounds];

(g) Processing and handling of recovered VOCs [volatile organic compounds];

(h) For the purposes of determining compliance with this regulation, if any equipment or operation is [could be] considered to be a part of more than one (1) coating line, its VOC [volatile organic compound] emissions shall be assigned to each coating line of which it is a part proportionally to the throughput of VOCs [volatile organic compounds] it receives from or distributes to each coating line;

(i) If any portion of the series of equipment [and/]or operations qualifies [qualify] for an exemption according to Section 6 of this regulation, then that portion shall be considered to be a separate coating line.

[(12) "Volatile organic compounds" means chemical compounds of carbon (excluding methane, ethane, carbon monoxide, carbon dioxide, carbonic acid, metallic carbides, and ammonium carbonate) which have a vapor pressure greater than one tenth (0.1) mm Hg at conditions of twenty (20) degrees Celsius and 760 mm Hg.]

(12) [(13)] "Process storage" means mixing tanks, holding tanks, and other tanks, drums, or other containers which contain surface coatings, VOCs [volatile organic compounds], or recovered VOCs [volatile organic compounds]; but does not mean storage tanks of petroleum liquids which are subject to 401 KAR 59:050, 401 KAR 59:052, or 401 KAR 61:050.

(13) [(14)] "Classification date" means June 29, 1979 [the effective date of this regulation].

(14) [(15)] "VOCs [Volatile organic compounds] net input" means the total amount of VOCs [volatile organic compounds] input to the affected facility minus the amount of VOCs [volatile organic compounds] that are not emitted into the atmosphere. VOCs [Volatile organic compounds] that are prevented from being emitted to the atmosphere by the use of control devices shall not be subtracted from the total for the purposes of determining VOCs [volatile organic compounds] net input. If [When] the nature of any operation or design of equipment [is such as to] permits more than one (1) interpretation of this definition, the interpretation that results in the minimum value for allowable emission shall apply.

Section 2. Applicability. This regulation shall apply to each affected facility commenced before the classification date defined in Section 1 of this regulation which is located in a county or portion of a county which is designated ozone nonattainment, for any nonattainment classification except marginal, under 401 KAR 51:010.

Section 3. Standard for VOCs [Volatile Organic Compounds]. No person shall cause, allow, or permit an affected facility to discharge into the atmosphere more than fifteen (15) percent by weight of the VOCs [volatile organic compounds] net input into the affected facility.

Section 4. Compliance. (1) In all cases the design of any control system shall be [is] subject to approval by the cabinet.

(2) Compliance with the standard in Section 3 of this regulation shall be demonstrated by a material balance, unless [except in those cases where] the cabinet determines that a material balance is not possible. If [For those cases where] a material balance is not possible, compliance shall [will] be determined based upon an engineering analysis by the cabinet of the control system design, control device efficiency, control system capture efficiency, and any other factors that may [could] influence the performance of the system. If so requested by the cabinet, performance tests as specified by the cabinet shall be conducted in order to determine the efficiency of the control device. Capture efficiency shall be determined by procedures specified in 401 KAR 50:047.

(3) With the prior approval of the cabinet, the owner or operator may elect to effect all [such] changes [in the affected facility as are] necessary to qualify for an exemption under Section 6 of this regulation.

(4) If [Whenever] deemed necessary by the cabinet, the cabinet shall obtain samples of the coatings used at an affected facility to verify that the coatings meet the requirements in Section 6 of this regulation. Method 24, which has been incorporated [The following methods of analyses, filed] by reference in 401 KAR 50:015, [for coatings] shall be used as applicable to determine compliance of the coatings [except in those cases where] the cabinet determines that other methods would be more appropriate. Case-by-case alternatives approved by the cabinet, but not previously authorized by the U.S. EPA, shall be submitted to the U.S. EPA as a SIP revision. [:]

[(a) ASTM D-1644-75 Method A;]

[(b) ASTM D-1475-60(74);]

[(c) ASTM D-2369-73; or]

[(d) Federal Standard 141 a, Method 4082.1.]

(5) Compliance with VOC emission limits shall be based on an averaging period not to exceed twenty-four (24) hours. If it is not economically or technically feasible to determine emissions on a daily basis, alternatives expressing emission limits for longer averaging times may be accepted if approved by the cabinet. Case-by-case alternatives approved by the cabinet, but not previously authorized by the U.S. EPA, shall be submitted to the U.S. EPA as a SIP revision.

(6) The amount of exempt solvents shall be subtracted from the amount of coatings, just like water, with the ultimate value of interest being the mass of VOC per unit volume of coating less exempt solvent or water or both.

(7) Calculations to determine equivalency shall be based on mass of VOC per volume of solids.

(8) Daily records shall be maintained by the source for the most recent two (2) year period. These records shall be made available to the cabinet or the U.S. EPA upon request. The records shall include, but not be limited to, the following:

(a) Applicable regulation number;

(b) Application method and substrate type;

(c) Amount and type of adhesive, coating (including catalyst and reducer for multicomponent coatings), or solvent used at each point of application, including exempt compounds;

(d) The VOC content as applied in each adhesive, coating, or solvent;

(e) The date for each application for adhesive, coating, or solvent;

(f) The amount of surface preparation, cleanup, or washup solvent (including exempt compounds) used and the VOC content of each; and

(g) Oven temperature, if applicable.

Section 5. Compliance Timetable. (1) Affected facilities which were subject to this regulation as in effect on June 29, 1979, shall have achieved final compliance by August 1, 1981.

(2) The owner or operator of an affected facility that becomes subject to this regulation on or after the effective date of this regulation shall be required to complete the following:

(a) [(1) Submit] A final control plan for achieving compliance with this regulation shall be submitted no later than nine (9) months after the date the affected facility becomes subject

to this regulation [~~September 1, 1979~~].

(b) [~~(2) Award~~] The control system contract or the exempt coatings and any accompanying process change contracts shall be awarded no later than eleven (11) months after the date the affected facility becomes subject to this regulation [~~January 1, 1980~~].

(c) [~~(3) Initiate~~] On-site construction or installation of emission control equipment or process changes for exempt coatings shall be initiated no later than thirteen (13) months after the date the affected facility becomes subject to this regulation [~~May 1, 1980~~].

(d) [~~(4)~~] On-site construction or installation of emission control equipment or process changes for exempt coatings shall be completed no later than seventeen (17) months after the date the affected facility becomes subject to this regulation [~~May 1, 1981~~].

(e) [~~(5)~~] Final compliance shall be achieved no later than eighteen (18) months after the date the affected facility becomes subject to this regulation [~~August 1, 1981~~].

(f) If an affected facility becomes subject to this regulation because it is located in a county previously designated nonurban nonattainment or redesignated in 401 KAR 51:010 after November 15, 1990, final compliance may be extended to May 31, 1995, and the schedule in paragraphs (a) through (d) of this subsection adjusted by the cabinet.

Section 6. Exemptions. Any affected facility shall be exempt from [~~the provisions of~~] Section 3 of this regulation if the VOC [~~volatile organic compound~~] content of the coating is:

(1) Less than 0.34 kg/l of coating (two and eight-tenths (2.8) lb/gal), excluding water, or exempt solvent or both, delivered to the applicators associated with the sheet base coat (exterior and interior) and overvarnish or two (2) piece can exterior (basecoat and overvarnish) coating lines;

(2) Less than 0.51 kg/l of coating (four and two-tenths (4.2) lb/gal), excluding water, or exempt solvent or both, delivered to the applicators associated with the two (2) and three (3) piece can interior body spray or two (2) piece can exterior end (spray or roll coat) coating lines;

(3) Less than 0.66 kg/l of coating (five and five-tenths (5.5) lb/gal), excluding water, or exempt solvent or both, delivered to the applicators associated with the three (3) piece can side-seam spray coating line;

(4) Less than 0.44 kg/l of coating (three and seven-tenths (3.7) lb/gal), excluding water, or exempt solvent or both, delivered to the applicators associated with the end sealing compound coating line.

(5) An affected facility shall be exempt from this regulation if the total VOC emissions from all affected facilities subject to this regulation are less than or equal to:

(a) Three (3) lb/hr actual emissions before add-on control;

(b) Fifteen (15) lb/day actual emissions before add-on control; or

(c) Ten (10) tons per year theoretical potential emissions based on design capacity for maximum production) and 8760 hr/yr before add-on control.

(6) Low-use coatings shall be exempt from Section 3 of this regulation if the plantwide consumption of these coatings in the aggregate is less than or equal to fifty-five (55) gallons during the previous twelve (12) months.

PHILLIP J. SHEPHERD, Secretary
RONALD P. MILLS, Acting Commissioner
APPROVED BY AGENCY: January 7, 1992
FILED WITH LRC: January 15, 1992 at noon

PUBLIC HEARING: A public hearing to receive comments on this proposed regulation and proposed amendments will be conducted on February 28, 1992, at 10 a.m. (ET) in the Auditorium of the State Office Building, Clinton and High Streets, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing: Hisham M. Saaid, Acting Director, Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Hisham M. Saaid

(1) Type and number of entities affected: A review of the division's records indicates that there are no entities presently affected by the amendments to this regulation. The amendments to this regulation have been made to eliminate deviations between state regulations which are a part of the state implementation plan (SIP) and U.S. EPA policy; to update the applicability; and to comply with KRS Chapter 13A. Many of the SIP deviations are requirements that already appear in 401 KAR 50:016, Policies incorporated by reference, which is a state regulation but not part of the SIP, and therefore no federally enforceable. The applicability has been updated to be compatible with the Clean Air Act as amended November 15, 1990. The Clean Air Act eliminates the distinction between rural and urban nonattainment counties. Formerly, minor sources were controlled only in urban nonattainment counties. Now minor sources will be controlled in all nonattainment areas except those classified as marginal. The amendments made to comply with KRS Chapter 13A do not impact any sources.

(a) Direct and indirect costs or savings to those affected: There are currently no entities affected by these amendments; therefore, there are no direct and indirect costs or savings to those affected.

1. First year: There are no first year costs or savings.

2. Continuing costs or savings: There are no continuing costs or savings.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There are no entities affected by these amendments; therefore, reporting and paperwork requirements are not applicable. Recordkeeping requirements are contained in Section 4(8) of this regulation.

(2) Effects on the promulgating administrative body: There are no entities affected by these amendments; therefore, there are no effects on the promulgating administrative body.

(a) Direct and indirect costs or savings: There are no direct and indirect costs or savings.

1. First year: There are no first year costs or savings.

2. Continuing costs or savings: There are no continuing costs or savings.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There are no entities affected by these amendments; therefore, reporting and paperwork requirements are not applicable.

(3) Assessment of anticipated effect on state and local revenues: There is no effect on state and local revenues because there are no entities affected by these amendments.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were not considered because no basis for an alternative exists since there are currently no entities affected by these amendments.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no entities affected by these amendments. Conflicts and duplication exist between this regulation and 401 KAR 50:016, Policies incorporated by reference. The conflict is in the capture efficiency procedures. This regulation references the new capture efficiency procedures required by the U.S. EPA which will take precedence over the old U.S. EPA capture efficiency procedures contained in 401 KAR 50:016. The duplication is in the control of volatile organic compounds. 401 KAR 50:016 is not part of Kentucky's SIP. The requirements are repeated in this regulation, which is a part of Kentucky's SIP.

(a) Necessity of proposed regulation if in conflict: This

regulation references 401 KAR 50:047, Test procedures for capture efficiency. 401 KAR 50:047 requires the U.S. EPA's new capture efficiency protocols. 401 KAR 50:016 requires the previous U.S. EPA capture efficiency procedures.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: 401 KAR 50:016 will be amended or repealed to eliminate the conflict. 401 KAR 50:016 is not part of Kentucky's SIP, therefore, amending only 401 KAR 50:016 would not satisfy the deviation between EPA's new policy and Kentucky's SIP.

(6) Any additional information or comments: The compliance time schedule has been updated to allow for affected facilities which become subject to this regulation on or after the effective date of this regulation. For instance, this situation could occur if the attainment status of a county changes.

TIERING: Was tiering applied? No. There are no entities currently affected by these amendments; therefore, no basis for tiering exists. Section 6(5) provides for exemptions based on low emissions. Section 6(6) provides for exemptions based on low use.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Federal policy has changed subsequent to the promulgation of this regulation. The U.S. EPA is requiring these amendments to eliminate deviations between Kentucky's state implementation plan and federal policy. The applicability of this regulation has been updated to be compatible with the Clean Air Act as amended November 15, 1990.

2. State compliance standards. There are no changes in the standards. The federal policy refers to procedures, calculations, etc., to apply the standards.

3. Minimum or uniform standards contained in the federal mandate. The federal policy does not change the standards, but refers to procedures, calculations, etc., to apply the standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This regulation has been amended to eliminate deviations between Kentucky's SIP and federal policy.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There are no stricter standards or additional or different responsibilities or requirements imposed by these amendments.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(Proposed Amendment)

401 KAR 61:130. Existing coil surface coating operations.

RELATES TO: KRS 224.20-100, 224.20-110, 224.20-120 [~~Chapter 224~~]

STATUTORY AUTHORITY: KRS 224.10-100 [~~224.033~~]

NECESSITY AND FUNCTION: KRS 224.10-100 [~~224.033~~] requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides for the control of volatile organic compound emissions from existing coil surface coating operations.

[~~Section 1. Applicability. The provisions of this regulation shall apply to each affected facility commenced before the classification date defined below which is located:~~]

[~~(1) In an urban county designated nonattainment for ozone under 401 KAR 51:010; or~~]

[~~(2) In any county which is designated nonattainment or unclassified under 401 KAR 51:010 and is a part of a major source of volatile organic compounds.~~]

Section 1. [~~2.~~] Definitions. As used in this regulation, all terms not defined in this section [~~herein~~] shall have the meaning given to them in 401 KAR 50:010.

(1) "Affected facility" means a coating line for metal sheets or strips that come in rolls or coils.

(2) "Applicator" means the mechanism or device used to apply the coating, including but not limited to, roller or spray.

(3) "Quench area" means a chamber where the hot metal exiting the oven is cooled by either a spray of water or a blast of air followed by water cooling.

(4) "Prime coat" means the first film of coating applied in a two (2) coat operation which is responsible for protecting the surface from corrosion and providing for good adhesion of the topcoat.

(5) "Topcoat" means the final film of coating applied in a two (2) coat operation to obtain desired aesthetic effects.

(6) "Single coat" means a single film coating applied directly to the metal substrate omitting the prime coat.

(7) "Coating line" means a series of equipment [~~and/~~]or operations used to apply, dry, or cure any prime, topcoat or single coatings containing volatile organic compounds (VOCs). This shall include, but is not limited to:

(a) Mixing operations;

(b) Process storage;

(c) Applicators;

(d) Drying operations including, but not limited to: quench area, oven drying, baking, curing, and polymerization;

(e) Clean up operations;

(f) Leaks, spills and disposal of VOCs [~~volatile organic compounds~~];

(g) Processing and handling of recovered VOCs [~~volatile organic compounds~~];

(h) For the purposes of determining compliance with this regulation, if any equipment or operation is [~~could be~~] considered to be a part of more than one (1) coating line, its VOCs [~~volatile organic compounds~~] emissions shall be assigned to each coating line of which it is a part proportionally to the throughput of VOCs [~~volatile organic compounds~~] it receives from or distributes to each coating line;

(i) If any portion of the series of equipment [~~and/~~]or operations qualifies [~~qualify~~] for an exemption according to Section 6 of this regulation, then that portion shall be considered to be a separate coating line.

[~~(8) "Volatile organic compounds" means chemical compounds of carbon (excluding methane, ethane, carbon monoxide, carbon dioxide, carbonic acid, metallic carbides, and ammonium carbonate) which have a vapor pressure greater than one tenth (0.1) mm Hg at conditions of twenty (20) degrees Celsius and 760 mm Hg.~~]

(8) [~~(9)~~] "Process storage" means mixing tanks, holding tanks, and other tanks, drums, or other containers which contain surface coatings, VOCs [~~volatile organic compounds~~], or recovered VOCs [~~volatile organic compounds~~]; but does not mean storage tanks of petroleum liquids which are subject to 401 KAR 59:050, 401 KAR 59:052, or 401 KAR 61:050.

(9) [~~(10)~~] "Classification date" means June 29, 1979 [~~the effective date of this regulation~~].

(10) [~~(11)~~] "VOCs [~~Volatile organic compounds~~] net input" means the total amount of VOCs [~~volatile organic compounds~~] input to the affected facility minus the amount of VOCs [~~volatile organic compounds~~] that are not emitted into the atmosphere. VOCs [~~Volatile organic compounds~~] that are prevented from being emitted to the atmosphere by the use of control devices shall not be subtracted from the total for the purpose of determining VOCs [~~volatile organic compounds~~] net input. If [~~When~~] the nature of any operation or design of equipment [~~is such as to~~] permits more than one (1) interpretation of this definition, the interpretation that results in the minimum value for allowable emission shall apply.

Section 2. Applicability. This regulation shall apply to each affected facility commenced before the classification date defined in Section 1 of this regulation which is located in a county or portion of a county which is designated ozone nonattainment, for any nonattainment classification except marginal, under 401 KAR 51:010.

Section 3. Standard for VOCs [~~Volatile Organic Compounds~~]. No person shall cause, allow, or permit an affected facility to discharge into the atmosphere more than fifteen (15) percent by weight of the VOCs [~~volatile organic compounds~~] net input into the affected facility.

Section 4. Compliance. (1) In all cases the design of any control system shall be [~~is~~] subject to approval by the cabinet.

(2) Compliance with the standard in Section 3 of this regulation shall be demonstrated by a material balance, unless [~~except in these cases where~~] the cabinet determines that a material balance is not possible. If [~~For these cases where~~] a material balance is not possible, compliance shall [~~will~~] be determined based upon an engineering analysis by the cabinet of the control system design, control device efficiency, control system capture efficiency, and any other factors that may [~~could~~] influence the performance of the system. If [~~so~~] requested by the cabinet, performance tests [~~as~~] specified by the cabinet shall be conducted [~~in order~~] to determine the efficiency of the control device. Capture efficiency shall be determined by procedures specified in 401 KAR 50:047.

(3) With the prior approval of the cabinet, the owner or operator may elect to effect all [~~such~~] changes [~~in the affected facility as are~~] necessary to qualify for an exemption under Section 6 of this regulation.

(4) If [~~Whenever~~] deemed necessary by the cabinet, the cabinet shall obtain samples of the coatings used at an affected facility to verify that the coatings meet the requirements in Section 6 of this regulation. Method 24, which has been incorporated [~~The following methods of analyses, filed~~] by reference in 401 KAR 50:015, [~~for coatings~~] shall be used as applicable to determine compliance of the coatings, unless [~~except in these cases where~~] the cabinet determines that other methods would be more appropriate. Case-by-case alternatives approved by the cabinet, but not previously authorized by the U.S. EPA, shall be submitted to the U.S. EPA as a SIP revision. [~~:~~]

[~~(a) ASTM D-1644-75 Method A;~~]

[~~(b) ASTM D-1475-60(74);~~]

[~~(c) ASTM D-2369-73; or~~]

[~~(d) Federal Standard 141 a, Method 4082.1.~~]

(5) Compliance on one (1) coating line with VOC emission limits shall be based on an averaging period not to exceed twenty-four (24) hours. If it is not economically or technically feasible to determine emissions on a daily basis, alternatives expressing emission limits for longer averaging times may be accepted if approved by the cabinet. Case-by-case alternatives approved by the cabinet, but not previously authorized by the U.S. EPA, shall be submitted to the U.S. EPA as a SIP revision.

(6) The amount of exempt solvents shall be subtracted from the amount of coatings, just like water, with the ultimate value of interest being the mass of VOC per unit volume of coating less exempt solvent or water or both.

(7) Calculations to determine equivalency on one (1) coating line shall be based on mass of VOC per volume of solids.

(8) Daily records shall be maintained by the source for the most recent two (2) year period. These records shall be made available to the cabinet or the U.S. EPA upon request. The records shall include, but not be limited to, the following:

(a) Applicable regulation number;

(b) Application method and substrate type;

(c) Amount and type of adhesive, coating (including catalyst and reducer for multicomponent coatings), or solvent used at each point of application, including exempt compounds;

(d) The VOC content as applied in each adhesive, coating, or solvent;

(e) The date for each application for adhesive, coating, or solvent;

(f) The amount of surface preparation, cleanup, or washup solvent (including exempt compounds) used and the VOC content of each; and

(g) Oven temperature, if applicable.

Section 5. Compliance Timetable. (1) All affected facilities which were subject to this regulation as in effect on June 29, 1979, shall have achieved final compliance by April 1, 1982.

(2) The owner or operator of an affected facility that becomes subject to this regulation on or after the effective date of this regulation shall be required to complete the following:

(a) [~~(1) Submit~~] A final control plan for achieving compliance with this regulation shall be submitted no later than nine (9) months after the date the affected facility becomes subject to this regulation [~~January 1, 1980~~].

(b) [~~(2) Award~~] The control system contract or the exempt coatings and any accompanying process change contracts shall be awarded no later than eleven (11) months after the date the affected facility becomes subject to this regulation [~~July 1, 1980~~].

(c) [~~(3) Initiate~~] on-site construction or installation of emission control equipment or process changes for exempt coatings shall be initiated no later than thirteen (13) months after the date the affected facility becomes subject to this regulation [~~January 1, 1981~~].

(d) [~~(4)~~] On-site construction or installation of emission control equipment or process changes for exempt coatings shall be completed no later than seventeen (17) months after the date the affected facility becomes subject to this regulation [~~January 1, 1982~~].

(e) [~~(5)~~] Final compliance shall be achieved no later than eighteen (18) months after the date the affected facility becomes subject to this regulation [~~April 1, 1982~~].

(f) If an affected facility becomes subject to this regulation because it is located in a county previously designated nonurban nonattainment or redesignated in 401 KAR 51:010 after November 15, 1990, final compliance may be extended to May 31, 1995, and the schedule in paragraphs (a) through (d) of this subsection adjusted by the cabinet.

Section 6. Exemptions. (1) Any affected facility shall be exempt from [~~the provisions of~~] Section 3 of this regulation if the VOC [~~volatile organic compound~~] content of the coating is less than 0.31 kg/l of coating (two and six-tenths (2.6) lb/gal), excluding water or exempt solvent or both, delivered to the applicators associated with the prime, single or topcoat coating line.

(2) An affected facility shall be exempt from this regulation if the total VOC emissions from all affected facilities subject to this regulation are less than or equal to:

(a) Three (3) lb/hr actual emissions before add-on control;

(b) Fifteen (15) lb/day actual emissions before add-on control; or

(c) Ten (10) tons per year theoretical potential emissions based on design capacity for maximum production) and 8760 hr/yr before add-on control.

(3) Low-use coatings shall be exempt from Section 3 of this regulation if the plantwide consumption of these coatings in the aggregate is less than or equal to fifty-five (55) gallons during the previous twelve (12) months.

PHILLIP J. SHEPHERD, Secretary
RONALD P. MILLS, Acting Commissioner
APPROVED BY AGENCY: January 7, 1992
FILED WITH LRC: January 15, 1992 at noon
PUBLIC HEARING: A public hearing to receive comments

on this proposed regulation and proposed amendments will be conducted on February 28, 1992, at 10 a.m. (ET) in the Auditorium of the State Office Building, Clinton and High Streets. Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing: Hisham M. Saaid, Acting Director, Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Hisham M. Saaid

(1) Type and number of entities affected: A review of the division's records indicates that there are no entities presently affected by the amendments to this regulation. The amendments to this regulation have been made to eliminate deviations between state regulations which are a part of the state implementation plan (SIP) and U.S. EPA policy; to update the applicability; and to comply with KRS Chapter 13A. Many of the SIP deviations are requirements that already appear in 401 KAR 50:016, Policies incorporated by reference, which is a state regulation but not part of the SIP, and therefore no federally enforceable. The applicability has been updated to be compatible with the Clean Air Act as amended November 15, 1990. The Clean Air Act eliminates the distinction between rural and urban nonattainment counties. Formerly, minor sources were controlled only in urban nonattainment counties. Now minor sources will be controlled in all nonattainment areas except those classified as marginal. The amendments made to comply with KRS Chapter 13A do not impact any sources.

(a) Direct and indirect costs or savings to those affected: There are currently no entities affected by these amendments; therefore, there are no direct and indirect costs or savings to those affected.

1. First year: There are no first year costs or savings.

2. Continuing costs or savings: There are no continuing costs or savings.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There are no entities affected by these amendments; therefore, reporting and paperwork requirements are not applicable. Recordkeeping requirements are contained in Section 4(8) of this regulation.

(2) Effects on the promulgating administrative body: There are no entities affected by these amendments; therefore, there are no effects on the promulgating administrative body.

(a) Direct and indirect costs or savings: There are no direct and indirect costs or savings.

1. First year: There are no first year costs or savings.

2. Continuing costs or savings: There are no continuing costs or savings.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There are no entities affected by these amendments; therefore, reporting and paperwork requirements are not applicable.

(3) Assessment of anticipated effect on state and local revenues: There is no effect on state and local revenues because there are no entities affected by these amendments.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were not considered because no basis for an alternative exists since there are currently no entities affected by these amendments.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no entities affected by these amendments. Conflicts and duplication exist between this regulation and 401 KAR 50:016, Policies incorporated by reference. The conflict is in the capture efficiency procedures. This regulation references the new capture efficiency procedures required by the U.S. EPA which will take precedence over the old U.S. EPA capture efficiency procedures contained in 401 KAR 50:016. The duplication is in the control of volatile organic compounds. 401 KAR 50:016 is not part of Kentucky's SIP. The requirements are repeated in this regulation, which is a part of Kentucky's SIP.

(a) Necessity of proposed regulation if in conflict: This regulation references 401 KAR 50:047, Test procedures for capture efficiency. 401 KAR 50:047 requires the U.S. EPA's new capture efficiency protocols. 401 KAR 50:016 requires the previous U.S. EPA capture efficiency procedures.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: 401 KAR 50:016 will be amended or repealed to eliminate the conflict. 401 KAR 50:016 is not part of Kentucky's SIP, therefore, amending only 401 KAR 50:016 would not satisfy the deviation between EPA's new policy and Kentucky's SIP.

(6) Any additional information or comments: The compliance time schedule has been updated to allow for affected facilities which become subject to this regulation on or after the effective date of this regulation. For instance, this situation could occur if the attainment status of a county changes.

TIERING: Was tiering applied? No. There are no entities currently affected by these amendments; therefore, no basis for tiering exists. Section 6(2) provides for exemptions based on low emissions. Section 6(3) provides for exemptions based on low use.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Federal policy has changed subsequent to the promulgation of this regulation. The U.S. EPA is requiring these amendments to eliminate deviations between Kentucky's state implementation plan and federal policy. The applicability of this regulation has been updated to be compatible with the Clean Air Act as amended November 15, 1990.

2. State compliance standards. There are no changes in the standards. The federal policy refers to procedures, calculations, etc., to apply the standards.

3. Minimum or uniform standards contained in the federal mandate. The federal policy does not change the standards, but refers to procedures, calculations, etc., to apply the standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This regulation has been amended to eliminate deviations between Kentucky's SIP and federal policy.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There are no stricter standards or additional or different responsibilities or requirements imposed by these amendments.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(Proposed Amendment)

401 KAR 61:132. Existing miscellaneous metal parts and products surface coating operations.

RELATES TO: KRS [~~Chapter~~] 224<u>20-100, 224.20-110, 224.20-120</u>

STATUTORY AUTHORITY: KRS <u>224.10-100</u> [~~224.033~~]

NECESSITY AND FUNCTION: KRS <u>224.10-110</u> [**224.033**] requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement and control of air pollution. This regulation provides for the control of volatile organic compound emissions from existing

miscellaneous metal parts and products surface coating operations.

[Section 1. Applicability. The provisions of this regulation shall apply to each affected facility commenced before the classification date defined below which is located:]

[(1) In an urban county designated nonattainment for ozone under 401 KAR 51:010; or]

[(2) In any county which is designated nonattainment or unclassified for ozone under 401 KAR 51:010 and is a part of a major source of volatile organic compounds.]

[(3) The provisions of this regulation shall not apply to affected facilities in the following counties: Garrard, Graves, Hopkins, Laurel, Montgomery, Nelson, Pulaski, Scott, Taylor, Trigg, and Union prior to designation of such counties nonattainment for ozone under 401 KAR 51:010.]

[(4) The provisions of this regulation shall not apply to affected facilities which are subject to local air pollution control district regulations which have been approved by the cabinet and the U.S. EPA.]

Section 1. [2.] Definitions. As used in this regulation, all terms not defined in this section [herein] shall have the meaning given to them in 401 KAR 50:010.

(1) "Affected facility" means a coating line located at job shops and original equipment manufacturing industries which apply coatings on metal substrates not subject to a regulation, other than 401 KAR 61:060, in this chapter.

(2) "Applicator" means the mechanism or device used to apply the coating, including but not limited to dipping, spraying, or flow coating.

(3) "Flash-off area" means the space between the applicator and the oven.

(4) "Single coat" means only one (1) film of coating is applied to the metal substrate.

(5) "Prime coat" means the first of two (2) or more films of coating applied in an operation.

(6) "Topcoat" means the final film or series of films of coating applied in a two (2) coat (or more) operation.

(7) "Coating line" means a series of equipment [and/]or operations used to apply, dry, or cure any prime, topcoat or single coatings containing volatile organic compounds (VOCs). This shall include, but is not limited to:

(a) Mixing operations;

(b) Process storage;

(c) Applicators;

(d) Drying operations including, but not limited to, flash-off area evaporation, oven drying, baking, curing, and polymerization;

(e) Clean up operations;

(f) Leaks, spills and disposal of VOCs [volatile organic compounds];

(g) Processing and handling of recovered VOCs [volatile organic compounds];

(h) For the purposes of determining compliance with this regulation, if [any] equipment or an operation is [could be] considered to be a part of more than one (1) coating line, its VOC [volatile organic compound] emissions shall be assigned to each coating line of which it is a part proportionally to the throughput of VOC [volatile organic compound] it receives from or distributes to each coating line;

(i) If a [any] portion of the series of equipment [and/]or operations qualifies [qualify] for an exemption according to Section 6 of this regulation, then that portion shall be considered to be a separate coating line.

[(8) "Volatile organic compounds" means chemical compounds of carbon (excluding methane, ethane, carbon monoxide, carbon dioxide, carbonic acid, metallic carbides, and ammonium carbonate) which have a vapor pressure greater than one tenth (0.1) mm Hg at conditions of twenty (20) degrees Celsius and 760 mm Hg.]

(8) [(9)] "Process storage" means mixing tanks, holding tanks, and other tanks, drums, or other containers which contain surface coatings, VOCs [volatile organic compounds], or recovered VOCs [volatile organic compounds]; but does not mean storage tanks of petroleum liquids which are subject to 401 KAR 59:050, 401 KAR 59:052, or 401 KAR 61:050.

(9) [(10)] "Miscellaneous metal parts and products" means items including but not limited to:

(a) Large farm machinery (harvesting, fertilizing and planting machines, tractors, combines, etc.);

(b) Small farm machinery (lawn and garden tractors, lawn mowers, rototillers, etc.);

(c) Small appliances (fans, mixers, blenders, crock pots, dehumidifiers, vacuum cleaners, etc.);

(d) Commercial machinery (computers and auxiliary equipment, typewriters, calculators, vending machines, etc.);

(e) Industrial machinery (pumps, compressors, conveyor components, fans, blowers, transformers, etc.);

(f) Fabricated metal products (metal covered doors, frames, etc.); and

(g) Any other industrial category not subject to a regulation, other than 401 KAR 61:060, in this chapter which coats metal parts or products.

(10) [(11)] "Heat sensitive material" means materials which cannot be exposed to temperatures greater than eighty-two (82) to ninety-three (93)°C (180°-200°F).

(11) [(12)] "Air or forced air-dried items" means parts that are too large or too heavy for practical size ovens; parts that are sensitive to heat; parts to which heat sensitive materials are attached; or equipment assembled prior to top coating for specific performance or quality standards.

(12) [(13)] "Outdoor or harsh exposure or extreme environmental conditions" means exposure to any of the following: year round weather conditions, temperatures consistently above ninety-five (95)°C, detergents, scouring, solvents, corrosive atmospheres; and similar environmental conditions.

(13) [(14)] "Classification date" means February 4, 1981.

(14) "VOCs [(15) "Volatile organic compounds] net input" means the total amount of VOCs [volatile organic compounds] input to the affected facility minus the amount of VOCs [volatile organic compounds] that are not emitted into the atmosphere. VOCs [Volatile organic compounds] that are prevented from being emitted to the atmosphere by the use of control devices shall not be subtracted from the total for the purposes of determining VOC [volatile organic compound] net input. If [When] the nature of an [any] operation or a design of equipment is such as to permit more than one (1) interpretation of this definition, the interpretation that results in the minimum value for allowable emissions shall apply.

(15) "Glass primer" means a primer applied to the body of a vehicle to etch the topcoat for the purpose of ensuring a positive bond with the adhesive used to secure the windshield and back glass to the vehicle in a manner consistent with federal safety regulations.

Section 2. Applicability. (1) This regulation shall apply to each affected facility commenced before the classification date defined in Section 1 of this regulation which is located in a county or portion of a county which is designated ozone nonattainment, for any nonattainment classification except marginal, under 401 KAR 51:010.

(2) This regulation shall not apply to affected facilities which are subject to local air pollution control district regulations which have been approved by the cabinet and the U.S. EPA.

Section 3. Standard for VOCS [Volatile Organic Compounds]. No person shall cause, allow, or permit an affected facility to discharge into the atmosphere more than fifteen (15) percent by weight of the VOCs [volatile organic compounds] net input into the affected facility.

Section 4. Compliance. (1) In all cases the design of a [any] control system is subject to approval by the cabinet.

(2) Compliance with the standard in Section 3 of this regulation shall be demonstrated by a material balance unless [except in those cases where] the cabinet determines that a material balance is not possible. If [For those cases where] a material balance is not possible, compliance shall [will] be determined based upon an engineering analysis by the cabinet of: the control system design, control device efficiency, control system capture efficiency, and [any] other factors that could influence the performance of the system. If [so] requested by the cabinet, Method 25, which has been incorporated [Kentucky Method 90 or 91, filed] by reference in 401 KAR 50:015, shall be performed in order to determine the efficiency of the control device or demonstrate compliance with the standard. Capture efficiency shall be determined by procedures specified in 401 KAR 50:047.

(3) With the prior approval of the cabinet, the owner or operator may elect to effect all [such] changes [in the affected facility as are] necessary to qualify for an exemption under Section 6 of this regulation.

(4) If [Whenever] deemed necessary by the cabinet, the cabinet shall obtain samples of the coatings used at an affected facility to verify that the coatings meet the requirements in Section 6 of this regulation. Method 24, which has been incorporated [The following methods of analyses, filed] by reference in 401 KAR 50:015, [for coatings] shall be used as applicable to determine compliance of the coatings unless [except in those cases where] the cabinet and the U.S. EPA determine that other methods would be more appropriate. [:]

[(a) ASTM D 1644 75 Method A;]

[(b) ASTM D 1475 60(74);]

[(c) ASTM D 2369 73; or]

[(d) Federal Standard 141 a, Method 4082.1.]

(5) Compliance on one (1) coating line with VOC emission limits shall be based on an averaging period not to exceed twenty-four (24) hours. If it is not economically or technically feasible to determine emissions on a daily basis, alternatives expressing emission limits for longer averaging times may be accepted if approved by the cabinet and the U.S. EPA as a SIP revision.

(6) The amount of exempt solvents shall be subtracted from the amount of coatings, just like water, with the ultimate value of interest being the mass of VOC per unit volume of coating less exempt solvent or water or both.

(7) Calculations to determine equivalency on one (1) coating line shall be based on mass of VOC per volume of solids.

(8) Daily records shall be maintained by the source for the most recent two (2) year period. These records shall be made available to the cabinet or the U.S. EPA upon request. The records shall include, but not be limited to, the following:

(a) Applicable regulation number;

(b) Application method and substrate type;

(c) Amount and type of adhesive, coating (including catalyst and reducer for multicomponent coatings), or solvent used at each point of application, including exempt compounds;

(d) The VOC content as applied in each adhesive, coating, or solvent;

(e) The date for each application for adhesive, coating, or solvent;

(f) The amount of surface preparation, clean-up, or wash-up solvent (including exempt compounds) used and the VOC content of each; and

(g) Oven temperature, if applicable.

Section 5. Compliance Timetable. (1) Affected facilities which were subject to this regulation as in effect on February 4, 1981, shall have achieved final compliance by December 31, 1982.

(2) The owner or operator of an affected facility that becomes subject to this regulation on or after the effective date of this regulation shall be required to complete the following:

(a) [(1)] Submit a final control plan for achieving compliance with this regulation no later than nine (9) months after the date the affected facility becomes subject to this regulation [April 15, 1981].

(b) [(2)] Award a contract for the control system [contract] or for the exempt coatings and any other accompanying process change [contracts] no later than eleven (11) months after the date the affected facility becomes subject to this regulation [June 15, 1981].

(c) [(3)] Initiate on-site construction or installation of emission control equipment or process changes for exempt coatings no later than thirteen (13) months after the date the affected facility becomes subject to this regulation [December 1, 1981].

(d) [(4)] On-site construction or installation of emission control equipment or process changes for exempt coatings shall be completed no later than seventeen (17) months after the date the affected facility becomes subject to this regulation [December 1, 1982].

(e) [(5)] Final compliance shall be achieved no later than eighteen (18) months after the date the affected facility becomes subject to this regulation [December 31, 1982].

(f) If an affected facility becomes subject to this regulation because it is located in a county previously designated nonurban nonattainment or redesignated in 401 KAR 51:010 after November 15, 1990, final compliance may be extended to May 31, 1995, and the schedule in paragraphs (a) through (d) of this subsection adjusted by the cabinet.

Section 6. Exemptions. (1) An [Any] affected facility shall be exempt from [the provisions of] Section 3 of this regulation if the VOC [volatile organic compound] content of the coating is:

(a) Less than 0.52 kg/l of coating (four and three-tenths (4.3) lb/gal), excluding water or exempt solvent or both, delivered to applicators associated with clear coat;

(b) Less than 0.42 kg/l of coating (three and five-tenths (3.5) lb/gal), excluding water or exempt solvent or both, delivered to applicators associated with air or forced air-dried items or items subject to outdoor or harsh exposure or extreme environmental conditions;

(c) Less than 0.36 kg/l of coating (three (3.0) lb/gal), excluding water or exempt solvent or both, delivered to applicators associated with color coat or first coat on untreated ferrous substrate; or

(d) Less than 0.05 kg/l of powder coating (four-tenths (0.4) lb/gal) delivered to applicators associated with no or infrequent color change, or a small number of colors applied.

(2) The surface coating of the following metal parts and products are exempt from this regulation:

(a) The exterior of airplanes and marine vessels, but not parts for the exterior of airplanes and marine vessels that are coated as a separate manufacturing or coating operation;

(b) Automobile refinishing; and

(c) Customized top coating of automobiles and trucks, if production is less than thirty-five (35) vehicles per day.

(3) An [Any] affected facility shall be exempt from [the provisions of Section 3 of] this regulation if the total VOC [volatile organic compound] emissions from all affected facilities subject to this regulation are less than or equal to thirty (30) tons per year.

(4) Low-use coatings shall be exempt from Section 3 of this regulation if the plantwide consumption of these coatings in the aggregate is less than or equal to fifty-five (55) gallons during the previous twelve (12) months.

(5) Glass primer with VOC content equal to or less than six and nine-tenths (6.9) lb/gal of glass primer excluding water or exempt solvent or both, shall be exempt from this regulation.

[Section 7. Variances. Variation with the standards and limitations contained in this regulation, when supported by adequate technical information, will be considered by the

~~cabinet on a case by case basis to allow for technological or economic circumstances which are unique to a source.~~]

PHILLIP J. SHEPHERD, Secretary
RONALD P. MILLS, Acting Commissioner
APPROVED BY AGENCY: January 7, 1992
FILED WITH LRC: January 15, 1992 at noon
PUBLIC HEARING: A public hearing to receive comments on this proposed regulation and proposed amendments will be conducted on February 28, 1992, at 10 a.m. (ET) in the Auditorium of the State Office Building, Clinton and High Streets, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing: Hisham M. Saaid, Acting Director, Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Hisham M. Saaid

(1) Type and number of entities affected: A review of the division's records indicates that there are currently 7 entities under this regulation. These entities are existing miscellaneous metal parts and products surface coating operations. The amendments to this regulation have been made to eliminate deviations between state regulations which are a part of the state implementation plan (SIP) and U.S. EPA policy; to update the applicability; and to comply with KRS Chapter 13A. Many of the SIP deviations are requirements that already appear in 401 KAR 50:016, Policies incorporated by reference, which is a state regulation but not part of the SIP, and therefore not federally enforceable. SIP deviations identified by the U.S. EPA include changes in the definition of volatile organic compounds, test methods, and variance. The applicability is updated to be compatible with the requirements of the Clean Air Act as amended November 15, 1991. This amendment will not impact the 7 entities currently under this regulation. However, the Clean Air Act Amendments eliminate the distinction between urban and nonurban ozone nonattainment areas. Previously, for example, minor sources in Boone, Campbell, and Kenton Counties (an urban nonattainment area) were subject to this regulation while similar sources in Boyd County (a nonurban nonattainment area) were not. The amendments will eliminate that distinction. This will make minor sources in Boyd County subject to this regulation. Further, the Clean Air Act amendments define 5 classifications of nonattainment. The redesignation of a county from attainment to any of the nonattainment classifications, except marginal nonattainment, would make additional entities subject to this regulation. Sources which become subject to this regulation because of the changes in applicability required by the Clean Air Act Amendments shall achieve final compliance by May 31, 1995. The amendments made to comply with KRS Chapter 13A do not impact any sources.

(a) Direct and indirect costs or savings to those affected: If Kentucky does not make the federally required amendments to this regulation, the U.S. EPA will promulgate the requirements in federal regulations. There are no additional costs associated with complying with the state's regulation over complying with the same requirements in a federal regulation.

1. First year: There are no costs or savings associated with KRS Chapter 13A amendments. There are no additional costs associated with complying with the state's amendments over complying with the same requirements in a federal regulation. The costs associated with the SIP deviation amendments are of the nature of more recordkeeping, a different test method, and a different capture efficiency procedure. A chemical that was previously uncontrolled because of its low vapor pressure could now be classified as a volatile organic compound or vice versa under the new definition of volatile organic compound. The applicability amendment required by the Clean Air Act will bring additional sources under this regulation for the first time. The number and size of entities will not be known until the redesignations of nonattainment status for individual counties or portions of counties have been made. A full cost analysis for the initial and continuing impact of this regulation was originally given in the U.S. EPA document EPA-450/2-78-015, pages 3-1 through 3-24, June 1978. Five control options are analyzed for small, medium, and large sources for 7 operation types. A small source waterborne-coatings cost effectiveness is given on page 3-12 as $857/megagram of solvent controlled. However, in the consideration of the various applicable control options, a range from $339 saved to $20,154 cost per megagram of solvent controlled is presented. Although inflation can be taken into consideration, the size of the entities affected is not available for an accurate evaluation. A typical cost multiplier factor for 1978 to 1991 is 1.7. This means that 1978 costs should be multiplied by 1.7 to obtain 1991 costs.

2. Continuing costs or savings: Please see discussion under First year, 1 above.

3. Additional factors increasing or decreasing costs (note any effects upon competition): Minor sources in nonattainment areas (except marginal nonattainment) are subject to this regulation, while minor sources in attainment areas are not.

(b) Reporting and paperwork requirements: The U.S. EPA identified recordkeeping as a SIP deficiency. Section 4(8) was added to comply with this federal requirement.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division will review and process permits for any sources newly affected. Costs will be recovered by a permit fee.

2. Continuing costs or savings: The division presently inspects all permitted sources of air pollutants and maintains plant and emissions data for emissions inventory purposes. Such activities are part of the division's normal day-to-day operations and are budgeted accordingly. Any newly affected source will be inspected and the cost will be absorbed as a part of the operating budget.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The division will review and issue permits for newly affected sources and will issue reports of inspections and emissions data as in 1. and 2. above.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered since these amendments contain the same provisions as federal requirements.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is conflict in the capture efficiency procedures between this regulation and 401 KAR 50:016, Policies incorporated by reference. There is also duplication, because 401 KAR 50:016 is not part of Kentucky's SIP.

(a) Necessity of proposed regulation if in conflict: This regulation references 401 KAR 50:047, Capture efficiency test procedures. 401 KAR 50:047 requires the U.S. EPA's new capture efficiency protocols. 401 KAR 50:016 requires the previous U.S. EPA capture efficiency procedures.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: 401 KAR 50:016 will be amended or repealed to eliminate the conflict. 401 KAR 50:016 is not part of Kentucky's SIP, therefore, amending only 401 KAR 50:016 would not satisfy the deviation between EPA's new policy and Kentucky's SIP.

(6) Any additional information or comments: These amendments were made in response to the requirements discussed under (1) above.

TIERING: Was tiering applied? No. The amendments eliminate deviations between the SIP and federal require-

ments. The amendments are being made to a regulation in which tiering already applies.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Clean Air Act as amended November 15, 1990.

2. State compliance standards. These amendments change the applicability and eliminate the deviations between Kentucky's SIP and U.S. EPA policy, but do not change the standards.

3. Minimum or uniform standards contained in the federal mandate. These amendments do not change the standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. These amendments are proposed to eliminate deviations from U.S. EPA policy and the Clean Air Act.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The proposed amendments do not impose stricter standards, or additional or different responsibilities or requirements.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(Proposed Amendment)

401 KAR 61:137. Leaks from existing petroleum refinery equipment.

RELATES TO: KRS [~~Chapter~~] 224.20-100, 224.20-110, 224.20-120

STATUTORY AUTHORITY: KRS 224.10-100 [~~224.033~~]

NECESSITY AND FUNCTION: KRS 224.10-100 [~~224.033~~] requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides for the control of volatile organic compound emissions from leaks from existing petroleum refinery equipment.

[~~Section 1. Applicability. The provisions of this regulation shall apply to each affected facility commenced before the classification date defined below which is located:~~]

[~~(1) In an urban county designated nonattainment for ozone under 401 KAR 51:010; or~~]

[~~(2) In any county which is designated nonattainment or unclassified for ozone under 401 KAR 51:010 and is a part of a major source of volatile organic compounds.~~]

[~~(3) The provisions of this regulation shall not apply to affected facilities in the following counties: Garrard, Graves, Hopkins, Laurel, Montgomery, Nelson, Pulaski, Scott, Taylor, Trigg, and Union prior to designation of such counties nonattainment for ozone under 401 KAR 51:010.~~]

Section 1. [~~2.~~] Definitions. As used in this regulation, all terms not defined in this section [~~herein~~] shall have the meaning given to them in 401 KAR 50:010.

(1) "Affected facility" means each individual component within a petroleum refinery complex that could potentially leak volatile organic compounds (VOCs) to the atmosphere.

(2) "Component" means equipment or apparatus which includes, but is not limited to, pump seals, compressor seals, seal oil degassing vents, pipeline valves, flanges and other connections, pressure relief devices, process drains, and open-ended pipes that could potentially leak VOCs [~~volatile organic compounds~~] to the atmosphere.

(3) "A petroleum refinery complex" means a [~~any~~] facility engaged in producing gasoline, kerosene, distillate fuel oils, residual fuel oils, lubricants, or other products through distillation of petroleum or through redistillation, cracking, rearrangement or reforming of unfinished petroleum derivatives.

(4) "Leak" means the presence of a VOC [~~volatile organic compound~~] concentration exceeding 10,000 ppm if [~~when~~] tested in the manner referenced in Section 5 of this regulation.

(5) "Gas service" means that the VOC [~~volatile organic compound~~] is gaseous at conditions that prevail in the component during normal operations.

[~~(6) "Volatile organic compounds" means chemical compounds of carbon (excluding methane, ethane, carbon monoxide, carbon dioxide, carbonic acid, metallic carbides, and ammonium carbonate) which have a vapor pressure greater than one tenth (0.1) mm Hg at conditions of twenty (20) degrees Celsius and 760 mm Hg.~~]

(6) [~~(7)~~] "Classification date" means February 4, 1981 [~~the effective date of this regulation~~].

Section 2. Applicability. This regulation shall apply to each affected facility commenced before the classification date defined in Section 1 of this regulation which is located in a county or portion of a county which is designated ozone nonattainment, for any nonattainment classification except marginal, under 401 KAR 51:010.

Section 3. Standard for VOCs [~~Volatile Organic Compounds~~]. The owner or operator of an affected facility shall:

(1) If an [~~When any~~] affected facility within the petroleum refinery complex is found to be leaking, repair the leak within fifteen (15) days. A component recheck shall be made after repair. If the leak is still present or a new leak is created by the repair, further maintenance shall be performed until the VOC [~~volatile organic compound~~] emission drops below the screening value (10,000 ppm).

(2) Any time a valve is located at the end of a pipe or line containing VOCs [~~volatile organic compounds~~], seal the end of the line with a second valve, a blind flange, a plug or a cap. This sealing device may be removed only when a sample is being taken. This requirement shall [~~does~~] not apply to safety pressure relief valves.

Section 4. Monitoring and Reporting Requirements. The owner or operator shall conduct [~~such~~] monitoring of affected facilities and submit records as specified below:

(1) The refinery operator shall perform component monitoring using the method referenced in Section 5 of this regulation as follows:

(a) Monitor with a portable VOC [~~volatile organic compound~~] detection device one (1) time per year (annually) pump seals, pipeline valves in liquid service, and process drains.

(b) Monitor with a portable VOC [~~volatile organic compound~~] detection device four (4) times per year (quarterly) compressor seals, pipeline valves in gas service, and pressure relief valves in gas service.

(c) Monitor visually fifty-two (52) times per year (weekly) pump seals.

(d) No individual monitoring is necessary for pressure relief valves in liquid service and pipeline flanges.

(2) Pipeline valves and pressure relief valves for gas service shall be marked or noted so that their location is readily obvious to both the refinery operator performing the monitoring and the cabinet.

(3) If [~~Whenever~~] liquids are observed dripping from a pump seal, the seal shall be checked immediately with a portable detector to determine if a leak of VOCs [~~volatile organic compounds~~] is present.

(4) If [~~Whenever~~] a relief valve operates and venting to the atmosphere occurs, the operator shall monitor this [~~such~~] valve immediately. Pressure relief devices which are tied in to either a flare header or vapor recovery device shall be exempted from the monitoring requirements.

(5) When a leak is located, a weatherproof and readily visible tag bearing an identification number and the date the leak is located shall be affixed to the leaking component. The location, tag number, date and stream composition of the leak

shall also be noted on a survey log. When the leak is repaired, the date of repair and date and instrument reading of component recheck after maintenance shall be entered in the survey log and the tag discarded. The operator shall retain the survey log for two (2) years after the inspection is completed.

(6) After quarterly monitoring has been performed, the refinery operator shall submit a report to the cabinet listing all leaks that were located but not repaired within the fifteen (15) day limit and a signed statement attesting to the fact that all monitoring has been performed as stipulated in the control plan. Leaks that cannot be repaired within fifteen (15) days shall be repaired during the next scheduled turnaround. If the cabinet requests it, the owner or operator shall demonstrate to the cabinet's satisfaction why the repairs could not be completed within the initial fifteen (15) day period. If the leak is [~~, or if~~] unable to be brought into compliance, a variance shall be requested and obtained on an individual basis. Case-by-case alternatives approved by the cabinet, but not previously authorized by the U.S. EPA, shall be submitted to the U.S. EPA as a SIP revision.

Section 5. Test Methods and Procedures. (1) Except as provided for in 401 KAR 50:045 Method 21, which has been incorporated [~~the test methods as defined in Appendix B to "Control of Volatile Organic Compound Leaks from Petroleum Refinery Equipment" (OAQPS 1.2-111, U.S. EPA, Office of Air Quality Planning and Standards), filed~~] by reference in 401 KAR 50:015, shall be used to determine compliance with the standard prescribed in Section 3 of this regulation and monitoring requirements in Section 4 of this regulation.

(2) The owner or operator may elect to use alternate monitoring methods if it is [~~can be~~] demonstrated to the cabinet's satisfaction that the alternate methods shall [~~will~~] achieve equivalent control efficiency.

Section 6. Compliance Timetable. (1) Affected facilities which were subject to this regulation as in effect February 4, 1981, shall have achieved final compliance by January 1, 1982.

(2) The owner or operator of an affected facility that becomes subject to this regulation on or after the effective date of this regulation shall be required to complete the following:

(a) [~~(1)~~] Submit a final control plan for achieving compliance with this regulation no later than three (3) months after the date the affected facility becomes subject to this regulation [~~April 1, 1981~~].

(b) [~~(2)~~] Award the control system contract no later than five (5) months after the date the affected facility becomes subject to this regulation [~~May 15, 1981~~].

(c) [~~(3)~~] Initiate on-site construction or installation of emission control equipment no later than seven (7) months after the date the affected facility becomes subject to this regulation [~~July 15, 1981~~].

(d) [~~(4)~~] On-site construction or installation of emission control equipment shall be completed no later than eleven (11) months after the date the affected facility becomes subject to this regulation [~~November 15, 1981~~].

(e) [~~(5)~~] Final compliance shall be achieved no later than twelve (12) months after the date the affected facility becomes subject to this regulation [~~January 1, 1982~~].

(f) If an affected facility becomes subject to this regulation because it is located in a county previously designated nonurban nonattainment or redesignated in 401 KAR 51:010 after November 15, 1990, final compliance may be extended to May 31, 1995, and the schedule in paragraphs (a) through (d) of this subsection adjusted by the cabinet.

Section 7. [~~Variances and~~] Modifications. (1) If, after at least two (2) complete annual checks, the refinery operator determines that modifications of the monitoring requirements are in order, he may request in writing to the cabinet that a revision be made. The submittal shall include data that have been developed to justify [~~any~~] modifications in the monitoring schedule.

(2) If the cabinet finds an excessive number of leaks during an inspection, or if the refinery operator found an excessive number of leaks in a [~~any~~] given area during scheduled monitoring, the cabinet shall increase the required frequency of operator inspections for that part of the facility.

[~~(3) Variation with the standards and limitations contained in this regulation, when supported by adequate technical information, will be considered by the cabinet on a case-by-case basis to allow for technological or economic circumstances which are unique to a source.~~]

PHILLIP J. SHEPHERD, Secretary
RONALD P. MILLS, Acting Commissioner
APPROVED BY AGENCY: January 7, 1992
FILED WITH LRC: January 15, 1992 at noon
PUBLIC HEARING: A public hearing to receive comments on this proposed regulation and proposed amendments will be conducted on February 15, 1992, at 10 a.m. (ET) in the Auditorium of the State Office Building, Clinton and High Streets, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing: Hisham M. Saaid, Acting Director, Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Hisham M. Saaid

(1) Type and number of entities affected: A review of the division's records indicates that there is currently one entity affected by the amendments to this regulation. The entity is a petroleum refinery. The amendments to this regulation have been made in response to three requirements. The first requirement is to eliminate deviations between state regulations which are a part of the State Implementation Plan (SIP) and U.S. EPA policy. The second is to update the applicability to be compatible with the requirements of the Clean Air Act as amended November 15, 1990. The third is to comply with KRS Chapter 13A. The SIP deviations identified by the U.S. EPA include changes in the definition of volatile organic compounds, test methods, and variance.

(a) Direct and indirect costs or savings to those affected: If Kentucky does not make the federally required amendments to this regulation, the U.S. EPA will promulgate the requirements in a Federal Implementation Plan (FIP). There are no additional costs associated with complying with the states' regulation over complying with the same requirements in a federal regulation.

1. First year: There are no additional costs associated with complying with the Kentucky SIP over complying with a FIP.

2. Continuing costs or savings: There are no additional costs associated with complying with the Kentucky SIP over complying with a FIP.

3. Additional factors increasing or decreasing costs (note any effects upon competition): Since these amendments are the same as federal policy which is applied throughout the country, there are no economic disadvantages to Kentucky caused by promulgating these amendments. Sources in nonattainment areas (except marginal nonattainment) are subject to this regulation, while sources in attainment areas are not.

(b) Reporting and paperwork requirements: There are no additional reporting or paperwork requirements.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There are no first year costs or savings associated with these amendments.

2. Continuing costs or savings: There are no continuing costs or savings associated with these amendments.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There are no reporting and paperwork requirements.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because these changes were required to eliminate deviations with U.S. EPA policy and to comply with the Clean Air Act.

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

(a) Necessity of proposed regulation if in conflict: There is no conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no conflict.

(6) Any additional information or comments: These amendments were made in response to the three requirements discussed under (1) above.

TIERING: Was tiering applied? No. The amendments eliminate deviations between the Kentucky's SIP and federal requirements.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Clean Air Act as amended November 15, 1990.

2. State compliance standards. These amendments change the applicability and eliminate the deviations between Kentucky's SIP and U.S. EPA policy, but do not change the standards.

3. Minimum or uniform standards contained in the federal mandate. These amendments do not change the standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. These amendments are proposed to eliminate deviations from U.S. EPA policy and the Clean Air Act.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The proposed amendments do not impose stricter standards, or additional or different responsibilities or requirements.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(Proposed Amendment)

401 KAR 61:150. Existing synthesized pharmaceutical product manufacturing operations.

RELATES TO: KRS [~~Chapter~~] 224.20-100, 224.20-110, 224.20-120

STATUTORY AUTHORITY: KRS 224.10-100 [~~224.033~~]

NECESSITY AND FUNCTION: KRS 224.10-100 [~~224.033~~] requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides for the control of volatile organic compound emissions from existing synthesized pharmaceutical product manufacturing operations.

~~[Section 1. Applicability. The provisions of this regulation shall apply to each affected facility commenced on or after the classification date defined below which is located:]~~

~~[(1) In an urban county designated nonattainment for ozone under 401 KAR 51:010; or]~~

~~[(2) In any county which is designated nonattainment or unclassified for ozone under 401 KAR 51:010 and is a part of a major source of volatile organic compounds.]~~

~~[(3) The provisions of this regulation shall not apply to affected facilities in the following counties: Garrard, Graves, Hopkins, Laurel, Montgomery, Nelson, Pulaski, Scott, Taylor, Trigg, and Union prior to designation of such counties nonattainment for ozone under 401 KAR 51:010.]~~

Section 1. [~~2.~~] Definitions. As used in this regulation, all terms not defined in this section [~~herein~~] shall have the meaning given to them in 401 KAR 50:010.

(1) "Affected facility" means operations involved in the manufacture of pharmaceutical products by chemical synthesis, but does not include fermentation, extraction, or formulation and packaging.

(2) "Extraction" means the manufacture of botanical and biological products by the extraction of organic chemicals from vegetative materials or animal tissues.

(3) "Fermentation" means the production and separation of medicinal chemicals such as antibiotics and vitamins from microorganisms.

(4) "Formulation and packaging" means the formulation of bulk pharmaceuticals into various dosage forms such as tablets, capsules, injectable solutions, ointments, etc., that can be taken by the patient immediately and in accurate amount.

~~[(5) "Volatile organic compounds" means chemical compounds of carbon (excluding methane, ethane, carbon monoxide, carbon dioxide, carbonic acid, metallic carbides, and ammonium carbonate) which have a vapor pressure greater than one tenth (0.1) mm Hg at conditions of twenty (20) degrees Celsius and 760 mm Hg.]~~

(5) [~~(6)~~] "Classification date" means February 4, 1981 [~~the effective date of this regulation~~].

(6) [~~(7)~~] "kPa" means kilopascals.

(7) [~~(8)~~] "psi" means pounds per square inch.

Section 2. Applicability. This regulation shall apply to each affected facility commenced before the classification date defined in Section 1 of this regulation which is located in a county or portion of a county which is designated ozone nonattainment, for any nonattainment classification except marginal, under 401 KAR 51:010.

Section 3. Standard for VOCs [~~Volatile Organic Compounds~~]. The owner or operator of an affected facility to which this regulation applies shall install, maintain and operate the control equipment and observe at all times the following operating requirements:

(1)(a) Each vent from reactors, distillation operations, crystallizers, centrifuges, and vacuum dryers that emit six and eight-tenths (6.8) kg/day (fifteen (15) lb/day) or more of VOCs [~~volatile organic compounds~~] shall be equipped with surface condensers or other methods of control which provide emission reductions equivalent to the use of surface condensers which meet the requirements in paragraph (b) of this subsection.

(b) If surface condensers are used, the condenser outlet gas temperature shall not exceed the following temperatures (degrees Celsius) if [~~when~~] condensing VOCs [~~volatile organic compounds~~] with the respective minimum vapor pressures (kilopascals). All vapor pressures are measured to twenty (20) degrees Celsius.

1. Negative twenty-five (-25)°C; forty (40) kPa (five and eight-tenths (5.8) psi);

2. Negative fifteen (-15)°C; twenty (20) kPa (two and nine-tenths (2.9) psi);

3. Zero°C; ten (10) kPa (one and five-tenths (1.5) psi);

4. Ten (10)°C; seven (7) kPa (one (1.0) psi); and

5. Twenty-five (25)°C; three and five tenths (3.5) kPa (five-tenths (0.5) psi).

(2)(a) For air dryers and production equipment exhaust systems that emit 150 kg/day (330 lbs/day) or more of VOCs [~~volatile organic compounds~~], emissions shall be reduced

ninety (90) percent.

(b) For air dryers and production equipment exhaust systems that emit less than 150 kg/day (330 lbs/day), emissions shall be reduced to fifteen (15) kg/day (thirty-three (33) lbs/day).

(3)(a) For storage tanks storing VOCs [~~volatile organic compounds~~] with a vapor pressure greater than twenty-eight (28) kPa (four and one-tenth (4.1) psi) at twenty (20)°C, one (1) liter of displaced vapor shall be allowed to be released to the atmosphere for every ten (10) liters transferred (i.e., a ninety (90) percent effective vapor balance or equivalent) on truck or [~~/~~]rail car delivery to all tanks greater than 7,500 liters (2,000 gal) capacity unless the [~~except where~~] tanks are equipped with floating roofs, vapor recovery systems, or their equivalent. This requirement does not apply to transfer of VOCs [~~volatile organic compounds~~] from one (1) in-plant location to another.

(b) For tanks storing VOCs [~~volatile organic compounds~~] with a vapor pressure greater than ten (10) kPa (one and five-tenths (1.5) psi) at twenty (20)°C, the pressure or [~~/~~] vacuum conservation vents shall be set at plus or minus two-tenths (0.2) kPa, unless [~~except where~~] more effective air pollution control is used.

(4) All centrifuges containing VOCs [~~volatile organic compounds~~], rotary vacuum filters processing liquid containing VOCs [~~volatile organic compounds~~] and [~~any~~] other filters having an exposed liquid surface if [~~where~~] the liquid contains VOCs [~~volatile organic compounds~~] shall be enclosed. This applies to liquids exerting a total VOCs [~~volatile organic compounds~~] vapor pressure of three and five-tenths (3.5) kPa (five-tenths (0.5) psi) or more at twenty (20)°C.

(5) All in-process tanks containing VOC [~~volatile organic compound~~] at any time shall have covers which shall be closed except for short periods when production, sampling, maintenance, or inspection procedures require operator access.

(6) For liquids containing VOCs [~~volatile organic compounds~~], all leaks in which liquid can be observed to be running or dripping from vessels and equipment (for example, pumps, valves, flanges) shall be repaired within fifteen (15) days. A visual recheck shall be made after repair. If the leak is still present or a new leak is created by the repair, further maintenance shall be performed until the VOC [~~volatile organic compound~~] emission drops below the screening value (observed to be running or dripping). Leaks that cannot be repaired within fifteen (15) days shall be repaired during the next scheduled turnaround. If the cabinet requests it, the owner or operator shall demonstrate to the cabinet's satisfaction why the repairs could not be completed within the initial fifteen (15) day period. If the leak is [~~, or if~~] unable to be brought into compliance, a variance shall be requested and obtained on an individual basis. Case-by-case alternatives approved by the cabinet, but not previously authorized by the U.S. EPA, shall be submitted to the U.S. EPA as a SIP revision. Leak detection or [~~/~~] maintenance and repair procedures shall include maintaining a survey log identifying when the leak occurred and reporting every ninety (90) days those leaks not repaired after fifteen (15) days. The operator shall retain the survey log for two (2) years after the inspection is completed.

Section 4. Compliance Timetable. (1) Affected facilities which were subject to this regulation as in effect on February 4, 1981, shall have achieved final compliance by December 31, 1982.

(2) The owner or operator of an affected facility that becomes subject to this regulation on or after the effective date of this regulation shall be required to complete the following:

(a) [~~(1)~~] Submit a final control plan for achieving compliance with this regulation no later than three (3) months after the date the affected facility becomes subject to this regulation [~~April 15, 1981~~].

(b) [~~(2)~~] Award the control system contract no later than five (5) months after the date the affected facility becomes subject to this regulation [~~June 15, 1981~~].

(c) [~~(3)~~] Initiate on-site construction or installation of emission control equipment no later than seven (7) months after the date the affected facility becomes subject to this regulation [~~December 1, 1981~~].

(d) [~~(4)~~] On-site construction or installation of emission control equipment shall be completed no later than eleven (11) months after the date the affected facility becomes subject to this regulation [~~December 1, 1982~~].

(e) [~~(5)~~] Final compliance shall be achieved no later than twelve (12) months after the date the affected facility becomes subject to this regulation [~~December 31, 1982~~].

(f) If an affected facility becomes subject to this regulation because it is located in a county previously designated nonurban nonattainment or redesignated in 401 KAR 51:010 after November 15, 1990, final compliance may be extended to May 31, 1995, and the schedule in paragraphs (a) through (d) of this subsection adjusted by the cabinet.

Section 5. Compliance Procedures. Compliance shall [~~will~~] be determined based upon an engineering analysis by the cabinet of the control system design, control device efficiency, control system capture efficiency, and [~~any~~] other factors that could influence the performance of the system. If [~~so~~] requested by the cabinet, performance tests as specified by the cabinet shall be conducted [~~in order~~] to determine the efficiency of the control device.

Section 6. Monitoring Requirements. If [~~When~~] adsorbers, condensers, incinerators or scrubbers are used to achieve compliance with Section 3 of this regulation, the following monitoring devices shall be an integral part of the control device:

(1) For carbon adsorbers, a monitoring device connected to an alarm device, which indicates carbon bed breakthrough;

(2) For condensers, a temperature sensing device located in the exit gas stream;

(3) For incinerators, temperature sensing devices located in the combustion chamber for thermal incinerators and in the catalyst preheat chamber for catalytic incinerators; and

(4) For scrubbers, flow meters for measuring flow rate of scrubbing medium or pressure drop measuring devices indicating back pressure and pressure drop across the scrubber.

[~~Section 7. Variances. Variation with the standards and limitations contained in this regulation, when supported by adequate technical information, will be considered by the cabinet on a case by case basis to allow for technological or economic circumstances which are unique to a source.~~]

PHILLIP J. SHEPHERD, Secretary
RONALD P. MILLS, Acting Commissioner
APPROVED BY AGENCY: January 7, 1992
FILED WITH LRC: January 15, 1992 at noon
PUBLIC HEARING: A public hearing to receive comments on this proposed regulation and proposed amendments will be conducted on February 28, 1992, at 10 a.m. (ET) in the Auditorium of the State Office Building, Clinton and High Streets, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing: Hisham M. Saaid, Acting Director, Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Hisham M. Saaid

(1) Type and number of entities affected: A review of the division's records indicates that there are no entities presently affected by the amendments to this regulation. The amend-

ments to this regulation have been made to eliminate deviations between state regulations which are a part of the State Implementation Plan (SIP) and U.S. EPA policy, to update the applicability, and to comply with KRS Chapter 13A. The applicability has been updated to be compatible with the Clean Air Act as amended on November 15, 1990. The Clean Air Act eliminates the distinction between rural and urban nonattainment counties. Now minor sources will be controlled in all nonattainment areas except those classified as marginal. The amendments made to comply with KRS Chapter 13A do not impact any sources.

(a) Direct and indirect costs or savings to those affected: There are currently no entities affected by these amendments; therefore, there are no direct or indirect costs or savings.

1. First year: There are no first year costs or savings.

2. Continuing costs or savings: There are no continuing costs or savings.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There are no entities affected by these amendments; therefore, reporting and paperwork requirements are not applicable.

(2) Effects on the promulgating administrative body: There are no entities affected by these amendments; therefore, there are no effects on the promulgating administrative body.

(a) Direct and indirect costs or savings: There are no direct and indirect costs or savings.

1. First year: There are no first year costs or savings.

2. Continuing costs or savings: There are no continuing costs or savings.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There are no entities affected by these amendments; therefore, reporting and paperwork requirements are not applicable.

(3) Assessment of anticipated effect on state and local revenues: There is no effect on state and local revenues because there are no entities affected by these amendments.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were not considered because no basis for an alternative exists since there are no entities affected by these amendments.

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

(a) Necessity of proposed regulation if in conflict: There is no conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no conflict.

(6) Any additional information or comments: The compliance time schedule has been updated to allow for affected facilities which become subject to this regulation on or after the effective date of this regulation. For instance, this situation could occur if the attainment status of a county changes.

TIERING: Was tiering applied? No. There are no entities currently affected by these amendments; therefore, no basis for tiering exists.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Federal policy has changed subsequent to the promulgation of this regulation. The U.S. EPA is requiring these amendments to eliminate deviations between Kentucky's SIP and federal policy. The applicability of this regulation has been updated to be compatible with the Clean Air Act as amended November 15, 1990.

2. State compliance standards. There are no changes in the standards. The federal policy refers to procedures, definitions, etc., to apply the standards.

3. Minimum or uniform standards contained in the federal mandate. The federal policy does not change the standards, but refers to procedures, definitions, etc., to apply the standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This regulation has been amended to eliminate deviations between Kentucky's SIP and federal policy.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There are no stricter standards or additional or different responsibilities or requirements imposed by these amendments.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(Proposed Amendment)

401 KAR 61:155. Existing pneumatic rubber tire manufacturing plants.

RELATES TO: KRS [~~Chapter~~] 224.20-100, 224.20-110, 224.20-120

STATUTORY AUTHORITY: KRS 224.10-100 [~~224.033~~]

NECESSITY AND FUNCTION: KRS 224.10-100 [~~224.033~~] requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement and control of air pollution. This regulation provides for the control of volatile organic compound emissions from existing pneumatic rubber tire manufacturing plants.

[~~Section 1. Applicability. The provisions of this regulation shall apply to each affected facility commenced before the classification date defined below which is located:~~]

[~~(1) In an urban county designated nonattainment for ozone under 401 KAR 51:010; or~~]

[~~(2) In any county which is designated nonattainment or unclassified for ozone under 401 KAR 51:010 and is a part of a major source of volatile organic compounds.~~]

[~~(3) The provisions of this regulation shall not apply to affected facilities in the following counties: Garrard, Graves, Hopkins, Laurel, Montgomery, Nelson, Pulaski, Scott, Taylor, Trigg, and Union prior to designation of such counties nonattainment for ozone under 401 KAR 51:010.~~]

Section 1. [~~2.~~] Definitions. As used in this regulation, all terms not defined in this section [~~herein~~] shall have the meaning given to them in 401 KAR 50:010.

(1) "Affected facility" means undertread cementers, tread end cementers, bead dip tanks, and green tire spray booths associated with the manufacture of pneumatic tires.

(2) "Manufacture of pneumatic rubber tires" means the mass production of pneumatic rubber tires.

(3) "Pneumatic rubber tires" means agricultural, airplane, industrial, mobile home, light and medium duty truck, and passenger vehicle tires of bead diameter up to .51 m (twenty (20) in.) and cross-sectional dimension up to .33 m (twelve and eight-tenths (12.8) in.).

[~~(4) "Volatile organic compounds" means chemical compounds of carbon (excluding methane, ethane, carbon monoxide, carbon dioxide, carbonic acid, metallic carbides, and ammonium carbonate) which have a vapor pressure greater than one tenth (0.1) mm Hg at conditions of twenty (20) degrees Celsius and 760 mm Hg.~~]

(4) [~~(5)~~] "Classification date" means February 4, 1981 [~~the effective date of this regulation~~].

(5) [~~(6)~~] "Water based sprays" means release compounds, sprayed on the inside and outside of green tires, in which solids, water, and emulsifiers have been substituted for organic solvents.

Section 2. Applicability. This regulation shall apply to each affected facility commenced before the classification date defined in Section 1 of this regulation which is located in a county or portion of a county which is designated ozone nonattainment, for any nonattainment classification except marginal, under 401 KAR 51:010.

Section 3. Standard for VOCs [~~Volatile Organic Compounds~~]. The owner or operator of an affected facility shall install, maintain and operate capture and control equipment to achieve the following:

(1) Emissions from undertread cementers, tread end cementers and bead dip tanks shall be reduced by at least seventy-six (76) percent; and

(2) Emissions from green tire spray booths shall be reduced by at least eighty-one (81) percent. This requirement shall not apply [~~is not applicable~~] to green tire spray booths using water based sprays.

Section 4. Compliance. Compliance shall [~~will~~] be determined based upon an engineering analysis by the cabinet of the control system design, control device efficiency, control system capture efficiency, and any other factors that may [~~could~~] influence the performance of the system. If [~~so~~] requested by the cabinet, performance tests [~~as~~] specified by the cabinet shall be conducted [~~in order~~] to determine the efficiency of the control device. Capture efficiency shall be determined by procedures specified in 401 KAR 50:047.

Section 5. Compliance Timetable. (1) Affected facilities which were subject to this regulation as in effect on February 4, 1981, shall have achieved final compliance by December 31, 1982.

(2) The owner or operator of an affected facility that becomes subject to this regulation on or after the effective date of this regulation shall be required to complete the following:

(a) [~~(1) Submit~~] A final control plan for achieving compliance with this regulation shall be submitted no later than three (3) months after the date the affected facility becomes subject to this regulation [~~April 15, 1981~~].

(b) [~~(2) Award~~] The control system contract shall be awarded no later than five (5) months after the date the affected facility becomes subject to this regulation [~~June 15, 1981~~].

(c) [~~(3) Initiate~~] On-site construction or installation of emission control equipment shall be initiated no later than seven (7) months after the date the affected facility becomes subject to this regulation [~~December 1, 1981~~].

(d) [~~(4)~~] On-site construction or installation of emission control equipment shall be completed no later than eleven (11) months after the date the affected facility becomes subject to this regulation [~~December 1, 1982~~].

(e) [~~(5)~~] Final compliance shall be achieved no later than twelve (12) months after the date the affected facility becomes subject to this regulation [~~December 31, 1982~~].

(f) If an affected facility becomes subject to this regulation because it is located in a county previously designated nonurban nonattainment or redesignated in 401 KAR 51:010 after November 15, 1990, final compliance may be extended to May 31, 1995, and the schedule in paragraphs (a) through (d) of this subsection adjusted by the cabinet.

[~~Section 6. Variances. Variation with the standards and limitations contained in this regulation, when supported by adequate technical information, will be considered by the cabinet on a case by case basis to allow for technological or economic circumstances which are unique to a source.~~]

PHILLIP J. SHEPHERD, Secretary
RONALD P. MILLS, Acting Commissioner
APPROVED BY AGENCY: January 7, 1992
FILED WITH LRC: January 15, 1992 at noon

PUBLIC HEARING: A public hearing to receive comments on this proposed regulation and proposed amendments will be conducted on February 28, 1992, at 10 a.m. (ET) in the Auditorium of the State Office Building, Clinton and High Streets, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing: Hisham M. Saaid, Acting Director, Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Hisham M. Saaid

(1) Type and number of entities affected: A review of the division's records indicates that there are no entities presently affected by the amendments to this regulation. The amendments to this regulation have been made to eliminate deviations between state regulations which are a part of the state implementation plan (SIP) and U.S. EPA policy; to update the applicability; and to comply with KRS Chapter 13A. The applicability has been updated to be compatible with the requirements of the Clean Air Act as amended November 15, 1990. The Clean Air Act eliminates the distinction between rural and urban nonattainment counties. Formerly, minor sources were controlled only in urban nonattainment counties. Now minor sources will be controlled in all nonattainment areas except those classified as marginal. The amendments made to comply with KRS Chapter 13A do not impact any sources.

(a) Direct and indirect costs or savings to those affected: There are currently no entities affected by these amendments; therefore, there are no direct or indirect costs or savings to those affected.

1. First year: There are no first year costs or savings.

2. Continuing costs or savings: There are no continuing costs or savings.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There are no entities affected by these amendments; therefore, reporting and paperwork requirements are not applicable.

(2) Effects on the promulgating administrative body: There are no entities affected by these amendments; therefore, there are no effects on the promulgating administrative body.

(a) Direct and indirect costs or savings: There are no direct and indirect costs or savings.

1. First year: There are no first year costs or savings.

2. Continuing costs or savings: There are no continuing costs or savings.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There are no entities affected by these amendments; therefore, reporting and paperwork requirements are not applicable.

(3) Assessment of anticipated effect on state and local revenues: There is no effect on state and local revenues because there are no entities affected by these amendments.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were not considered because no basis for an alternative exists since there are currently no entities affected by these amendments.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no entities affected by these amendments. Conflict exists between this regulation and 401 KAR 50:016, Policies incorporated by reference. The conflict is in the capture efficiency procedures. This regulation references the new capture efficiency procedures required by the U.S. EPA which will take precedence over the old U.S. EPA capture efficiency procedures contained in 401 KAR 50:016.

(a) Necessity of proposed regulation if in conflict: This regulation references 401 KAR 50:047, Test procedures for

capture efficiency. 401 KAR 50:047 requires the U.S. EPA's new capture efficiency protocols. 401 KAR 50:016 requires the previous U.S. EPA capture efficiency procedure.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: 401 KAR 50:016 will be amended or repealed to eliminate the conflict. 401 KAR 50:016 is not part of Kentucky's SIP, therefore, amending only 401 KAR 50:016 would not satisfy the deviation between EPA's new policy and Kentucky's SIP.

(6) Any additional information or comments: The compliance time schedule has been updated to allow for affected facilities which become subject to this regulation on or after the effective date of this regulation. For instance, this situation could occur if the attainment status of a county changes.

TIERING: Was tiering applied? No. There are no entities currently affected by these amendments; therefore, no basis for tiering exists.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Federal policy has changed subsequent to the promulgation of this regulation. The U.S. EPA is requiring these amendments to eliminate deviations between Kentucky's state implementation plan and federal policy. The applicability of this regulation has been updated to be compatible with the Clean Air Act as amended November 15, 1990.

2. State compliance standards. There are no changes in the standards. The federal policy refers to procedures, calculations, etc., to apply the standards.

3. Minimum or uniform standards contained in the federal mandate. The federal policy does not change the standards, but refers to procedures, calculations, etc., to apply the standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This regulation has been amended to eliminate deviations between Kentucky's state implementation plan and federal policy.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There are no stricter standards or additional or different responsibilities or requirements imposed by these amendments.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(Proposed Amendment)

401 KAR 61:160. Existing perchloroethylene dry cleaning systems.

RELATES TO: KRS [~~Chapter~~] 224.20-100, 224.20-110, 224.20-120

STATUTORY AUTHORITY: KRS 224.10-100 [~~224.033~~]

NECESSITY AND FUNCTION: KRS 224.10-100 [~~224.033~~] requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement and control of air pollution. This regulation provides for the control of volatile organic compound emissions from existing perchloroethylene dry cleaning systems.

[~~Section 1. Applicability. The provisions of this regulation shall apply to each affected facility commenced before the classification date defined below which is located:~~]

[~~(1) In an urban county designated nonattainment for ozone under 401 KAR 51:010; or~~]

[~~(2) In any county which is designated nonattainment or unclassified for ozone under 401 KAR 51:010 and is a part of a major source of volatile organic compounds.~~]

[~~(3) The provisions of this regulation shall not apply to affected facilities in the following counties: Garrard, Graves, Hopkins, Laurel, Montgomery, Nelson, Pulaski, Scott, Taylor, Trigg, and Union prior to designation of such counties nonattainment for ozone under 401 KAR 51:010.~~]

Section 1. [~~2.~~] Definitions. As used in this regulation, all terms not defined in this section [~~herein~~] shall have the meaning given to them in 401 KAR 50:010.

(1) "Affected facility" means dry cleaning systems which use perchloroethylene.

(2) "Dry cleaning system" means a series of equipment [~~and~~/]or operations which includes, but is not limited to washer, dryer, filter and purification systems, waste disposal systems, holding tanks, pumps, and attendant piping and valves used for the purpose of commercial cleaning of fabrics.

[~~(3) "Volatile organic compounds" means chemical compounds of carbon (excluding methane, ethane, carbon monoxide, carbon dioxide, carbonic acid, metallic carbides, and ammonium carbonate) which have a vapor pressure greater than one tenth (0.1) mm Hg at conditions of twenty (20) degrees Celsius and 760 mm Hg.~~]

(3) [~~(4)~~] "Classification date" means February 4, 1981 [~~the effective date of this regulation~~].

Section 2. Applicability. This regulation shall apply to each affected facility commenced before the classification date defined in Section 1 of this regulation which is located in a county or portion of a county which is designated ozone nonattainment, for any nonattainment classification except marginal, under 401 KAR 51:010.

Section 3. Standard for VOCs [~~Volatile Organic Compounds~~]. The owner or operator of an affected facility shall install, maintain and operate the control equipment such that the following requirements are met:

(1) There shall be no liquid leakage of organic solvents from the system.

(2) The entire dryer exhaust shall be vented through a properly functioning carbon adsorber or equally effective control device.

(3) The maximum organic solvent concentration in the vent from the dryer control device shall not exceed 100 ppm before dilution.

(4) Filter and distillation wastes.

(a) The residue from a [~~any~~] diatomaceous earth filter shall be cooked or treated so that wastes shall not contain more than twenty-five (25) kg of solvent per 100 kg of wet waste material.

(b) The residue from a solvent still shall not contain more than sixty (60) kg of solvent per 100 kg of wet waste material.

(c) Filtration cartridges shall be drained in the filter housing for at least twenty-four (24) hours before being discarded. The drained cartridges shall be dried in the dryer tumbler after draining.

(d) Any other filtration or distillation system may [~~can~~] be used if equivalency to these requirements is demonstrated. A [~~Any~~] system reducing waste losses below one (1) kg solvent per 100 kg clothes cleaned shall [~~will~~] be considered equivalent.

Section 4. Compliance. (1) Liquid leakage shall be determined by visual inspection of the following sources:

(a) Hose connections, unions, couplings and valves;
(b) Machine door gasket and seating;
(c) Filter head gasket and seating;
(d) Pumps;
(e) Base tanks and storage containers;
(f) Water separators;
(g) Filter sludge recovery operations;
(h) Distillation units;
(i) Diverter valves;

(j) Saturated lint from lint basket; and
(k) Cartridge filters.
(2) Dryer exhaust concentration shall be determined by the proper installation, operation, and maintenance of approved equipment as determined by the cabinet or by performance tests specified by the cabinet.
(3) The amount of solvent in filter and distillation wastes shall be determined by ASTM D 322-67(77), and substituting collector C from ASTM E 123-78. ASTM Methods have been incorporated [~~are filed~~] by reference in 401 KAR 50:015.

Section 5. Compliance Timetable. (1) Affected facilities which were subject to this regulation as in effect on February 4, 1981, shall have achieved final compliance by December 31, 1982.
(2) The owner or operator of an affected facility that becomes subject to this regulation on or after the effective date of this regulation shall be required to complete the following:
(a) [~~(1)~~] Submit a final control plan for achieving compliance with this regulation no later than three (3) months after the date the affected facility becomes subject to this regulation [~~April 15, 1981~~].
(b) [~~(2)~~] Award the control system contract no later than five (5) months after the date the affected facility becomes subject to this regulation [~~June 15, 1981~~].
(c) [~~(3)~~] Initiate on-site construction or installation of emission control equipment no later than seven (7) months after the date the affected facility becomes subject to this regulation [~~December 1, 1981~~].
(d) [~~(4)~~] On-site construction or installation of emission control equipment shall be completed no later than eleven (11) months after the date the affected facility becomes subject to this regulation [~~December 1, 1982~~].
(e) [~~(5)~~] Final compliance shall be achieved no later than twelve (12) months after the date the affected facility becomes subject to this regulation [~~December 31, 1982~~].
(f) If an affected facility becomes subject to this regulation because it is located in a county previously designated nonurban nonattainment or redesignated in 401 KAR 51:010 after November 15, 1990, final compliance may be extended to May 31, 1995, and the schedule in paragraphs (a) through (d) of this subsection adjusted by the cabinet.

Section 6. Exemptions. Perchloroethylene dry cleaning facilities which are coin-operated shall be exempt from this regulation.

Section 7. Variances. Variation with the standards and limitations contained in this regulation, if [~~when~~] supported by adequate technical information, may [~~will~~] be considered by the cabinet on a case-by-case basis to allow for technological or economic circumstances which are unique to a source. Case-by-case alternatives approved by the cabinet, but not previously authorized by the U.S. EPA, shall be submitted to the U.S. EPA as a SIP revision.

PHILLIP J. SHEPHERD, Secretary
APPROVED BY AGENCY: January 7, 1992
FILED WITH LRC: January 15, 1992 at noon
PUBLIC HEARING: A public hearing to receive comments on this proposed regulation and proposed amendments will be conducted on February 28, 1992, at 10 a.m. (ET) in the Auditorium of the State Office Building, Clinton and High Streets, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing: Kenneth M. Hines, Manager, Program Planning and Administration Branch, Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Hisham M. Saaid

(1) Type and number of entities affected: A review of the division's records indicates that there are currently 21 entities under this regulation for dry cleaners. The amendments to this regulation have been made in response to 3 requirements. The first requirement is to eliminate deviations between state regulations which are a part of the State Implementation Plan (SIP) and U.S. EPA policy. The second is to update the applicability to be compatible with the requirements of the Clean Air Act as amended November 15, 1990. The third is to comply with KRS Chapter 13A. The impacts of these amendments to the 21 sources are minimal. However, the Clean Air Act amendments eliminate the distinction between urban and nonurban ozone nonattainment areas. Previously, for example, minor sources in Boone, Campbell, and Kenton Counties (an urban nonattainment area) were subject to this regulation while similar sources in Boyd County (a nonurban nonattainment area) were not. The amendments will eliminate that distinction. This will make minor sources in Boyd County subject to this regulation. Further the Clean Air Act amendments define 5 classifications of nonattainment. The redesignation of a county from attainment to any of the nonattainment classifications, except marginal nonattainment, would make additional entities subject to this regulation. Sources which become subject to this regulation because of the changes in applicability required by the Clean Air Act amendments shall achieve final compliance by May 31, 1995.
(a) Direct and indirect costs or savings to those affected: If Kentucky does not make the federally required amendments to this regulation, the U.S. EPA will promulgate the requirements in federal regulation. There are no additional costs associated with complying with the state's regulation over complying with the same requirements in a federal regulation.
1. First year: There are no costs or savings associated with KRS Chapter 13A amendments. The costs or savings due to the SIP deviations' amendments are minimal. The applicability amendment required by the Clean Air Act will bring additional sources under this regulation for the first time. The number of entities will not be known until the redesignations of nonattainment status for individual counties or portions of counties have been made. A full cost analysis for the initial and continuing impact of this regulation was originally given in the U.S. EPA document EPA-450/2-78-050, pages 4-1 through 4-8, December 1978. 5 different sized facilities were analyzed. For example, for the model 11 kg/load commercial plant the total installed capital cost for a carbon adsorber was estimated to be $3200, the net annualized cost $500/year, and the cost per kilogram of hydrocarbon controlled 31¢/kg controlled. Large industrialized units of 114 kg/load were predicted a savings of 41¢/kg controlled. Although inflation can be taken into consideration, the size of the entities affected is not available for an accurate evaluation. A typical cost multiplier factor for 1978 to 1991 is 1.7. This means that 1978 costs should be multiplied by 1.7 to obtain 1991 costs.
2. Continuing costs or savings: Please see discussion under first year, 1. above.
3. Additional factors increasing or decreasing costs (note any effects upon competition): Sources in nonattainment areas (except marginal nonattainment) are subject to this regulation, while sources in attainment areas are not.
(b) Reporting and paperwork requirements: There are no additional reporting and paperwork requirements.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: The division will review and process permits for sources newly affected. Costs will be recovered by a permit fee.
2. Continuing costs or savings: The division presently inspects all permitted sources of air pollutants and maintains plant and emissions data for emissions inventory purposes. Such activities are part of the division's normal day-to-day operations and are budgeted accordingly. Any newly affected source will be inspected and the cost will be absorbed as a

part of the operating budget.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The division will review and issue permits for newly affected sources and will issue reports of inspections and emissions data as in 1. and 2. above.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered since these amendments contain the same provisions as the federal requirements.

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

(a) Necessity of proposed regulation if in conflict: There is no conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no conflict.

(6) Any additional information or comments: These amendments were made in response to the 3 requirements discussed under (1) above.

TIERING: Was tiering applied? No. The amendments eliminate deviations between the SIP and federal requirements. The amendments are being made to a regulation in which tiering already applies.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Clean Air Act as amended November 15, 1990.

2. State compliance standards. These amendments change the applicability and eliminate the deviations between Kentucky's SIP and U.S. EPA policy, but do not change the standards.

3. Minimum or uniform standards contained in the federal mandate. These amendments do not change the standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. These amendments are proposed to eliminate deviations from U.S. EPA policy and the Clean Air Act.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The proposed amendments do not impose stricter standards, or additional or different responsibilities or requirements.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(Proposed Amendment)

401 KAR 61:175. Leaks from existing synthetic organic chemical and polymer manufacturing equipment.

RELATES TO: KRS 224.20-100, 224.20-110, 224.10-120 [~~224.320, 224.330, 224.340~~]

STATUTORY AUTHORITY: KRS 224.10-100 [~~224.033~~]

NECESSITY AND FUNCTION: KRS 224.10-100 [~~224.033~~] requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement and control of air pollution. This regulation provides for the control of volatile organic compound emissions from leaks from existing synthetic organic chemical and polymer manufacturing equipment.

[~~Section 1. Applicability. (1) The provisions of this regulation shall apply to each affected facility commenced on or before the classification date defined below which is located in any county designated nonattainment for ozone under 401 KAR 51:010. The provisions of this regulation shall continue to apply to these affected facilities if the area is redesignated to attainment or unclassified status in 401 KAR 51:010 or 40 CFR 81.318, unless a state implementation plan which provides for other controls is approved by the U.S. EPA.~~]

[~~(2) The provisions of this regulation shall not apply to components within a petroleum refinery complex. Leaks from new and existing petroleum refinery equipment shall be regulated by 401 KAR 59:049 and 401 KAR 61:137, respectively.~~]

Section 1. [~~2.~~] Definitions. As used in this regulation, all terms not defined in this section [~~herein~~] shall have the meaning given to them in 401 KAR 50:010.

(1) "Affected facility" means each individual component which contacts a process fluid that contains greater than ten (10) percent volatile organic compounds (VOCs) by weight within a synthetic organic chemical manufacturing plant or polymer manufacturing plant.

(2) "Component" means a piece of equipment, including but not limited to pumps, valves, compressors, and pressure relief valves, which has the potential to leak VOCs [~~volatile organic compounds~~].

(3) "Synthetic organic chemical manufacturing plant" means facilities which operate equipment in process units to manufacture methyl tert-butyl ether or one (1) or more of the synthetic organic chemicals listed [~~in 40 CFR 60, Subpart VV, filed by reference~~] in 401 KAR 59:305.

(4) "Polymer manufacturing plant" means a facility [~~facilities~~] which operate equipment in process units to manufacture polyethylene, [~~or~~] polypropylene, or polystyrene.

(5) "Leak" means the presence of a VOC [~~volatile organic compound~~] concentration exceeding 10,000 ppm by volume if [~~when~~] tested in the manner referenced in Section 5 of this regulation.

(6) "Gas service" means that the VOC [~~volatile organic compound~~] is gaseous at conditions that prevail in the component during normal operations.

(7) "In light liquid service" means that the component contacts a liquid with a concentration greater than twenty (20) percent by weight of VOCs [~~volatile organic compounds~~] having a vapor pressure greater than three-tenths (0.3) kilopascals at twenty (20) degrees Celsius.

(8) "Light liquid" means a liquid with a concentration greater than twenty (20) percent by weight of VOCs [~~volatile organic compounds~~] having a vapor pressure greater than three-tenths (0.3) kilopascals at twenty (20) degrees Celsius.

(9) "Heavy liquid" means a fluid which is not in the gaseous state at operating conditions or which is not a light liquid.

(10) "Process unit" means components assembled to manufacture, as intermediate or final products, one (1) or more of the chemicals referenced in subsections (3) and (4) of this section. A process unit can operate independently if it is supplied with sufficient feed or raw materials and sufficient storage facilities for the product.

[~~(11) "Volatile organic compounds (VOC)" means chemical compounds of carbon (excluding methane, ethane, carbon monoxide, carbon dioxide, carbonic acid, metallic carbides, and ammonium carbonate) which have a vapor pressure greater than one tenth (0.1) mm Hg at conditions of twenty (20) degrees Celsius and 760 mm Hg.~~]

(11) [~~(12)~~] "Classification date" means January 5, 1981.

Section 2. Applicability. (1) This regulation shall apply to each affected facility commenced on or before the classification date defined in Section 1 of this regulation which is located in a county or portion of a county which is designated ozone nonattainment, for any nonattainment classification except marginal, under 401 KAR 51:010.

(2) This regulation shall not apply to components within a petroleum refinery complex. Leaks from new and existing petroleum refinery equipment shall be regulated by 401 KAR 59:049 and 401 KAR 61:137, respectively.

Section 3. Standard for VOCs [~~Volatile Organic Compounds~~]. (1) If an [~~When any~~] affected facility within the manufacturing plant is found to be leaking, the owner or operator shall repair the leak within fifteen (15) days. A component recheck shall be made within five (5) days after repair. If the leak is still present or a new leak is created by the repair, further maintenance shall be performed until the VOC [~~volatile organic compound~~] emission drops below the screening value (10,000 ppm by volume).

(2) Any time a valve is located at the end of a pipe or line containing VOCs [~~volatile organic compounds~~], the owner or operator shall seal the end of the line with a second valve, a blind flange, a plug, or a cap. This sealing device may be removed only when a sample is being taken or during maintenance operations. This requirement shall [~~does~~] not apply to safety pressure relief valves.

Section 4. Monitoring and Reporting Requirements. The owner or operator shall conduct [~~such~~] monitoring of affected facilities and submit records as specified below:

(1) The operator shall perform component monitoring using the method referenced in Section 5 of this regulation as follows:

(a) Monitor with a portable VOC [~~volatile organic compound~~] detection device four (4) times per year (quarterly) pumps in light liquid service, compressors, valves in light liquid service, valves in gas service, and pressure relief valves in gas service.

(b) Monitor visually fifty-two (52) times per year (weekly) pumps in light liquid service. Each pump shall be repaired within fifteen (15) days after visual inspection indicates it is leaking.

(c) Monitor with a portable VOC [~~volatile organic compound~~] detection device a pressure relief valve within five (5) days after it has vented to the atmosphere. Pressure relief devices which are tied in to either a flare header or vapor recovery device shall be exempt from the monitoring requirements.

(d) Monitor with a portable VOC [~~volatile organic compound~~] detection device within five (5) days of discovery, a [~~any~~] component whose sight, smell, or sound indicates that it might be leaking.

(e) Difficult or unsafe-to-monitor components shall be exempt from [~~the provisions of~~] this subsection, however these [~~such~~] components shall meet the requirements for difficult or unsafe-to-monitor valves as specified in 401 KAR 59:305 [~~40 CFR 60, Subpart VV~~].

(2) Pipeline valves and pressure relief valves for gas service shall be marked or noted so that their location is readily obvious to both the operator performing the monitoring and the cabinet.

(3) When a leak is located, a weatherproof and readily visible tag bearing an identification number and the date the leak is located shall be affixed to the leaking component. The location, tag number, date, and stream composition of the leak shall also be noted on a survey log. When the leak is repaired, the date of repair and date and detector reading of component recheck after maintenance shall be entered in the survey log and the tag discarded. The operator shall retain the survey log for two (2) years after the inspection is completed. The survey log shall be made available to the cabinet upon request.

(4) After quarterly monitoring has been performed the operator shall submit a report to the cabinet listing all leaks that were located but not repaired within the fifteen (15) day limit and a signed statement attesting to the fact that all monitoring has been performed as stipulated in the control plan. Leaks that cannot be repaired within fifteen (15) days [~~as determined by the cabinet~~] shall be repaired during the next scheduled turnaround. If the cabinet requests it, the owner or operator shall demonstrate to the cabinet's satisfaction why the repairs could not be completed within the initial fifteen (15) day period. If the leak is [~~, or if~~] unable to be brought into compliance, a variance shall be requested which the cabinet may grant on an individual basis, based upon a showing which is satisfactory to the cabinet. Case-by-case alternatives approved by the cabinet, but not previously authorized by the U.S. EPA, shall be submitted to the U.S. EPA as a SIP revision.

Section 5. Test Methods and Procedures. (1) Except as provided for in 401 KAR 50:045, Reference Method 21, which has been incorporated [~~filed~~] by reference in 401 KAR 50:015, shall be used to determine compliance with the standard prescribed in Section 3 of this regulation and the monitoring requirements in Section 4 of this regulation.

(2) The owner or operator may elect to use alternate monitoring methods if it can be demonstrated to the cabinet's satisfaction that the alternate methods shall [~~will~~] achieve equivalent control efficiency.

Section 6. Compliance Timetable. (1) Affected facilities which were subject to this regulation as in effect on December 2, 1986, shall have achieved final compliance by January 1, 1988.

(2) The owner or operator of an affected facility that becomes subject to this regulation on or after the effective date of this regulation shall complete the following:

(a) [~~(1)~~] Submit a final control plan for achieving compliance with this regulation no later than six (6) months after the date the affected facility becomes subject to this regulation [~~April 1, 1987~~].

(b) [~~(2)~~] Final compliance shall be achieved no later than twelve (12) months after the date the affected facility becomes subject to this regulation [~~January 1, 1988~~].

(c) If an affected facility becomes subject to this regulation because it is located in a county previously designated nonurban nonattainment or redesignated in 401 KAR 51:010 after November 15, 1990, final compliance may be extended to May 31, 1995, and the schedule in paragraphs (a) and (b) of this subsection adjusted by the cabinet.

Section 7. Exemptions. (1) [~~Any~~] Process units which process only heavy liquid VOC shall be exempt from [~~the provisions of~~] Section 4 of this regulation.

(2) Equipment operating under a vacuum shall be exempt from [~~the provisions of~~] this regulation.

(3) [~~Any group of all~~] Affected facilities within a process unit that has the design capacity to manufacture less than 1,000 megagrams per year of polyethylene, polypropylene, polystyrene, methyl tert-butyl ether, or one (1) or more of the synthetic organic chemicals listed in 401 KAR 59:305 [~~40 CFR 60, Subpart VV~~], shall be exempt from [~~the provisions of~~] this regulation.

(4) [~~Any group of all~~] Affected facilities within a process unit that manufactures beverage alcohol shall be exempt from [~~the provisions of~~] this regulation.

Section 8. [~~Variances and~~] Modifications. (1) If, after at least one (1) complete annual check, the operator determines that modifications of the monitoring requirements are in order, he may request in writing to the cabinet that a revision to the monitoring requirements be made. The submittal shall include data that have been developed to justify [~~any~~] modifications in the monitoring schedule. The cabinet may grant this [~~such a~~] revision to the monitoring requirements based upon a showing which is satisfactory to the cabinet.

(2) An owner or operator may elect to comply with the alternative standards for valves contained in 401 KAR 59:305. In 401 KAR 59:305 under skip period leak detection and repair alternative for valves, the phrase "60.482-7" shall be

read as "Section 4 of this regulation". [~~40 CFR 60, Subpart VV. In the skip period leak detection and repair alternative for valves contained in 40 CFR 60.483-2, "60.482-7" shall be read as "Section 4 of this regulation."~~]

[~~(3) Variation with the standards and limitations contained in this regulation, when supported by adequate technical information will be considered by the cabinet on a case by case basis to allow for technological or economic circumstances which are unique to a source.~~]

PHILLIP J. SHEPHERD, Secretary
RONALD P. MILLS, Acting Commissioner
APPROVED BY AGENCY: January 7, 1992
FILED WITH LRC: January 15, 1992 at noon
PUBLIC HEARING: A public hearing to receive comments on this proposed regulation and proposed amendments will be conducted on February 28, 1992, at 10 a.m. (ET) in the Auditorium of the State Office Building, Clinton and High Streets, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing: Kenneth M. Hines, Manager, Program Planning and Administration Branch, Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Hisham M. Saaid
(1) Type and number of entities affected: A review of the division's records indicates that there are no entities presently affected by the amendments to this regulation. The amendments to this regulation have been made to eliminate deviations between state regulations which are a part of the SIP and U.S. EPA policy, to update the applicability, and to comply with KRS Chapter 13A. The applicability has been updated to be compatible with the Clean Air Act as amended on November 15, 1990. The Clean Air Act eliminates the distinction between rural and urban nonattainment counties. Formerly, minor sources were controlled only in urban nonattainment counties. Now minor sources will be controlled in all nonattainment areas except those classified as marginal. The amendments made to comply with KRS Chapter 13A do not impact any sources.
(a) Direct and indirect costs or savings to those affected: There are currently no entities affected by these amendments; therefore, there are no direct and indirect costs or savings.
1. First year: There are no first year costs or savings.
2. Continuing costs or savings: There are no continuing costs or savings.
3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors increasing or decreasing costs.
(b) Reporting and paperwork requirements: There are no entities affected by these amendments; therefore, reporting and paperwork requirements are not applicable.
(2) Effects on the promulgating administrative body: There are no entities affected by these amendments; therefore, there are no effects on the promulgating administrative body.
(a) Direct and indirect costs or savings: There are no direct or indirect costs or savings.
1. First year: There are no first year costs or savings.
2. Continuing costs or savings: There are no continuing costs or savings.
3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.
(b) Reporting and paperwork requirements: There are currently no entities affected by these amendments; therefore, reporting and paperwork requirements are not applicable.
(3) Assessment of anticipated effect on state and local revenues: There is no effect on state and local revenues because there are no entities affected by these amendments.
(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were not considered because there are currently no entities affected by these amendments; therefore, no basis for an alternative exists.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflict, overlapping, or duplication.
(a) Necessity of proposed regulation if in conflict: There is no conflict.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no conflict.
(6) Any additional information or comments: The compliance time schedule has been updated to allow for affected facilities which become subject to this regulation on or after the effective date of this regulation. For instance, this situation could occur if the attainment status of a county changes.
TIERING: Was tiering applied? No. There are no entities affected by these amendments; therefore, no basis for tiering exists.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Federal policy has changed subsequent to the promulgation of this regulation. The U.S. EPA is requiring these amendments to eliminate deviations between Kentucky's SIP and federal policy. The applicability of this regulation has been updated to be compatible with the Clean Air Act as amended on November 15, 1990.
2. State compliance standards. There are no changes in the standards. The federal policy refers to procedures, definitions, etc., to apply the standards.
3. Minimum or uniform standards contained in the federal mandate. The federal policy does not change the standards, but refers to procedures, definitions, etc., to apply the standards.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This regulation has been amended to eliminate deviations between Kentucky's SIP and federal policy.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There are no stricter standards or additional or different responsibilities or requirements imposed by these amendments.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(Proposed Amendment)

401 KAR 63:025. Asphalt paving operations.

RELATES TO: KRS [~~Chapter~~] 224.20-100, 224.20-110, 224.20-120
STATUTORY AUTHORITY: KRS 224.10-100 [~~224.033~~]
NECESSITY AND FUNCTION: KRS 224.10-100 [~~224.033~~] requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides for the control of volatile organic compound emissions due to asphalt paving operations.

[~~Section 1. Applicability. This regulation is applicable to all asphalt paving operations which are located:~~]
[~~(1) In an urban county designated nonattainment for ozone under 401 KAR 51:010; or~~]
[~~(2) In any county which has in excess of 100 tons/year volatile organic compound emissions from asphalt paving operations and is designated nonattainment or unclassified for ozone.~~]

Section 1. [2.] Definitions. Terms used in this regulation not defined in this section [herein] shall have the meaning given to them in 401 KAR 50:010.

(1) "Asphalt paving operations" means the use of asphalt in any paving operation, public or private, including, but not limited to paving of roads, paving of parking lots, maintenance operations, application of tack coats, sealants, etc.

(2) "Asphalt" means a dark brown to black cementitious material (solid, semisolid, or liquid in consistency) in which the predominating constituents are bitumens which occur in nature as such or which are obtained as residue in refining petroleum.

(3) "Cutback asphalt" means asphalt cement which has been liquefied by blending with volatile organic compounds VOCs as diluents [(diluents)]. Upon exposure to atmospheric conditions the diluents evaporate, leaving the asphalt cement to perform its function.

(4) "Emulsified asphalt" means an emulsion of asphalt cement, VOCs [volatile organic compounds], and water which contains a small amount of an emulsifying agent; a heterogeneous system containing two (2) normally immiscible phases (asphalt and water) in which the water forms the continuous phase of the emulsion, and minute globules of asphalt form the discontinuous phase.

(5) "Maintenance operation" means patching of holes and breaks in pavement as is necessary for safety.

(6) "Penetrating prime coat" means an application of low-viscosity liquid asphalt to an absorbent surface. It is used to prepare an untreated base for an asphalt surface. The prime penetrates the base and plugs the voids, hardens the top, and helps bind it to the overlying asphalt course. It also reduces the necessity of maintaining an untreated base course prior to placing the asphalt pavement.

(7) "Unacceptable emulsion asphalt" means any emulsion asphalt which yields more than seven (7) percent by volume of oil distillate when tested according to AASHTO T 59-78, Sections 7 to 9, which have been incorporated [filed] by reference in 401 KAR 50:015.

[(8) "Volatile organic compounds" means chemical compounds of carbon (excluding methane, ethane, carbon monoxide, carbon dioxide, carbonic acid, metallic carbides, and ammonium carbonate) which have a vapor pressure greater than one tenth (.1) mm Hg at conditions of twenty (20) degrees Celsius and 760 mm Hg.]

Section 2. Applicability. This regulation is applicable to all asphalt paving operations which are located in a county or portion of a county which is designated ozone nonattainment, for any nonattainment classification except marginal, under 401 KAR 51:010.

Section 3. Standard for VOCs [Volatile Organic Compounds]. On or after April 1, 1980, no person shall use[, or sell for use, manufacture, mix, or store] cutback asphalts or unacceptable emulsion asphalts for asphalt paving operations. If this requirement becomes applicable because the county was previously designated nonurban nonattainment or redesignated in 401 KAR 51:010 after November 15, 1990, compliance is extended to May 31, 1995.

Section 4. Exemptions. [The provisions of] This regulation shall not apply to the following asphalt paving operations:

(1) Application of penetrating prime coat;

(2) Dust suppression operations;

(3) Maintenance operations during the months of November, December, January, February and March.

PHILLIP J. SHEPHERD, Secretary
RONALD P. MILLS, Acting Commissioner
APPROVED BY AGENCY: January 7, 1992
FILED WITH LRC: January 15, 1992 at noon
PUBLIC HEARING: A public hearing to receive comments on this proposed regulation and proposed amendments will be conducted on February 28, 1992, at 10 a.m. (ET) in the Auditorium of the State Office Building, Clinton and High Streets, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing: Kenneth M. Hines, Manager, Program Planning and Administration Branch, Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Hisham M. Saaid

(1) Type and number of entities affected: This regulation affects all asphalt paving operations which are located in a county or portion of a county which is designated ozone nonattainment for any nonattainment classification except marginal. The amendments to this regulation have been made to eliminate deviations between state regulations which are a part of the state implementation plan (SIP) and U.S. EPA policy; to update the applicability; and to comply with KRS Chapter 13A. The definition for volatile organic compounds has been changed to eliminate a SIP deviation. The applicability has been updated to be compatible with the requirements of the Clean Air Act as amended November 15, 1990. The Clean Air Act eliminates the distinction between rural and urban nonattainment counties. Formerly, minor sources were controlled only in urban nonattainment counties. Now minor sources will be controlled in all nonattainment areas except those classified as marginal. The amendments made to comply with KRS Chapter 13A do not impact any sources.

(a) Direct and indirect costs or savings to those affected: If Kentucky does not make the federally required amendments to this regulation, the U.S. EPA will promulgate the requirements in federal regulations. There are no additional costs associated with complying with the state's regulation over complying with the same requirements in a federal regulation.

1. First year: The applicability amendment required by the Clean Air Act will bring additional paving operations under this regulation for the first time. Boyd county will now be under this regulation. Other newly affected paving operations will not be known until the redesignations of nonattainment status for individual counties or portions of counties have been made. The costs of applying the technology were originally given in the U.S. EPA document EPA-450/2-77-037, pages 3-1 through 3-2, December 1977. The cost of emulsified asphalt was 33.75 cents per gallon versus 36.92 cents per gallon for cutback. Today's costs are on the order of 50 cents per gallon for emulsified asphalt versus 75 cents per gallon for cutback asphalt. According to the U.S. EPA document, each gallon of cutback in the total asphalt mix is normaliy replaced with one gallon of emulsion; and most state highways reported a savings as a result of the substitution of emulsions.

2. Continuing costs or savings: Please see discussion under first year, 1, above.

3. Additional factors increasing or decreasing costs (note any effects upon competition): Paving operations in nonattainment areas (except marginal nonattainment) are subject to this regulation, while paving operations in attainment areas are not.

(b) Reporting and paperwork requirements: Reporting and paperwork requirements are not applicable.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The requirements of these amendments are part of the division's normal day-to-day operations and are budgeted accordingly.

2. Continuing costs or savings: The requirements of these amendments are part of the division's normal day-to-day operations and are budgeted accordingly.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There are no additional reporting and paperwork requirements beyond normal operating procedures.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered since these amendments contain the same provisions as federal requirements.

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

(a) Necessity of proposed regulation if in conflict: There is no conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no conflict.

(6) Any additional information or comments: These amendments were made in response to federal requirements.

TIERING: Was tiering applied? No. These amendments were made in response to federal requirements. There is no federal cutoff level.

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 affects any division of local government which conducts asphalt paving operations which are located in a county or portion of a county which is designated ozone nonattainment, for any nonattainment classification except marginal.

3. State the aspect or service of local government to which this administrative regulation relates. This regulation relates to asphalt paving operations. Asphalt paving operations are defined in Section 1(1) of this amended regulation.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This regulation prohibits the use of cutback asphalt in certain areas which are not achieving the ozone standard. This results in the substitution of emulsified asphalt. The cost of emulsified asphalt is approximately 50 cents per gallon as compared to 75 cents per gallon for cutback asphalt. A savings is, therefore, anticipated.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Clean Air Act as amended November 15, 1990.

2. State compliance standards. These amendments change the applicability and eliminate the deviations between Kentucky's SIP and U.S. EPA policy. The standard in Section 3 has been amended to restrict only the use of asphalt and, therefore, be compatible with the federal guidance referenced in 3 below.

3. Minimum or uniform standards contained in the federal mandate. The federal guidance is given in the control techniques guidelines (CTG) document, "Control of Volatile Organic Compounds from Use of Cutback Asphalt," EPA-450/2-77-037, December 1977, and limits the use of cutback asphalt.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. These amendments are proposed to eliminate deviations from U.S. EPA policy and the Clean Air Act.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The proposed amendments do not impose stricter standards, or additional or different responsibilities or requirements.

CORRECTIONS CABINET
(Proposed Amendment)

501 KAR 6:030. Kentucky State Reformatory.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

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

Section 1. Pursuant to the authority vested in the Corrections Cabinet the following policies and procedures, revised January 15, 1992 [~~November 15, 1991~~], are incorporated by reference and shall be referred to as Kentucky State Reformatory Policies and Procedures, July 14, 1991. Copies of the procedures may be obtained from the Office of the General Counsel, Corrections Cabinet, State Office Building, Frankfort, Kentucky 40601 or may be reviewed at the Office of General Counsel weekdays from 8 a.m. to 4:30 p.m.

KSR 01-00-09	Public Information and News Media Relations
KSR 01-00-10	Entry Authorization for All Cameras and Tape Recorders Brought into the Institution
KSR 01-00-14	Extraordinary Occurrence Report
KSR 01-00-15	Cooperation and Coordination with Oldham County Court
KSR 01-00-19	Personal Service Contract Personnel
KSR 01-00-20	Consent Decree Notification to Inmates
KSR 02-00-01	Inmate Canteen
KSR 02-00-03	Screening Disbursements from Inmate Personal Accounts (Revised 1/15/92)
KSR 02-00-11	Inmate Personal Accounts
KSR 02-00-12	Institutional Funds and Issuance of Checks
KSR 04-00-02	Staff Training and Development
KSR 05-00-01	Officers' Daily Housing Security and Safety Log
KSR 05-00-02	Research Activities [~~(Revised 11-15-91)~~]
KSR 05-00-03	Management Information Systems
KSR 06-00-01	Inmate Master File
KSR 06-00-02	Records Audit
KSR 06-00-03	Kentucky Open Records Law and Release of Psychological/ Psychiatric Information
KSR 07-00-02	Institutional Tower Room Regulations
KSR 07-00-04	Handling of PCB Articles and Containers
KSR 07-00-05	Proper Removal of Transformers
KSR 07-00-06	Asbestos Abatement
KSR 07-00-07	Discharge Monitoring Report (DMR)
KSR 07-00-08	Control of Hazardous Energy (Lockout or Tagout) (Added 1/15/92)
KSR 07-00-09	Inventory Control of Underground Storage Tanks (Added 1/15/92)
KSR 08-00-07	Inmate Family Emergency - Life Threatening Illness or Death in Inmate's Immediate Family
KSR 08-00-08	Death of an Inmate/Notification of Inmate Family in Case of Serious Injury, Critical Medical Emergency, Major Surgery
KSR 08-00-10	Hazardous Chemicals and Material Safety Data Sheet
KSR 09-00-04	Horizontal Gates/Box 1 Entry and Exit

	Procedure
KSR 09-00-05	Gate I Entrance and Exit Procedure
KSR 09-00-09	Contraband, Dangerous Contraband and Search Policy
KSR 09-00-14	Use of Force
KSR 09-00-21	Crime Scene Camera
KSR 09-00-22	Collection, Preservation, and Identification of Physical Evidence
KSR 09-00-23	Drug Abuse Testing
KSR 09-00-25	Inmate Motor Vehicle Operator's License
KSR 09-00-26	Contraband Outside Institutional Perimeter
KSR 09-00-27	Construction Crew Entry/Exit
KSR 09-00-28	Restricted Areas
KSR 09-00-29	Transportation of Inmates
KSR 09-00-30	Parole Board
KSR 09-00-31	Forced Cell Move in Medium or Maximum Area
KSR 10-01-01	Unit D - Staffing Pattern, Staff Allocation, Position Description, Staff Selection, Training and Evaluation, Time and Attendance, and Unit Personnel Records
KSR 10-01-02	Unit D - General Operational Procedures (Revised 1/15/92)
KSR 10-01-03	Unit D - Inmate Tracking System and Records System (Revised 1/15/92)
KSR 10-01-04	Unit D - Administrative Segregation (Revised 1/15/92)
KSR 10-01-05	Unit D - Disciplinary Segregation (Revised 1/15/92)
KSR 10-01-06	Unit D - Protective Custody (Revised 1/15/92)
KSR 10-01-07	Unit D - Geriatrics
KSR 10-01-08	Unit D - Safekeepers (Revised 1/15/92)
KSR 10-01-09	Unit D - Hold Ticket Residents (Revised 1/15/92)
KSR 10-00-10	Unit D - and Unit E - Special Management Inmate Legal Access (Revised 1/15/92)
KSR 10-01-11	Unit D - Behavior Problem Control
KSR 10-00-12	Unit D - Designated Staff Visits [~~(Revised 11-15-91)~~]
KSR 10-00-13	Unit D - Property Room Access
KSR 10-02-01	Mental Health Staffing Pattern
KSR 10-02-02	Unit E Designated Staff Visits
KSR 10-02-03	Unit E-1 Convalescent Care
KRS 10-02-04	Unit E-General Operating Procedures [~~(Added 11-15-91)~~]
KSR 11-00-01	Meal Planning for the General Population
KSR 11-00-02	Special Diets
KSR 11-00-03	Food Service Inspections
KSR 11-00-04	Dining Room Rules and Dress Code for Inmates
KSR 11-00-06	Health Standards/Regulations for Food Service Employees
KSR 11-00-07	Early Chow Line Passes for Medically Designated Inmates
KSR 12-00-01	Inmate Summer Dress Regulations
KSR 12-00-03	State Items Issued to Inmates
KSR 12-00-07	Regulations for Inmate Barbershop
KSR 12-00-09	Treatment of Inmates with Body Lice
KSR 13-00-02	Hospital Operations, Rules and Regulations
KSR 13-00-03	Medication for Inmates Leaving Institution Grounds
KSR 13-00-04	Medical and Dental Care
KSR 13-00-05	Medical Records
KSR 13-00-08	Institutional Laboratory Procedures
KSR 13-00-09	Institutional Pharmacy Procedures
KSR 13-00-10	Requirements for Medical Personnel
KSR 13-00-11	Health Evaluation
KSR 13-00-12	Vision Care/Optometry Services
KSR 13-00-14	Periodic Health Examinations for Inmates
KSR 13-00-15	Medical Alert System
KSR 13-00-16	Suicide Prevention and Intervention Program
KSR 13-00-17	Special Care
KSR 13-02-01	Mental Health Services
KSR 13-02-02	Mentally Retarded Inmates
KSR 13-02-03	Suicide Prevention and Intervention Program
KSR 13-02-04	Division of Mental Health's Residential Services
KSR 14-00-01	Inmate Rights
KSR 14-00-04	Inmate Grievance Procedure
KSR 15-00-02	Regulations Prohibiting Inmate Control or Authority Over Other Inmate(s)
KSR 15-00-04	Restoration of Forfeited Good Time
KSR 15-00-05	Differential Status for SU (QUIT) Inmates
KSR 15-00-06	Inmate I.D. Cards
KSR 15-00-07	Inmate Rules and Discipline - Adjustment Committee Procedures
KSR 15-00-08	Firehouse Living Area
KSR 15-00-10	Program Services for Special Housing Placement
KSR 15-01-01	Operational Procedures and Rules and Regulations for Unit A, B & C: Functions of Assigned Personnel
KSR 15-01-02	Operational Procedures and Rules and Regulations for Unit A, B, & C: Staff Operational Procedures
KSR 15-01-03	Operational Procedures and Rules and Regulations for Unit A, B & C: Inmate Rules and Regulations
KSR 15-01-04	Institutional Medical and Fire Safety Service: Unit Application
KSR 15-01-05	Operational Procedures Rules and Regulations for Unit A, B, & C: Institutional Inmate Services (Revised 1/15/92)
KSR 15-01-06	Operational Procedures and Rules and Regulations for Unit A, B & C: Inmate Honor Housing Criteria and Regulations
KSR 16-00-02	Inmate Correspondence and Mailroom Operations
KSR 16-00-03	Inmate Access to Telephones
KSR 16-01-01	Visiting Regulations
KSR 16-01-02	Lawn Visit Regulations
KSR 16-01-03	Night Visit Regulations
KSR 17-00-03	Notifying Inmates' Families of Admission and Procedures for Mail and Visiting
KSR 17-00-05	Dormitory 10 Operations
KSR 17-00-06	Identification Department Admission and Discharge Procedures
KSR 17-00-07	Inmate Personal Property
KSR 17-00-08	Repair of Inmate Owned Appliances by Outside Dealers
KSR 18-00-04	Returns from Other Institutions
KSR 18-00-05	Transfer of Residents to Kentucky Correctional Psychiatric Center, and Referral Procedure for Residents Adjudicated Guilty but Mentally Ill
KSR 18-00-06	Classification and Special Notice Form
KSR 18-00-07	Kentucky State Reformatory Placement Committee
KSR 19-00-01	Inmate Work Incentives (Revised 1/15/92)
KSR 19-00-02	On-the-job Training Program
KSR 19-00-03	Safety Inspections of Inmate Work Assignment Locations [~~(Revised 11-15-91)~~]
KSR 19-00-05	Food Service On-The-Job Training and Workers Rules
KSR 20-00-01	Technical and Adult Basic Level Learning Center Programs (Revised 1/15/92) [~~Vocational School Referral and Release Process~~]
KSR 20-00-03	Academic School Program
KSR 20-00-04	Criteria for Participation in Jefferson Community College Program
[~~KSR 20-00-08~~	~~Integration of Vocational and Academic Education Programs (Deleted 1/15/92)~~]

KSR 21-00-01	Legal Aide Office and Inmate Law Library Services and Supervision
KSR 21-00-02	Inmate Library Services
KSR 21-00-03	Library Services for Unit D
KSR 22-00-03	Inmate Organizations
KSR 22-00-07	Inmate News Magazine
KSR 23-00-02	Chaplain's Responsibility and Inmate Access to Religious Representatives
KSR 23-00-03	Religious Programming
KSR 25-00-01	Discharge of Inmates to Hospital or Nursing Home [~~(Revised 11-15-91)~~]
KSR 25-00-02	Violations of Law or Code of Conduct by Inmates on Parole Furlough
KSR 25-00-03	Preparole Progress Report

JACK C. LEWIS , Deputy Secretary
APPROVED BY AGENCY: January 15, 1992
FILED WITH LRC: January 15, 1992 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for February 25, 1992 at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: Jack Damron and Tom Campbell, 5th Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jack Damron
(1) Type and number of entities affected: 576 employees of the Kentucky State Reformatory, 1408 inmates, and all visitors to state correctional institutions.
(a) Direct and indirect costs or savings to those affected:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: None - All of the costs involved with the implementation of the regulations are included in the operational budget.
2. Continuing costs or savings: Same as 2(a)1.
3. Additional factors increasing or decreasing costs: Same as 2(a)1.
(b) Reporting and paperwork requirements: Monthly submission of policy revisions.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None
TIERING: Was tiering applied? No. All policies are administered in a uniform manner.

CORRECTIONS CABINET
(Proposed Amendment)

501 KAR 6:160. Correctional Industries.

RELATES TO: KRS Chapters 196, 197, 439
STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640
NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590 and 439.640 authorizes the secretary to adopt, amend or rescind regulations necessary and suitable for the proper administration of the cabinet or any division therein.

Section 1. Pursuant to the authority vested in the Corrections Cabinet the following policies and procedures revised January 15, 1992 [~~November 15, 1991~~] are incorporated by reference and shall be referred to as Correctional Industries Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Corrections Cabinet, State Office Building, Frankfort, Kentucky 40601 or may be reviewed at the Office of General Counsel weekdays from 8 a.m. to 4:30 p.m.

CI 01-01-01	Establishment and Issuance of Policies and Procedures
CI 01-01-02	Administration and Use of the Policy and Procedures Manual, Including Issuance, Revision and Dissemination
CI 01-02-01	Organization of Correctional Industries
CI 01-03-01	Annual Planning Document
CI 01-04-01	Personnel Records
CI 01-04-04	New Employee Orientation
CI 02-01-01	Budgeting
CI 02-02-01	Purchasing
CI 02-03-01	Equipment Inventory and Other Nonexpendable Items [~~(Revised 11-15-91)~~]
CI 02-04-01	Accounts Receivable
CI 03-01-01	Raw Material and Work In-Process Inventory
CI 03-01-02	Finished Goods Inventory [~~(Revised 11-15-91)~~]
CI 03-01-03	Stocking of Warehouse
CI 03-02-01	Delivery of Goods and Services
CI 03-02-02	Pickup of Reupholstery and Repair Items [~~(Revised 11-15-91)~~]
CI 04-01-01	Marketing
CI 04-02-01	Advertising Correctional Industry Products and Services
CI 04-02-02	Correctional Industries Catalog
CI 04-02-03	Prototypes and Samples Not For Sale
CI 04-03-01	Pricing of Correctional Industries Products
CI 04-03-02	Preparation of Bids
CI 04-03-03	Customer Orders
CI 04-03-04	Sale of Industry Products to Private Individuals
CI 04-03-05	Sales and Sales Reporting
CI 04-04-02	Warranty of Products [~~(Revised 11-15-91)~~]
CI 05-01-01	Inmate Job Descriptions
CI 05-01-02	Equal Opportunity Employment
CI 05-01-03	Job Performance Evaluations
CI 05-01-04	Inmate Compensation (Revised 1/15/92)
CI 05-01-05	Job Assignments
CI 05-02-01	Inmate Orientation
CI 05-03-01	Standards for Working in Correctional Industries Plants
CI 06-01-01	Safety and Working Conditions
CI 06-02-01	Key and Tool Control [~~(Revised 11-15-91)~~]
CI 06-02-02	Searches
CI 06-02-03	Use of State Vehicles
CI 06-03-01	Inmate Supervision
CI 07-01-01	Production Scheduling
CI 07-01-02	New Production Development
CI 07-02-01	Quality Control

JACK C. LEWIS, Deputy Secretary
APPROVED BY AGENCY: January 15, 1992
FILED WITH LRC: January 15, 1992 at 10 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for February 25, 1992, at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: Tom Campbell or Jack Damron, Department of Adult Institutions, 5th Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jack Damron
(1) Type and number of entities affected: 59 employees, 486 inmates and all visitors of Correctional Industries.
(a) Direct and indirect costs or savings to those affected:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: None - All of the costs involved with the implementation of the regulations are included in the operational budget.
2. Continuing costs or savings: Same as 2(a)1.
3. Additional factors increasing or decreasing costs: Same as 2(a)1.
(b) Reporting and paperwork requirements: Monthly submission of policy revisions.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None
TIERING: Was tiering applied? No. All policies are administered in a uniform manner.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Carriers
Division of Driver Licensing
Division of Motor Vehicle Licensing
Office of General Counsel
(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.~~]

JERRY D. ANGLIN, Acting Commissioner
DON C. KELLY, Secretary
APPROVED BY AGENCY: December 23, 1991
FILED WITH LRC: December 23, 1991 at 1 p.m.
PUBLIC HEARING: A public comment hearing will be held on this administrative regulation on February 21, 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 Holmes Streets, Frankfort, Kentucky 40622. Any person who intends to attend this hearing must in writing by February 16, 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 February 16, 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
Office of General Counsel
(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, suburban, city, 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.

JERRY D. ANGLIN, Acting Commissioner
DON C. KELLY, P.E., Secretary

APPROVED BY AGENCY: December 23, 1991
FILED WITH LRC: December 23, 1991 at 1 p.m.

PUBLIC HEARING: A public comment hearing will be held on this administrative regulation on February 21, 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 Holmes Streets, Frankfort, Kentucky 40622. Any person who intends to attend this hearing must in writing by February 16, 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 February 16, 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 certificates 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) 564-4540.

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 filed 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.]

JERRY D. ANGLIN, Acting Commissioner
DON C. KELLY, Secretary
APPROVED BY AGENCY: December 23, 1991
FILED WITH LRC: December 23, 1991 at 1 p.m.

PUBLIC HEARING: A public comment hearing will be held on this administrative regulation on February 21, 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 Holmes Streets, Frankfort, Kentucky 40622. Any person who intends to attend this hearing must in writing by February 16, 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 February 16, 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 year 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.

JERRY D. ANGLIN, Acting Commissioner
DON C. KELLY, P.E., Secretary
APPROVED BY AGENCY: December 20, 1991
FILED WITH LRC: December 23, 1991 at 1 p.m.
PUBLIC HEARING: A public comment hearing will be held on this administrative regulation on February 21, 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 Holmes Streets, Frankfort, Kentucky 40622. Any person who intends to attend this hearing must in writing by February 16, 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 February 16, 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
Office of General Counsel
(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 doument 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 [~~is 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.

JERRY D. ANGLIN, Acting Commissioner
DON C. KELLY, Secretary
APPROVED BY AGENCY: December 23, 1991
FILED WITH LRC: December 23, 1991 at 1 p.m.

PUBLIC HEARING: A public comment hearing will be held on this administrative regulation on February 21, 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 February 16, 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 February 16, 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
Office of General Counsel
(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.

JERRY D. ANGLIN, Acting Commissioner
DON C. KELLY, P.E., Secretary
APPROVED BY AGENCY: December 23, 1991
FILED WITH LRC: December 23, 1991 at 1 p.m.
PUBLIC HEARING: A public comment hearing will be held on this administrative regulation on February 21, 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 Holmes Streets, Frankfort, Kentucky 40622. Any person who intends to attend this hearing must in writing by February 16, 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 February 16, 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 Carriers
Division of Motor Vehicle Enforcement

601 KAR 40:010. Identification of motor vehicles transporting municipal solid waste.

RELATES TO: KRS 174.450
STATUTORY AUTHORITY: KRS 174.450
NECESSITY AND FUNCTION: This regulation sets forth the specific requirements for the placard identification of motor vehicles transporting municipal solid waste which are operating in the Commonwealth of Kentucky. This administrative regulation is needed because the motor carrier industry has an unwritten concept of "placard" which appears to be more stringent than the requirements of KRS 174.450.

Section 1. Definitions. "Placard" means any method chosen by the motor vehicle owner to display the words "solid waste" on the motor vehicle. Examples of a placard include paint, magnetic letters, magnetic signs, or other removable device, if that device meets the identification and legibility requirements of this administrative regulation.

Section 2. Size, Shape and Color of the Placard. (1) The placard shall be in letters that contrast sharply in color with the background on which they are placed.

(2) The placard shall be in all capital letters and readily legible, during daylight hours from a distance of fifty (50) feet while the vehicle is stationary.

(3) The placard shall be kept and maintained in a manner that retains the legibility requirements of subsection (2) of this section.

Section 3. Placement of the Placard. KRS 174.450(10) specifies the placement of the placard on the motor vehicle. The list of locations shall not be interpreted to include any

location on the motor vehicle where the placard is not clearly visible such as the rear of the power unit of the motor vehicle if the power unit is hauling a trailer or semitrailer.

JERRY D. ANGLIN, Acting Commissioner
DON C. KELLY, Secretary
APPROVED BY AGENCY: January 9, 1992
FILED WITH LRC: January 13, 1992 at 3 p.m.
PUBLIC HEARING: A public comment hearing will be held on this administrative regulation on February 21, 1992 at 2 p.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 February 16, 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 February 16, 1992. Send written notification of intent to attend the public hearing or written comments on the administrative regulation to: Sandra G. Pullen, Staff Assistant, 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: Approximately 500 transporters of municipal solid waste 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: 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: The do-nothing alternative was rejected because the Natural Resources Cabinet requested that the title be changed.
(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: Since the authorizing statute and regulation are only applicable to the transporters of municipal solid waste Natural Resources requested that the title be changed to clearly reflect that.
TIERING: Was tiering applied? Yes. Applicable only to transporters of municipal solid waste not any transporters of solid waste.

TRANSPORTATION CABINET
Department for Vehicle Regulation
Division of Motor Carriers
Office of General Counsel
(Proposed Amendment)

601 KAR 40:020. Application for license to operate vehicles transporting municipal solid waste.

RELATES TO: KRS 174.450
STATUTORY AUTHORITY: KRS 174.450
NECESSITY AND FUNCTION: KRS 174.450(9) requires that the Transportation Cabinet promulgate regulations to establish a municipal solid waste transportation licensing program by August 26, 1991, and that on or after November 26, 1991, that each vehicle being used to transport municipal solid waste be identified by the licensee.

Section 1. (1) An applicant for a license to operate municipal solid waste transportation vehicles within the Commonwealth of Kentucky, shall apply to the Transportation Cabinet, Office of General Counsel, 501 High Street, Frankfort, Kentucky 40622.
(2) The following information shall be provided in, or with, the application:
(a) Name in which license is sought. (NOTE: This name shall be identical to the motor carrier's current KYU number issued by the Department of Vehicle Regulation, if applicable. See question below relating to Kentucky Highway Use Tax Identification Number);
(b) Business address, including street address, city, state and zip code;
(c) Telephone number;
(d) Name of a natural person who is either the applicant, or an officer of the applicant, position of this person, Social Security number of this person and home address of this person:
(e) Number of vehicles which the licensee intends to operate;
(f) If the applicant is not a resident of Kentucky and anticipates transporting municipal solid waste from outside Kentucky to a municipal solid waste management facility in Kentucky, a copy of the applicant's "Consent to Service" document as required to be filed with the Natural Resources and Environmental Protection Cabinet;
(g) The applicant's highway use tax identification number, as required by KRS 138.665. (NOTE: If the applicant does not currently have a KYU number, it shall attach a statement of why its transportation operations do not fall within the purview of KRS 138.665);
(h) A statement that the applicant does now have, or is in the process of obtaining, liability insurance on each vehicle in the amounts currently required by Kentucky law;
(i) A statement of whether the applicant or any corporate officer or principal stockholder thereof has ever been convicted of a felony; and
(j) If 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 certificates shall be more than thirty (30) days old at the time the application is submitted. If the applicant is doing business under an assumed name, it shall provide proof with the application that the assumed name has been registered with the appropriate county clerk's office. The Transportation Cabinet may require other proof of eligibility to do business in Kentucky or proof of safety fitness ~~[its articles of incorporation, along with a list of stockholders who own ten (10) percent or more of the outstanding stock]~~.
(3) The official signing on behalf of the applicant shall be sworn, state that he has the authority to represent the applicant, that the information is true and correct to the best of his knowledge and belief and have his signature and oath notarized.
(4) The Transportation Cabinet shall make available a form listing the information required in subsections (2) and (3) of this section to any person wishing to apply for a license to operate municipal solid waste transportation vehicles. These

forms may be obtained from the Office of General Counsel, 501 High Street, Frankfort, Kentucky 40622, or by telephoning 502/564-7650.

Section 2. The Transportation Cabinet shall within thirty (30) days of receipt of an application either approve the application to operate municipal solid waste transportation vehicles, disapprove the application or request additional information from the applicant. However, the Transportation Cabinet shall not issue a license to anyone who has not filed a fully completed application form.

Section 3. As soon as the applicant has been licensed to operate municipal solid waste transportation vehicles, the Transportation Cabinet shall provide a form to the licensee so that the individual municipal solid waste transportation vehicles used by that licensee can be identified. This form shall contain space for the licensee to submit the following information:

(1) The municipal solid waste transporter license number and name of the municipal solid waste transporter;

(2) KYU number (if applicable) of the licensee;

(3) Telephone number of the licensee;

(4) Address of the licensee;

(5) Licensee's contact person;

(6) A sworn and notarized statement made by an official of the licensee certifying that the named licensee has, and shall maintain, liability insurance on each vehicle operated under this license. In addition, the official shall state that the applicant has access to, and is familiar with, all applicable regulations of the United States Department of Transportation relating to the safe operation of commercial vehicles and the safe transportation of hazardous materials, and that the applicant shall comply with these regulations;

(7) Identification of each vehicle to be used to transport muni-cipal solid waste which shall include the vehicle's company unit number, complete vehicle identification number (serial number), make of vehicle, year of manufacture, declared gross weight, type of truck, and number of axles, state of license of the vehicle, license plate number (if the vehicle is Kentucky licensed), name of the lessor (if the vehicle is leased), the amount of the fee paid and whether it is a first or renewal registration of that individual vehicle. To identify the type of truck and number of axles, the licensee shall, for a straight truck, code the letters "ST", followed by the total number of axles. For a tractor-trailer, the licensee shall code the letters "TR", followed by the total number of axles.

Section 4. Municipal solid waste transporter vehicle identification cards shall expire at midnight of December 31 of each year.

Section 5. The fee for a municipal solid waste transporter vehicle identification card which shall become effective January 1, or a renewal of an identification card shall be ten (10) dollars. If the card becomes effective in a month other than January, the cost of the identification card shall be prorated by using the following schedule: February - $9.17, March - $8.34, April - $7.50, May - $6.67, June - $5.84, July - $5.00, August - $4.17, September - $3.34, October - $2.50, November - $1.67, December - $0.84.

Section 6. The original vehicle identification card shall be carried in the power unit of the vehicle for which it was issued. No photocopies, reproductions or facsimiles shall be allowed.

Section 7. Even though the Transportation Cabinet does not have the authority to issue temporary identification cards for municipal solid waste transportation vehicles, the cabinet shall promptly issue identification cards to a licensee who has properly applied for the identification cards.

Section 8. The appropriate identification card shall be in the cab of each vehicle transporting municipal solid waste beginning March [~~January~~] 1, 1992.

Section 9. The Transportation Cabinet shall notify the Natural Resources and Environmental Protection Cabinet of all persons found to be transporting municipal solid waste, either without a license to do so, or without a vehicle identification card for the transportation of municipal solid waste.

JERRY D. ANGLIN, Acting Commissioner
DON C. KELLY, Secretary

APPROVED BY AGENCY: January 9, 1992

FILED WITH LRC: January 13, 1992 at 3 p.m.

PUBLIC HEARING: A public comment hearing will be held on this administrative regulation on February 21, 1992 at 2 p.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 February 16, 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 February 16, 1992. Send written notification of intent to attend the public hearing or written comments on the administrative regulation to: Sandra G. Pullen, Staff Assistant, 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: Approximately 500 transporters of municipal solid waste 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: Will now be required to provide proof of authority to do business in Kentucky rather than articles of incorporation.

(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: The current requirement that an applicant for a license to transport municipal solid waste provide list of stockholders and a copy of articles of incorporation, has proven onerous and seems to provide no benefit to the Commonwealth. By requiring that the applicant provide proof that he is qualified to do business in Kentucky and safety fitness appears much more beneficial. In checking with the Office of the Secretary of State we discovered that many of the out-of-state corporations had made no effort to become qualified.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: The effective date of January 1, 1992, was changed to March 1, 1992, because of the great difficulty the Transportation Cabinet has had in locating transporters to tell them they had to be licensed. Natural Resources' officials agrees that the delay in enforcement would be beneficial to all concerned. No one wanted an

otherwise legitimate transporter to dump his trash in a ravine because he was denied access to a landfill.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: The Human Resources Cabinet also licenses transporters of septic tank sludge (a municipal solid waste). While this does not appear to be a conflict, these licensees are irate at the dual licensing requirement.

(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. Only transporters of municipal solid waste have to be licensed by the Transportation Cabinet.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Chief State School Officer
(Proposed Amendment)

701 KAR 5:050. Summary hearing procedures.

RELATES TO: KRS [~~156.031,~~] 156.132, 156.210
STATUTORY AUTHORITY: KRS 156.070, 156.132
NECESSITY AND FUNCTION: [~~KRS 156.031 requires that regulations relating to statutes amended by the 1990 Kentucky Education Reform Act be reviewed, amended if necessary, and resubmitted to the Legislative Research Commission prior to December 30, 1990.~~] KRS 156.132 requires that the State Board for Elementary and Secondary Education, after a summary hearing as provided for by administrative regulations, suspend any district board of education member or superintendent who is believed to be guilty of immorality, misconduct in office, incompetence, or willful neglect of duty; authorizes the state board to issue subpoenas and administer oaths in removal proceedings; and KRS 156.210 authorizes the chief state school officer to administer oaths and examine witnesses, issue subpoenas, and to have access to public school records. This regulation implements KRS 156.132 by establishing summary hearing procedures for suspension prior to full-blown removal hearing procedures being instituted.

Section 1. When pursuant to KRS 156.132 the Commissioner of Education or the State Board for Elementary and Secondary Education determines it is appropriate to schedule a summary hearing before the state board regarding whether a district board of education member or superintendent should be suspended, the following shall be done:

(1) Arrange scheduling of a summary hearing; and

(2) At least ten (10) days prior to the scheduled hearing, furnish the district board member or superintendent with written notice of the specific charges against him and with written notice of the scheduled hearing. Service of written notice shall be by personal delivery by a person over eighteen (18) years of age or by certified mail return receipt requested with instructions to the delivering postal employee to deliver to the addressee only and show the address where delivered and the date of delivery. [~~When, within its reasonable discretion, the State Board for Elementary and Secondary Education, pursuant to KRS 156.132, feels a summary hearing to determine whether a district board of education member or superintendent is to be suspended shall be held, the hearing shall either be scheduled before the full board, or a panel thereof, or referred to a hearing examiner who is a full time employee of the Department of Education and who has been recommended by the chief state school officer, and the district board member or superintendent shall be furnished the specific charges against him.~~]

Section 2. The full board, or a panel thereof, or any hearing examiner designated to conduct a hearing under this regulation may [~~shall have full authority to, and shall, do the following:~~]

[~~(1) Schedule the hearing, on not less than ten (10) days' written notice, and~~] grant hearing continuances [~~thereof~~] through the chairman of the state board or the hearing panel or through the hearing examiner for just cause shown by verified statement of the accused or by signed statement of his attorney, although when a panel of the state board or a hearing examiner conducts the hearing, a report in the form hereinafter required shall, whenever practicable, be made to the state board for its next regular meeting following referral of the matter to such a panel or hearing examiner.

Section 3. The full board, or a panel thereof, or any hearing examiner designated to conduct a hearing under this regulation shall:

(1) [~~(2)~~] Administer oaths, examine witnesses under oath, issue requested subpoenas to compel attendance of witnesses or production of physical evidence;

(2) [~~(3)~~] Tape record all testimony taken; and

(3) [~~(4)~~] Issue, whenever a hearing panel or hearing examiner is utilized, a written report to the state board containing a synopsis of the testimony taken, any exhibits filed, and a recommendation.

Section 4. [~~3.~~] Any hearing held under this regulation shall be for the purpose of allowing the accused district board member or superintendent to appear, with or without counsel, and to reply to the charges, although witnesses testifying in support of the charges may, at the option of the state board, also be heard. Formal rules of evidence and confrontation and cross-examination of witnesses shall not be applicable unless specifically ordered by the state board.

Section 5. [~~4.~~] Any hearing held under this regulation shall be closed to the public, unless otherwise requested by the accused district board member or superintendent, and any hearing panel's or hearing examiner's report shall be held confidential.

Section 6. [~~5.~~] Any failure of a district board member or superintendent to avail himself of the summary hearing procedures set forth herein shall not be deemed a waiver of his right to contest actual removal from office under KRS 156.132, and the procedures set forth herein shall not be deemed, purely by force of this regulation, to apply to any hearing which shall be held for actual removal.

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: January 10, 1992

FILED WITH LRC: January 10, 1992 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 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 February 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 Noland, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Kevin Noland

(1) Type and number of entities affected: Local school board members and superintendents of 176 local school districts.

(a) Direct and indirect costs or savings to those affected: Direct costs of appearance and any legal representation at summary hearing.

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: Reduced costs of conducting hearings and rendering decisions as the number of times necessary for the state board to convene for suspension and removal hearings and determinations is reduced from 3 to 2.

(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: Producing report and recommended decision for state board.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: KRS 156.132 requires summary hearing procedures.

(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. Uniformity for all summary hearings necessary in interest of due process of law.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Instruction
(Proposed Amendment)

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

RELATES TO: KRS 158.6453, 158.650 to 158.710

STATUTORY AUTHORITY: KRS 156.160, 158.6453, 158.650, 158.685

NECESSITY AND FUNCTION: KRS 158.650 to 158.710 mandate a program of annual performance reports, educational improvement plans, performance standards, and assistance and various sanctions by the Department of Education pursuant to regulations of the State Board for Elementary and Secondary Education. This regulation implements the state board duty to promulgate administrative regulations.

Section 1. (1) The annual performance report which KRS 158.650 requires each local school district to publish shall be submitted to the State Board for Elementary and Secondary Education by September 15 of each year and shall be published in the newspaper with the largest circulation in the county by October 1. The purpose of the October 1 publishing requirement is to inform the public in each school district regarding the operation and performance of each school district.

(2) The annual performance report shall include local district data for the following factors:

(a) Student data. Results of the biennial state-mandated testing program; results of Scholastic Aptitude Test and American College Board Test; dropout rate; retention rate; percentage of average daily attendance; number and percentage of students entering the workforce, military service, going to college or other postsecondary training; number and percentage of students with disabilities receiving specially designed instruction and related services according to individual education programs; and percentage of enrollment classified as economically deprived shall be reported and published.

(b) Staff data. Percentage of attendance by professional staff; student/teacher ratio; teacher/administrator ratio; salary data by rank; the number of teachers teaching out of their field of specialty and the number of classes taught by teachers out of their field of specialty; and average cost per professional staff for staff development activities shall be reported and published.

(c) Management data. Transportation cost per pupil transported; current expenses per pupil in average daily attendance; cost per pupil for instruction; cost per pupil for administration; percentage of district revenue received from local, state and federal sources; local revenue per child in average daily attendance; assessed property value per child in average daily attendance; and district goals for the succeeding year shall be reported and published.

Section 2. Each local district board of education shall achieve and maintain minimum performance standards established by the State Board for Elementary and Secondary Education in student, program, service and operational performance, as follows:

(1) Program and service performance standards. A local school district shall have a deficiency in program and service performance when one (1) or more of the following standards are not met:

(a) The local school district and each school within the district shall be in compliance with all applicable federal and state statutes and regulations and with federal, state, and local ordinances pertaining to the health and safety of pupils, faculty, and staff of the school district.

(b) Each local district board of education shall adopt and implement, by September 1, 1992, a continuous student assessment program designed to monitor student progress toward attaining the valued outcomes as defined by the state board. The continuous assessment program shall include but not be limited to at least one (1) of the following assessment strategies: performance tasks, portfolios, open-ended questions, and multiple choice questions.

(c) The local school district and schools within that district providing vocational education programs shall meet the requirements as established in 705 KAR 4:230, general program standards for secondary vocational education programs, and shall meet any additional requirements imposed by federal or state law.

(d) The local school district and schools within that district shall have special education programs and related services for children and youth who have educational disabilities. These programs and services shall meet the requirements of 707 KAR Chapter 1 programs for exceptional children, and shall meet any additional requirements imposed by federal or state law.

(e) The local school district and each school within the district shall, by July 1, 1992, have policies and procedures to assist in the reduction of physical and mental health barriers to learning. The policies and procedures shall provide for:

1. Systematic efforts to define and identify physical and mental health barriers to learning which may impede the

successful attainment of the goals and capacities specified in KRS 158.645 and 158.6451;

2. Systematic screening of students to identify physical and mental health barriers impacting the learning of individual students;

3. Referral of students for medical, educational, social, mental health, and family support services, including prevention, evaluation and intervention, to in-school and district programs and public and nonpublic agencies;

4. Coordination with existing community, regional, and state resources for provision of services to students; and

5. Development of a written plan to assist in reducing physical and mental health barriers to learning which includes:

a. A systematic needs assessment process to provide current data for long-term and annual planning, including data on the service needs of the district and its schools' student population;

b. Strategies and activities designed to reduce physical and mental health barriers to learning; and

c. Evaluation of the implementation of the plan and effectiveness of the activities and strategies for reducing the identified physical and mental health barriers to learning.

(2) Student performance standards. The determination of district performance and individual school performance within the district shall be based on data collected through an individual student identification system. A local school district shall have a deficiency in student performance when one (1) or more of the following standards are not met, after any applicable percentage figures are rounded to the nearest one-tenth (.1) of one (1) percent:

(a) Academic performance. Academic performance shall be based on student performance, and standards shall be established by administrative regulation, based on the Council on School Performance Standards' definition of the statutory goals in measurable terms under KRS 158.6451, once that task is completed.

(b) Attendance standard. The percentage of attendance shall be calculated by dividing the aggregate days attendance by the aggregate days membership. The local school district shall achieve an annual attendance rate of ninety-four (94) percent or above.

(c) Dropout standard. The dropout rate shall be defined as the annual percentage of students leaving school prior to graduation in grades 7-12 and include withdrawals in attendance accounting codes W6 (child turns sixteen (16) years of age and drops out), W10 (pupil discharged), W11 (drop out on account of marriage), and W14 (drop out on account of birth of child). The local school district shall achieve an annual dropout percentage equal to or less than five (5) percent.

(d) Completion rate. The percentage of first grade students completing the 12th grade, with this standard to be established by administrative regulation after the implementation of an individual student identification system.

(e) Retention rate. The percentage of the schools' pupils who are retained shall decrease each year until the percentage retained in the district does not exceed four (4) percent.

(f) Transition to work, postsecondary education and military. The annual percentage of the district's students completing a program of studies who enter the workforce, postsecondary training, or military service shall equal seventy--five and four-tenths (75.4) percent or above.

(3) Operational performance standards. A local school district shall have a deficiency in operational performance when one (1) or more of the following standards are not met. By October 1 of each year each school district shall be notified regarding their performance according to the previous year data.

(a)1. The total cost of maintenance and operation of a school district, less the cost of salaries, shall not have a deviation of more than one and one-tenth (1.1) standard deviation above the average per pupil per year costs as compared to the statewide average for comparably sized school districts.

2. Line item codes, excluding salaries that deviate significantly (more than one and one-tenth (1.1)) above state averages for comparably sized school districts shall be reason for the state department to provide consultation to assist the district in eliminating the line item deviation.

3. The following average daily attendance ranges shall constitute the size groups within which county and independent districts are placed for comparative deviation analysis:

County Districts	Independent Districts
10,000 and up	16,000 and up
5,000 to 9,999	900 to 1,599
3,000 to 4,999	500 to 899
2,200 to 2,999	0 to 499
1,500 to 2,199	
0 to 1,499	

4. Approval for major deviations (more than one and one-tenth (1.1) standard deviation) due to renovations, improvements, and additional programs with long-range planning requirements may be authorized annually by the Commissioner of Education.

(b)1. The adjusted total cost of transportation of a school district, as defined in 702 KAR 5:020 shall not have a deviation of more than one and one-tenth (1.1) standard deviations above the per pupil per year cost of transported pupils as compared with the statewide average for comparable density school districts.

2. Line item codes, excluding salaries that deviate significantly (more than one and one-tenth (1.1) standard deviations) in a district above the [~~applicable~~] state average cost per mile shall be cause to be provided Department of Education consultation to promote efficiency.

3. The buses in operation in a school district, less the spare units, shall have a load capacity of students that shall not vary more than one and one-tenth (1.1) standard deviations as compared with statewide comparable density averages. Approval shall be authorized by the Commissioner of Education for contract buses prior to the beginning of each school year.

4. The following transported pupil density per square mile of area served shall constitute the size groups within which county and independent districts are placed for comparative deviation analysis:

County Districts	Independent Districts
0 - 4.0	0 - 15.0
4.1 - 5.0	15.1 - 30.0
5.1 - 6.0	30.1 - 50.0
6.1 - 7.0	50.1 - 70.0
7.1 - 9.0	70.1 - 100.0
9.1 - 12.0	100.0 - 150.0
12.1 - 16.0	150.1 - 200.0
16.1 - 40.0	All over 200
40.1 - 75.0	
All over 75	

5. Approval for major deviations (more than one and one-tenth (1.1) standard deviations), due to major single year improvements of equipment or vehicles, or implementation of new, expanded or required programs, may be authorized annually by the Commissioner of Education.

Section 3. (1) Local school districts failing to attain a minimum performance level on one (1) standard as defined in Section 2 of this regulation shall be identified as having a deficiency and shall prepare a district improvement plan to correct the deficiency.

(2) Local school districts failing to attain a minimum performance level on two (2) or more standards as established in Section 2 of this regulation shall be identified as

failing to meet minimum student, program, service or operational standards pursuant to KRS 158.685(2).

Section 4. [3.] (1) The Kentucky Department of Education shall identify and present to the state board for formal declaration those districts failing to meet minimum student, program, service or operational standards as defined in Section 3 [2] of this regulation.

(2) The performance of districts failing to meet minimum standards and such other information as may be required by this regulation shall be reviewed by the Educational Improvement Advisory Committee quarterly.

Section 5. [4.] (1) The State Board for Elementary and Secondary Education shall declare a school district to be educationally deficient when, in any school year, the district fails to meet [any of the] minimum student, program, service, or operational standards as defined in Section 3(2) [2] of this regulation.

(2) Each local school district declared educationally deficient by the State Board for Elementary and Secondary Education shall submit a district improvement plan for approval to the state board, within thirty (30) working days from the date of declaration. The district improvement plan as adopted by the local board shall address each deficiency area in accordance with KRS 158.650, 158.685, and 158.710. The initial plan shall address a period of not less than twelve (12) months.

Section 6. [5.] The Commissioner of Education shall determine the extent of and provide appropriate consultation and assistance to any school district which has been declared educationally deficient by the State Board for Elementary and Secondary Education. These services shall be provided in accordance with KRS 158.685(3) and shall be included in the contract of services required in KRS 158.685(3).

Section 7. [6.] Failure by an educationally deficient school district to meet the process goals, interim performance goals, or timeliness set in the district improvement plan shall constitute grounds for the Commissioner of Education to initiate action in accordance with KRS 158.685(4).

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: January 10, 1992

FILED WITH LRC: January 10, 1992 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 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 February 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: Kevin M. Noland, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dr. H.M. Snodgrass

(1) Type and number of entities affected: 176 school districts.

(a) Direct and indirect costs or savings to those affected: No change from current statutory requirements which have been in place since 1984.

1. First year:

2. Continuing costs or savings:

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

(b) Reporting and paperwork requirements: No change from current: annual performance report published and improvement plans developed to address deficiencies.

(2) Effects on the promulgating administrative body: N/A

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Monitoring and reporting on district performance status.

(3) Assessment of anticipated effect on state and local revenues: N/A

(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: N/A

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments: N/A

TIERING: Was tiering applied? No. Standards were applied equally to all districts.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Learning Support Services
(Proposed Amendment)

704 KAR 7:060. Missing Kentucky School Children Program.

RELATES TO: KRS 156.495

STATUTORY AUTHORITY: KRS [156.031,] 156.070, 156.495

NECESSITY AND FUNCTION: KRS 156.495 requires the Department of Education to provide for and administer a program to identify and locate missing Kentucky school children. The State Board for Elementary and Secondary [of] Education hereby adopts an administrative regulation developed by the Department of Education which establishes procedures to enable the Department of Education to implement the required program.

Section 1. (1) Forms prepared by the Department of Education pursuant to KRS 156.495 for the reporting of missing Kentucky school children shall be distributed to all local school districts and all private schools in the Commonwealth of which the Department of Education has knowledge. The form shall [will] contain a notice to return the completed form to the Division of Student/Family Support Services, Department of Education. Such forms shall solicit the following information:

(a) Full name of child and any nickname;

(b) Child's social security number if available;

(c) Father's name and telephone number;

(d) Mother's name and telephone number;

(e) Guardian's name (if other than above) and telephone number;

(f) Race;

(g) Sex;

(h) Date of birth and age;

(i) Height;
(j) Weight;
(k) Color of eyes, hair, and complexion;
(l) Any other identifying characteristics;
(m) Time and date missing;
(n) Location last seen;
(o) Possible destination;
(p) Name of any person(s) possibly accompanying child;
(q) Vehicle description;
(r) Last Kentucky school in which enrolled;
(s) Last address at which child resided;
(t) Address of parent/guardian where child resided permanently and telephone number;
(u) Name and address of police agency with whom missing person's report has been filed and date report filed;
(v) Any relevant remarks; and
(w) A recent photograph if available.

(2) Local school officials shall make such forms available, upon request, to the parents or guardians of missing Kentucky school children, who shall be assisted in completing and forwarding these forms to the Department of Education. Public school officials shall advise all parents and guardians in their district at the beginning of each school year, by any method reasonably calculated to provide actual notice, of the availability of such forms.

Section 2. (1) The Department of Education shall compile and maintain a record of the information received on such forms.

(2) A list of names of currently missing Kentucky school children, together with the other pertinent information listed in Section 1 of this regulation (including whether a photograph is available) and compiled from submitted missing children forms, shall be distributed to all public and all known private schools. The list shall be prepared annually, with monthly updates as to any additions to and deletions from the list and as to additional information received. Names of children who, based upon reliable information from law enforcement officials, have been located shall be deleted from the list.

(3) Public school officials shall make reasonable efforts to publicize the Department of Education's list within each school.

(4) The Department of Education's list of missing Kentucky school children, and monthly updates, shall notify public and private school officials to notify the applicable local, state, or federal law enforcement agency and the Department of Education if contact is made with a child on said list, giving the location and circumstances of the contact.

(5) The [~~Said~~] list, and each monthly update, shall include a statement recommending that officials of public and private schools see that parents or guardians of children absent from school are notified in person or by telephone that such children are not attending.

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: January 10, 1992

FILED WITH LRC: January 10, 1992 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 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 February 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: Kevin M. Noland, General Counsel, Office of Legal Services, Department of Education, 120 Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Bill Scott

(1) Type and number of entities affected: None, just wording changes.

(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: Department staff and the Kentucky State Police will continue information exchange regarding missing children.

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings: None

1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No changes in reporting; same process of information exchange on missing children as before.

(3) Assessment of anticipated effect on state and local revenues: N/A

(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: Not applicable.

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

(6) Any additional information or comments: No

TIERING: Was tiering applied? No. N/A

WORKERS' COMPENSATION BOARD
Department of Workers' Claims
(Proposed Amendment)

803 KAR 25:011. Procedure [~~in applications~~] for adjustments of claims.

RELATES TO: KRS Chapter 342

STATUTORY AUTHORITY: KRS Chapter 13A, 342.260

NECESSITY AND FUNCTION: KRS 342.260 requires the Workers' Compensation Board to prepare such rules and regulations as it considers necessary to carry on its own work and the work of the administrative law judges and for carrying out the provisions of KRS Chapter 342. The function of this proposed administrative regulation is to regulate practice and procedure before the administrative law judges and the Workers' Compensation Board.

Section 1. Definitions. (1) "Board" means the Workers' Compensation Board created pursuant to KRS 342.215(1).

(2) "Commissioner" means the individual employed by the board pursuant to KRS 342.230(2).

(3) "Administrative law judge" means an individual appointed pursuant to KRS 342.230(3).

(4) "Employer" means and includes individuals, partnerships, voluntary associations and corporations.

(5) "An employer who has not secured payment of compensation" means any employer who employs covered employees as defined by KRS 342.640 but has not complied with KRS 342.340.

(6) "Date of filing" means the date a pleading, motion, or other document is received by the board at its office in Frankfort, Kentucky.

Section 2. Parties. (1) The parties to any application for adjustment of claim filed with the board pursuant to KRS 342.270 shall be designated as "plaintiff" and "defendant." The party filing the original application in such proceedings shall be designated as the "plaintiff" and the adverse party (parties) as "defendant" ("defendants").

(2) All parties shall join as plaintiffs in whom any right to any relief pursuant to KRS Chapter 342, arising out of the same transaction or occurrence, is alleged to exist. If any such person should refuse to join as a plaintiff, he shall then be joined as a defendant, and the fact of his refusal to join as a plaintiff shall be pleaded.

(3)(a) All persons shall be joined as defendants against whom the ultimate right to any relief pursuant to KRS Chapter 342 may exist, whether jointly, severally, or in the alternative. The administrative law judge to whom the matter is assigned may order upon a proper showing that any additional party be joined when the administrative law judge deems the presence of the party necessary or that any party be dismissed when the administrative law judge deems the presence of the party unnecessary.

(b) The special fund shall be joined as a defendant in accord with the provisions of KRS 342.120.

(c) Additional parties may be joined upon motion made as soon as practicable after legal grounds for joinder are known. The administrative law judge may, in his discretion, overrule any motion for joinder which is untimely made. Upon joinder of an additional party, a copy of the file shall be served on the party joined as ordered by the administrative law judge. Upon order of the administrative law judge, the commission shall provide notice of the joinder to the party joined.

Section 3. Pleadings. (1) Any application for adjustment of claim for compensation, answer, or [~~and~~] other pleading shall be typewritten, and the printed forms prescribed by the board shall be used whenever applicable. All forms shall be furnished by the commissioner to any person who requests them, without charge.

(2) The original application for adjustment of claim shall be fully completed and filed in triplicate with the commissioner. The original and sufficient copies for serving all named parties and the administrative law judge shall be furnished. The commissioner shall serve the application upon all named parties other than the plaintiff by first class mail. The commissioner shall return unfiled to the plaintiff or his attorney any application which is not fully completed or which does not have attached all forms required to be filed with the application. If the application is resubmitted in proper form within twenty (20) [~~ten (10)~~] days of the date it was returned by the commissioner, the filing date shall relate back to the date the application was first received by the commissioner. Otherwise, the second date of receipt shall be the filing date.

(3) All pleadings filed with the commissioner subsequent to the original application shall include the certificate of the party or attorney who filed the pleading stating the date and manner of service of a copy of the pleading upon the other parties. Service of these pleadings shall be made in one of the ways provided by Rule 5.02, Kentucky Rules of Civil Procedure. Copies of all pleadings filed after the application has been assigned to an administrative law judge and the parties have received notice of the assignment shall also be served upon the administrative law judge at his office address, and the certificate of service shall so show. Service of all pleadings and transcripts of proof by deposition upon the administrative law judge and the commissioner is required.

(4) If issues not raised by the pleadings are tried by expressed or implied consent of the parties, they may be treated in all respects as if they had been raised in the pleadings. Amendment of the pleadings necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after opinion, award, or order, but not later than the time within which a petition for reconsideration may be filed. The claim or defense asserted in the amended pleading shall relate back to the date of the original pleading.

Section 4. Motions. (1) Every application for an order of the administrative law judge shall be by typewritten motion, served and filed in the manner prescribed by Section 3(3) of this regulation. The party filing a motion shall tender with the motion a proposed order granting the relief requested by the motion.

(2) When a motion is filed, the party may file with it a short memorandum supporting the motion, and the opposing party may file a short memorandum in reply. No further memoranda in support of a motion may be filed.

(3) Every motion, the grounds of which depend upon the existence of facts not appearing in evidence at the time of the filing of the motion, shall be supported by affidavits evidencing such facts, which shall be served and filed with the motion. Contrary affidavits may likewise be served and filed by the opposing party.

(4) Every motion, the grounds of which depend upon the existence of one (1) or more facts which the movant contends are shown in evidence or are admitted by the pleading of the adverse party, shall contain a reference to the hearing transcript, [~~of~~] deposition transcript, or medical report containing the evidence and to the page where it is to be found, or to the pleading containing the admission.

(5) A motion may be considered by an administrative law judge ten (10) days after the date of filing of the motion. A response to a motion will be considered if filed prior to the tenth day after the date of filing of the motion.

(6) Every motion for the allowance of an attorney's fee shall be served upon the adverse party and also upon the attorney's client and the fact of such service certified as provided in Section 3(3) of this regulation. Every motion for the allowance of an attorney's fee shall set forth the amount of money requested and the percentage of the award represented by the fee. Every motion shall be accompanied by an affidavit of the attorney setting forth in detail the services rendered and the amount of time expended. Every motion shall also be accompanied by a completed Form 109 signed by the attorney and his client, and notarized, as required by KRS 342.320(3). Every motion for allowance of an attorney's fee shall be submitted within thirty (30) days following finality of the last appealable order of the administrative law judge.

Section 5. Application for Adjustment of an Injury Claim. (1) The original application for adjustment of injury claim (Form 101) shall be filed with the following attachments:

(a) A complete work history of the plaintiff (Form 104);

(b) A complete relevant medical history of the plaintiff (Form 105);

(c) One (1) medical report describing the injury which is the basis of the claim; and

(d) A signed waiver and consent to release relevant medical information in compliance with KRS 342.020(4) (Form 106).

The medical report required to be filed under paragraph (c) of this subsection may consist of the notes of a treating physician and other materials provided by the physician so long as the notes and materials are legible. Medical reports presented in this form and not on Form 107 shall not be considered as the direct testimony of a physician through a medical report pursuant to KRS 342.033, except that the

administrative law judge may, in his discretion, permit the introduction of a medical report not submitted on Form 107 or Form 108 if the report contains substantially all of the information required by the forms.

(2) A defendant may file an answer to the plaintiff's application for adjustment of an injury claim (Form 101) within twenty (20) days after the date of service upon him of the application, but no such answer is required. If [~~and if~~] none is filed, all of the allegations of the application will be deemed to be denied. If, however, an answer other than a special answer under subsection (3) of this section is filed, only those allegations which are specifically denied by the answer shall be deemed to be in disagreement.

(3) If any defendant in an application for adjustment of injury claim relies upon an affirmative special defense, he shall plead the defense in a special answer filed within twenty (20) days after the date of service upon him of the application, or within ten (10) days after the defense is discovered if the defense could not have been discovered earlier in the exercise of reasonable diligence. If, in the exercise of reasonable diligence, the defense could not have been discovered until the introduction of proof, the pleading shall be filed to conform with the proof within ten (10) days after the proof is taken.

(4) Upon the issuance of a scheduling order by the Department of Workers' Claims, all parties may begin discovery and proof. All parties may take discovery and proof before or within [~~for~~] sixty (60) days from the [~~filing~~] date of the scheduling order [~~application~~]; the defendants may then take discovery and proof for an additional thirty (30) days; thereafter, [~~following the defendant's discovery and proof time~~] the plaintiffs may take rebuttal discovery and proof for an additional fifteen (15) days.

All parties shall be furnished with copies of all medical reports and vocational evaluation reports [~~resulting from medical examinations and evaluations by vocational experts~~] within thirty (30) days of the examination or evaluation by the party requesting the examination or evaluation.

(5) Within thirty (30) days after an application for adjustment of an injury claim is filed, the commissioner shall assign the case to an administrative law judge and schedule the time and place for the prehearing conference. The prehearing conference shall be scheduled at least fifteen (15) days after the last day of discovery and proof time in order for transcripts of proof by deposition to be filed prior to the prehearing conference. All parties shall be notified of the assignment and schedule by the commissioner.

Section 6. Application for Adjustment of an Occupational Disease Claim. (1) The original application for adjustment of an occupational disease claim (Form 102) shall be filed with the following attachments:

(a) A complete work history of the plaintiff (Form 104);

(b) A complete relevant medical history of the plaintiff (Form 105);

(c) A signed waiver and consent to release of relevant medical information (Form 106);

(d) Two (2) written medical reports supporting the claim (Form 108) in compliance with KRS 342.316(2)(b)1.

[~~An application for an adjustment of an occupational disease claim (Form 102) may be used to apply for retraining incentive benefits if the plaintiff does not wish to use the expedited procedure described in KRS 342.732 and this section. Retraining incentive benefits may be awarded as an adjustment of an occupational disease claim if the evidence supports such an award, even though this benefit was not requested.~~]

(2) Within sixty (60) days after the date of service upon him of an application for adjustment of an occupational disease claim (Form 102), each defendant shall file a notice of election to resist the application pursuant to KRS 342.316(2)(c)3, or eligibility of the plaintiff for benefits shall be deemed to be conceded.

(3) If any defendant in an application for adjustment of an occupational disease claim relies upon an affirmative special defense, he shall plead the defense in a special answer filed within sixty (60) days after the date of service upon him of the application or within ten (10) days after the defense is discovered if the defense could not have been discovered earlier in the exercise of reasonable diligence. If the affirmative special defense is not so pled, it is waived. If, in the exercise of reasonable diligence, the defense could not have been discovered until the introduction of proof, the pleading shall be filed to conform with the proof within ten (10) days after the proof is taken. Failure of the plaintiff to file and pursue in good faith a claim under the federal Coal Mine Health and Safety Act as required by KRS 342.800 when pneumoconiosis or silicosis benefits are sought shall not be an affirmative special defense when retraining incentive benefits are sought.

(4) Upon being served with an application for adjustment of an occupational disease claim pursuant to KRS 342.316(2)(6)1a or KRS 342.732 (Form 102), a defendant may have the plaintiff examined by medical experts and evaluated by vocational experts, at the defendant's expense. All parties shall be furnished with copies of the resulting medical reports and vocational evaluations within thirty (30) days of the date of the examination or evaluation and within the sixty (60) day discovery time. During this sixty (60) day discovery time, the defendants may depose the plaintiff for discovery purposes. If at the end of the sixty (60) day discovery time the commissioner has received one (1) or more notices of election to resist an application, the commissioner shall assign the case to an administrative law judge, shall schedule the time and place for the prehearing conference, and at the same time issue a schedule for the taking of discovery and of proof by deposition prior to the prehearing conference. All parties shall be notified of this assignment and schedule by the commissioner. The schedule for taking discovery and proof by deposition shall provide that all parties may take discovery and proof for sixty (60) days from the date of filing of the scheduling order; the defendants may then take discovery and proof for an additional thirty (30) days; following the defendants' discovery and proof time, the plaintiffs may take discovery and proof for an additional fifteen (15) days. The prehearing conference shall be scheduled at least fifteen (15) days after the last day of discovery and proof time in order for transcripts of proof by deposition to be filed prior to the prehearing conference.

(5) When an application for adjustment of an occupational disease claim (Form 102) is filed and one (1) or more of the medical reports filed with the application pursuant to KRS 342.316 contains the findings of more than one (1) physician, the findings of one (1) physician concerning the x-ray examination, one (1) physician concerning the spirometric testing, and one (1) physician concerning the comprehensive clinical examination shall together constitute one (1) "written medical report", and cross-examination by deposition may be taken of all the three (3) physicians contributing to any "written medical report" and be introduced as the "direct testimony" of one (1) physician for the purposes of KRS 342.033. Up to three (3) "written medical reports" may be introduced by any party to an occupational disease claim or application for retraining incentive benefits without prior consent from the administrative law judge, as required by KRS 342.033.

Section 7. Application for Retraining Incentive Benefits. (1) The original application for retraining incentive benefits [~~(expedited procedure)~~] (Form 103) shall be filed with the following attachments:

(a) A complete work history of the plaintiff (Form 104);

(b) A complete relevant medical history of the plaintiff (Form 105);

(c) A signed waiver and consent to release of relevant medical information (Form 106) in compliance with KRS 342.020(4);

(d) Two (2) x-ray reports complying with KRS 342.316.

(2) Within sixty (60) days after the date of service upon him of an application for retraining incentive benefits [~~(expedited procedure)~~] (Form 103), each defendant shall file a notice of election to resist the application pursuant to KRS 342.316(2)(c)3 or eligibility of the plaintiff for benefits shall be deemed to be conceded.

(3) If any defendant in an application for retraining incentive benefits [~~(expedited procedure)~~] relies upon an affirmative special defense, he shall plead the defense in a special answer filed within sixty (60) days after the date of service upon him of the application or within ten (10) days after the defense is discovered if the defense could not have been discovered earlier in the exercise of reasonable diligence. If the affirmative special defense is not so pled, it is waived. If, in the exercise of reasonable diligence, the defense could not have been discovered until the introduction of proof, the pleading shall be filed to conform with the proof within ten (10) days after the proof is taken. Failure of the plaintiff to file and pursue in good faith a claim under the federal Coal Mine Health and Safety Act as required by KRS 342.800 when pneumoconiosis or silicosis benefits are sought shall not be an affirmative special defense when rehabilitation incentive benefits are sought [~~in an expedited procedure~~].

[~~(4) When an application for retraining incentive benefits (expedited procedure) (Form 103) has been filed, the commissioner shall appoint a physician to conduct a comprehensive clinical examination, radiographic testing and spirometric testing of the plaintiff, or may appoint up to three (3) physicians if any one (1) physician is not qualified to conduct all these procedures. The findings of this physician or these physicians shall constitute a report of the "examination" which the claimant may elect pursuant to KRS 342.732(1)(a). The examination shall be conducted and the findings filed and served on all parties within fifty (50) days of the appointment. No other medical examination shall be conducted.~~]

(4) [~~(5)~~] If at the end of the sixty (60) day discovery time the commissioner has received one (1) or more notices of election to resist the application, the commissioner shall assign the case to an administrative law judge, shall schedule the time and place for the hearing, and at the same time shall issue a schedule for the taking of proof. During this proof-taking time, direct testimony may be taken from the physicians who conducted the examination, and proof may be taken by deposition concerning any special defenses pleaded by the employer at the time of filing of the notice of election to resist [~~Resistance~~]. All parties shall be notified of this assignment and schedule by the commissioner. The schedule for taking discovery and proof by deposition shall provide that all parties may take discovery and proof for sixty (60) days from the date of filing of the scheduling order; the defendants may then take discovery and proof for an additional thirty (30) days; following the defendants' discovery and proof time, the plaintiff may take discovery and proof for an additional fifteen (15) days. The hearing shall be scheduled at least fifteen (15) days after the last day of discovery and proof time in order for transcripts of proof by deposition to be filed prior to the hearing. There shall be no prehearing conference in a claim which is initiated by an application for retraining benefits [~~(expedited procedure)~~].

Section 8. Prehearing Conference. (1) The purposes of the prehearing conference are to expedite the processing of contested cases and to avoid whenever possible the need for a formal hearing. The conference is an informal procedure, presided over by the administrative law judge. No transcript of the proceedings of the conference shall be made. At the conference, every effort shall be made by all parties to dispose of controversies whenever possible, to narrow and define issues, and to facilitate prompt settlement of the claim. The parties shall exchange lists of known witnesses fifteen (15) days before the prehearing conference and final additions, if any, to the respective witness lists shall be made at least seven (7) days before the prehearing conference. The witness list shall give the name of each proposed witness together with a summary of the prior testimony or anticipated testimony of the witness. For medical witnesses, this summary shall include at a minimum a description of the diagnosis made by the witness and the physical findings and diagnostic studies upon which the diagnosis is based, as well as the functional impairment rating assessed by the witness and any work-related restrictions imposed.

(2) Within sixty (60) days after the date of the commissioner's scheduling order, the defendant employer shall file with the administrative law judge, with copies to opposing parties, the plaintiff's payroll records with the defendant employer for each of the fifty-two (52) weeks preceding the date of the alleged injury or the date of the alleged last exposure in accordance with the provisions of KRS 342.140 unless good cause is shown for the failure to file the payroll records or the parties, by joint stipulation, agree upon the employee's average weekly wage. Such payroll records or stipulation shall constitute evidence in the case.

(3) At the prehearing conference, the administrative law judge may limit witnesses for good cause shown.

(4) [~~(2)~~] The plaintiff and his representative, the defendant employer/insurer or its representative, and the representatives of all other parties shall attend the prehearing conference. The representative of any party must have authority to resolve disputed issues and settle the claim at the conference. The administrative law judge may upon motion waive the requirement that the plaintiff shall attend the conference but only for good cause shown in the motion and with a showing that the plaintiff's representative will attend the conference with full authority to settle the claim.

(5) [~~(3)~~] The representative of a party may seek rescheduling or postponement of a prehearing conference by motion filed at least fifteen (15) days prior to the schedule date of the conference, stating the reason for the request. A motion to postpone or reschedule shall be sustained only upon good cause shown at the discretion of the administrative law judge.

(6) [~~(4)~~] If all parties agree upon a settlement prior to the prehearing conference, the settlement agreement shall be filed for the approval of the administrative law judge. If the agreement is approved by the administrative law judge, the prehearing conference shall be cancelled and notice of the cancellation served on all parties.

[~~(5) If the parties reach agreement on all issues at the prehearing conference and the claim is settled, the administrative law judge shall summarize the terms of the agreement using a Form 110. This record of the terms of the agreement shall be signed by the parties. The administrative law judge may approve the agreement at the conference or retain it for review for up to ten (10) days prior to approval. The administrative law judge shall cause copies of the agreement form to be served on all parties, and the claim will thereafter be closed.~~]

(7) [~~(6)~~] If at the conclusion of the conference the parties have not reached agreement on all the issues, the administrative law judge shall prepare a stipulated summary of all contested and uncontested issues, which shall be signed by representatives of the parties and by the administrative law judge. This stipulation shall be filed, and only the contested issues shall be the subject of further proceedings before the administrative law judge.

(8) [~~(7)~~] In the sole discretion of the administrative law judge upon motion of a party with good cause shown, the administrative law judge may order that additional discovery or proof by deposition be taken on a contested issue between the prehearing conference and the hearing. Taking of this proof shall not automatically be a valid reason for continuing the date for the hearing.

(9) [~~(8)~~] If the claim is not settled, the administrative law judge shall schedule a date for the hearing on the claim at the prehearing conference. The date for the hearing shall be within sixty (60) days from the date of the prehearing confer-

ence. Representatives of the parties shall come to the prehearing conference prepared to schedule a hearing during the conference. The hearing date will not be changed except for good cause shown on motion of the representative requesting the change.

(10) [~~(9)~~] If the parties agree upon a settlement at or after the prehearing conference but before the hearing, the settlement agreement (Form 110) shall be filed for the approval of the administrative law judge. The administrative law judge shall approve or disapprove the settlement agreement within ten (10) days of filing. If the agreement is approved by the administrative law judge, the hearing shall be cancelled and notice of the cancellation served on all parties.

Section 9. Interlocutory Relief. (1) The plaintiff may seek three (3) forms of interlocutory relief while his claim is in the process of consideration for adjustment.

(a) If the plaintiff is totally disabled, he may seek to have income benefits paid pursuant to KRS 342.730 while the claim is pending.

(b) He may seek to have medical and hospital bills paid pursuant to KRS 342.020 while the claim is pending.

(c) He may seek provision of rehabilitation services pursuant to KRS 342.710 while the claim is pending. The defendants may also request rehabilitation services for the plaintiff while the claim is pending.

(2) The plaintiff may seek one (1) or more forms of interlocutory relief by completing the appropriate section of the application for adjustment of claim. The plaintiff or defendants may seek interlocutory relief by motion if the need for interlocutory relief arises after the application is filed.

(3) If the plaintiff seeks interlocutory relief in his application for adjustment of claim or by motion at least twenty (20) days prior to the prehearing conference or if there is agreement of all parties, the request for interlocutory relief may be considered at or before the prehearing conference. If the motion is filed within twenty (20) days of the prehearing conference or after the prehearing conference but before the hearing, it may be considered at or before the hearing.

(4) One (1) or more of the forms of interlocutory relief described in Section 9 [~~7~~](1) of this regulation may be granted by the administrative law judge if the plaintiff shows by means of affidavits, [~~or~~] his own deposition, or other evidence of record that he is eligible for the interlocutory remedies being sought under KRS Chapter 342 and that if he does not receive the interlocutory relief sought he will suffer immediate and irreparable injury, loss, or damage pending a final decision on the application. A defendant may be granted the right to provide rehabilitation services to the plaintiff while the claim is pending upon a showing that the plaintiff will benefit from the services and have a better chance of returning to work as a result.

(5) When the plaintiff seeks interlocutory relief, the defendant shall file his response, if any, and supporting affidavits, as appropriate, within twenty (20) days from the date of the issuance of the scheduling order by the Department of Workers' Claims, or within twenty (20) days of the filing of any subsequent motion [~~as herein provided~~].

(6) When the plaintiff seeks interlocutory relief, the administrative law judge shall review all pleadings, affidavits, and other evidence in the record and at the prehearing conference or hearing may, in his discretion, hear oral arguments in support of each party's position. The administrative law judge shall render his decision, file it in the record, and serve it on all parties.

(7) When the administrative law judge awards to the plaintiff interlocutory relief in the form of income benefits while he is totally disabled, the application shall be placed in abeyance, unless the plaintiff shows that he will be irreparably harmed thereby. While the application is in abeyance, the parties shall submit in writing to the administrative law judge a report on the plaintiff's continued total disability every sixty (60) days. If, in the administrative law judge's discretion, new evidence shows that the plaintiff is no longer totally disabled, the administrative law judge may revoke the interlocutory payment of income benefits based on total disability and remove the claim from abeyance.

(8) No interlocutory relief may be sought or granted when the claim is an application for retraining incentive benefits [~~(expedited procedure)~~].

(9) When the administrative law judge awards to the plaintiff interlocutory relief in the form of income benefits while he is totally disabled, an attorney's fee in the amounts authorized by KRS 342.320 but in no case to exceed twenty (20) percent of the weekly income benefit awarded may be ordered by the administrative law judge upon motion of the attorney. The administrative law judge may award the fee on a sixty (60) day basis, renewable for additional sixty (60) day periods if the interlocutory benefit is renewed pursuant to Section 9(7) of this regulation. All provisions of KRS 342.320 and Section 4(6) of this regulation must be complied with. The fee awarded shall be deducted in equal amounts from the weekly income benefits awarded and paid directly to the attorney awarded the fee at the beginning of each sixty (60) day period.

Section 10. Hearings. (1) If the parties have not arrived at a settlement prior to the scheduled hearing date, a hearing shall be held to complete proof on all contested issues set forth in the stipulated summary filed pursuant to Section 7(8) [~~6(6)~~] of this regulation.

(2) The administrative law judge to whom the case has been assigned shall conduct the hearing. No proof shall be taken following the hearing.

(3) The plaintiff shall appear at the hearing and shall present his testimony concerning the contested issues still before the administrative law judge, even if the plaintiff's testimony has previously been taken by deposition. Defendants may cross-examine. Other proof may be taken at the hearing only if it has not previously been taken by deposition.

(4) If the plaintiff fails to appear at the hearing of his claim and no good cause is shown for his failure to appear, the administrative law judge may dismiss the case for want of prosecution. If good cause is shown, the case may be continued until the plaintiff is able to appear.

(5) When a defendant or his representative fails to appear at the hearing, the hearing may proceed as scheduled.

(6)(a) At the conclusion of the hearing, the administrative law judge may take the application under submission immediately or request briefs from the parties to be filed according to a schedule announced by the administrative law judge at the hearing. Upon filing of the last brief scheduled or passage of the due date for that brief, the case shall stand submitted. Briefs filed with the administrative law judges shall not exceed twenty-five (25) pages in length. Permission to increase the length of a brief shall be sought by motion. Cause must be shown for the increase. The administrative law judge may announce his decision at the conclusion of the hearing and subsequently file his written opinion, serving it on the parties when filed, or the administrative law judge may defer his decision until he files the written opinion. In either case, a decision shall be rendered no later than ninety (90) days following the hearing, and the time for filing a petition for reconsideration shall not begin to run until the date of filing of the written opinion.

(b) A persistent or continuous failure to comply with paragraph (a) of this subsection may be considered by the board as cause for removal of the administrative law judge pursuant to KRS 342.230.

Section 11. Petitions for Reconsideration. (1) Within fourteen (14) days from the date the written opinion announcing an order, award, or decision is filed, any party may file a petition for reconsideration of the award, order, or decision. The petition shall clearly identify the error "patently appearing upon the face" of the award, order, or decision which the

petitioner seeks to have corrected and set forth arguments and authorities supporting the correction sought.

(2) Any party may file a response to the petition within ten (10) days after the date of filing of the petition.

(3) The administrative law judge shall by order overrule or sustain the petition for reconsideration within ten (10) days after the date the responses are due.

(4) If the administrative law judge finds that the petition is frivolous, he may assess costs and attorney fees against the petitioner or his attorney.

(5) The filing of a timely petition for reconsideration shall suspend the finality of any order, decision, or award until the ruling is made thereon. Any notice of appeal filed prior to filing of a petition for reconsideration shall be held in abeyance until a ruling is made on the petition.

Section 12. Appeals to the Workers' Compensation Board. (1) Within thirty (30) days after the date of filing of a written opinion, order or decision finally adjudicating a case, a party aggrieved by the opinion, order, or decision may appeal the opinion, order, or decision to the Workers' Compensation Board. Opinions, orders, or decisions of administrative law judges and of the (old) Workers' Compensation Board established pursuant to KRS 342.215(5) shall be appealed in this manner. A final adjudication as used in this section shall be determined according to the provisions of Civil Rule 54.02(1) and (2).

(2) The appeal shall be initiated by the filing of a notice of appeal. The notice of appeal shall style the appealing party first as the "petitioner" and all other parties against whom the appeal is being taken as the "respondents." The Workers' Compensation Board case number shall be retained in the petition and in all other pleadings related to the appeal to the board. The administrative law judge who rendered the opinion, order or decision appealed from or the (old) Workers' Compensation Board shall be named as a "respondent." If appropriate, the Director of the Special Fund shall be named as a "respondent" pursuant to KRS 342.316(10)(b) [~~(6)~~].

(3) Any party other than the petitioner in the appeal may file a cross-appeal [~~against a party who has taken an appeal against him~~]. All cross-appeals shall be filed by notice of cross-appeal within ten (10) days after notice of appeal is filed. If a cross-appeal is filed, the style of the appealed and cross-appealed case shall designate the parties as appropriate (i.e., petitioner-cross-respondent). The Workers' Compensation Board number shall remain the same.

(4) The notice of appeal or cross-appeal, and enough copies for service on all respondents, shall be filed with the commissioner. The commissioner shall cause all respondents to be served by first class mail with a copy of the notice of appeal or cross-appeal. All subsequent pleadings shall be served on the respondents as provided in Section 3(3) of this regulation.

(5) When a notice of appeal is filed, the record in the case shall be transferred to the Workers' Compensation Board in its entirety, unpaginated. All references to specific evidence in the record shall be by the title of the evidence referenced and the page number at which the specific entry occurs (i.e., Deposition of Dr. A. B., p. 17.)

(6) If a ground for the appeal is fraud or misconduct pursuant to KRS 342.285(2) [~~(3)~~], the board shall immediately schedule a hearing on that issue before the board. All testimony concerning the issue shall be transcribed and placed in the record, and notice of filing of the transcript shall be given to all parties by the commissioner. All subsequent time in such a case shall be calculated from the date the transcript is filed instead of the date of filing of the notice of appeal.

(7)(a) The petitioner's brief shall be filed with the board within thirty (30) days of filing of the notice of appeal. The organization and contents of the petitioner's brief shall be as provided in Rule 76.12(4)(c) of the Kentucky Rules of Civil Procedure except that no index shall be required and the only appendix shall be a copy of the decision appealed from, including the decision of the administrative law judge, all petitions for reconsideration of the opinion, [~~and~~] all rulings on petitions for reconsideration, and copies of all cited cases from federal courts and foreign jurisdictions.

(b) The failure of the petitioner to file petitioner's brief within the time provided by paragraph (a) of this subsection may be grounds for one (1) or more of the following penalties:

1. A dismissal of the appeal after failure to respond to a show cause order served upon the attorney and client;

2. The striking of the petitioner's brief;

3. The imposition of a fine on petitioner's counsel of not more than $500.

(8)(a) The respondent's brief shall be filed with the board within thirty (30) days of the date the petitioner's brief was filed or due. The organization and contents of the respondent's brief shall be as provided in Rule 76.12(4)(d) of the Kentucky Rules of Civil Procedure, except that no index shall be required and the only appendix shall be a copy of any response filed to a petition for reconsideration and copies of all cited cases from federal courts and foreign jurisdictions. If a respondent is also a cross-petitioner, a combined brief shall be filed addressing issues raised by the petitioner's brief and by the cross-appeal.

(b) The failure of the respondent to file respondent's brief within the time provided by paragraph (a) of this subsection may be grounds for one (1) or more of the following penalties:

1. The reversal of the opinion and award if the petitioner's brief and the record reasonably appear to sustain such action;

2. The striking of the respondent's brief;

3. The imposition of a fine on respondent's counsel of not more than $500.

(9) The petitioner's reply brief may [~~shall~~] be filed within fifteen (15) days after the date on which the last respondent's brief was filed or due, whichever is earlier. The organization and contents of the petitioner's reply brief shall be as provided in Rule 76.12(4)(e) of the Kentucky Rules of Civil Procedure, except that no appendix, index, or contents page shall be required. If the petitioner is also a cross-respondent, a combined brief shall be filed addressing issues raised by the response and issues raised by the cross-petitioner's brief.

(10) If a cross-appeal has been filed, the cross-petitioner's reply brief may [~~shall~~] be filed within fifteen (15) days after the date on which the last cross-respondent's brief was filed or due, whichever is earlier. The organization and contents of the cross-petitioner's reply brief shall be as provided in Rule 76.12(4)(e) of the Kentucky Rules of Civil Procedure, except that no appendix, index, or contents page shall be required.

(11) The petitioner's brief and the respondent's brief shall be limited to fifteen (15) pages each in overall length. Reply briefs shall be limited to five (5) pages in overall length. Combined briefs shall be limited to twenty (20) pages each in overall length. The requirements of this rule with respect to a "statement of points and authorities" shall not apply to any brief of five (5) pages or less. Permission to increase the length of a brief shall be sought by motion. Cause must be shown for the increase. All pleadings shall be typewritten and conform to the requirements set forth in Rule 7.02(4) of the Kentucky Rules of Civil Procedure. Pleadings shall be filed without covers, but the style of the case, including the board number and the title of the pleading, shall appear on the first page of the pleading.

(12) When all briefs have been filed or the due date is past on the last brief due, any party may [~~shall~~] by motion move for submission of the appeal to the board for decision. Upon issuance of the board's order, the case shall stand submitted.

(13) Within thirty (30) days of the filing of the board's order of submission, the board shall enter its decision affirming, modifying, or setting aside the decision, order, or award appealed from, or, in its discretion, remand[~~ing~~] the claim to the administrative law judge for further proceedings

in conformity with the direction of the board. There shall be no motion for reconsideration.

(14) The decision of the board may be appealed to the Kentucky Court of Appeals as provided in Rule 76.25, Kentucky Rules of Civil Procedure.

(15) Every application for an order of the board shall be by typewritten motion, served and filed in the manner prescribed by Section 3(3) of this regulation.

(16) When a motion is filed, the party may file with it a short memorandum supporting the motion, and the opposing party may file a short memorandum in reply. No further memoranda in support of a motion may be filed.

(17) All motions filed with the board subsequent to the original notice of appeal shall include the certificate of the party or attorney who filed the motion stating the date and manner of service of a copy of the motion upon the other parties. Service of these motions shall be made in one of the ways provided in Rule 5.02, Kentucky Rules of Civil Procedure.

(18) The opposing party may file a response, accompanied by a certificate of service, within ten (10) days after the date the motion was filed with the board.

[~~(19) Three (3) copies of motions and responses in the Workers' Compensation Board shall be filed.~~]

(19) [~~(20)~~] Except for motions that call for final disposition of an appeal before [~~in~~] the board, any member of the board designated by the chairman may dispose of any motion; and any intermediate order of a procedural nature pending final disposition of a proceeding pending before the board may be issued on the signature of any member of the board.

Section 13. Medical Reports. (1) As provided in KRS 342.033, any party may introduce direct testimony (proof) from a physician through a written medical report, subject to the limitations of KRS 342.033, Section 5(3) of this regulation, and the scheduling order issued by the commissioner [~~administrative law judge~~] pursuant to Section 5 of this regulation.

(2) Any written medical report sought to be introduced as evidence shall be submitted on a Form 107 (injury) or Form 108 (occupational disease) whichever is appropriate, except that the administrative law judge may, in his discretion, permit the introduction of a medical report not submitted on Form 107 or Form 108 if the report contains substantially all of the information required by the forms.

(3) Any written medical report sought to be introduced as evidence shall be signed by the physician making the report, bearing an original signature. A reproduced medical report which is not originally signed is not admissible as evidence unless accompanied by an originally signed affidavit from the physician or the submitting attorney verifying the contents of the report.

(4) Any written medical report sought to be introduced into evidence shall include within the body of the report or as an attachment a statement of qualifications of the person making the report. If the qualifications of the physician who prepared the written medical report have been filed with the commissioner and the physician assigned a medical qualifications index number, this section may be complied with by a statement of the physician's medical qualifications index number on the record in lieu of attaching a statement of the physician's qualifications.

(5) Any narrative in a written medical report on a Form 107 or Form 108 sought to be introduced into evidence shall be typewritten. Any written medical report or any attachment to a written medical report, such as spirometric tracings, shall be clearly legible in the original and on the copies served on other parties.

(6) The written medical reports required by KRS 342.316(2)(b)1a shall be filed with the application for adjustment of an occupational disease claim as required by that section but shall not be considered evidence unless a motion for that purpose is made.

(7) Any party may file the testimony of three (3) physicians, taken either by deposition or medical report, which shall be admitted into evidence without further motion. If any party objects to the admissibility of the evidence, the administrative law judge shall then rule on its admissibility.

(8) [~~(7)~~] All other written medical reports shall be introduced by motion for admission. The written medical report shall be attached to the motion. The party seeking admission of the report may also file a memorandum in support of the motion. The administrative law judge shall rule on the motion for admission within fifteen (15) days of the filing of the motion.

(9) [~~(8)~~] Any objection to the filing of a written medical report shall be filed within ten (10) days of the filing of the report or the motion for admission. Grounds for the objection shall be stated with particularity. The objecting party may file a memorandum in support of his objection.

[~~(9) The administrative law judge shall rule on the motion for admission within fifteen (15) days of the filing of the motion.~~]

(10) If a written medical report is admitted as direct testimony, any adverse party may depose the physician making the written report as cross-examination concerning it, and the deposition shall be filed as proof without a motion.

Section 14. Continuances, Extensions, and Motions to Hold in Abeyance. (1) Continuances of hearings and prehearing conferences may be granted by the administrative law judge upon motion supported by affidavits stating facts making a proper showing of good cause for a continuance. A motion for a continuance must be filed no later than twenty (20) days prior to the conference or hearing unless there is a showing of emergency or circumstances beyond the control of the requesting party which prohibited timely filing of the motion. The opposing parties may have ten (10) days from the filing date of the motion to respond with a brief memorandum with affidavits in support of their [~~his~~] position.

(2) Extensions of time for the taking of discovery or proof by deposition shall not be granted except upon showing of circumstances preventing the party moving for an extension from timely taking discovery or proof by deposition. The motion for extension of time must be filed no later than five (5) days before the deadline sought to be extended. The motion for extension of time and supporting affidavits must clearly set forth the following:

(a) A showing of timely and diligent efforts by counsel to take the discovery or proof by deposition in question must be detailed.

(b) The facts which prevent taking of the needed discovery or proof by deposition must be detailed.

(c) The date of availability of the evidence needed and the probability of its production must be detailed.

(d) Where possible, supporting documentation giving rise to the need for the extension should be filed with the motion.

(3) In the absence of unusual circumstances, only one (1) thirty (30) day extension shall be granted to each side for completion of discovery or proof by deposition.

(4) The granting of an extension of time for completion of discovery or proof shall enlarge the time to all plaintiffs if the extension is granted to a plaintiff or to all defendants should an extension be granted to a defendant.

(5) The provisions of this section shall apply to motions requesting that a claim be held in abeyance pending settlement or for any other reason.

Section 15. Stipulation of Facts and Judicial Notice. (1) Stipulation of facts which are not in issue is mandatory, and the refusal without good cause to stipulate facts which are not in [~~at~~] issue, within the sound discretion of the administrative law judge, may result in assessment of costs against the party who without good cause has refused to stipulate to routine matters not in issue. The assertion of the fact that a party has not had sufficient time or opportunity to ascertain the facts will not be necessarily considered "good cause" within the

meaning of this regulation.

(2) Every party to a stipulation shall be considered bound to the same. For good cause shown, however, any party may be relieved of a stipulation he has made provided that the motion for relief is filed at least ten (10) days prior to the date of the hearing. Upon granting relief from a stipulation, the administrative law judge shall grant a continuation of the hearing and shall schedule additional discovery or proof time for the opposing party or parties to complete their discovery or proof so as to prevent prejudice or surprise.

(3) At the prehearing conference, the administrative law judge shall ask the appropriate questions in order to determine the reasons for an inability or unwillingness to stipulate. The plaintiff and the defendants have the joint responsibility of resolving jurisdictional issues and preaward payment of compensation and explaining why these cannot be stipulated.

(4) The administrative law judge will take judicial notice that the Act is mandatory except for those employers exempted by KRS 342.650 and those employees rejecting the Act pursuant to KRS 342.395 and 342.400.

(5) Upon the filing of a claim, the commissioner shall ascertain whether the employer or any other person against whom a claim is filed and who is not exempted by KRS 342.650 has secured payment of compensation by obtaining insurance coverage or qualifying as a self-insurer pursuant to KRS 342.340. Should the employer or any other person against whom a claim is filed not have insurance coverage or qualify as a self-insurer, the commissioner within thirty (30) days after the filing of the claim shall certify to the file that the defendant or any other person against whom a claim has been filed has failed to secure payment of compensation as required by KRS Chapter 342 and shall notify the administrative law judge and all parties by service of a copy of the certification of no coverage.

Section 16. Evidence: Rules Applicable. (1) The same rules of evidence that apply in judicial proceedings and that are governed by the common law and the statutes in effect in this Commonwealth apply in all hearings and depositions taken to be used in cases before the administrative law judges.

(2) An exception to the above rule applies in medical reports submitted by and depositions taken of evaluating physicians who are nontreating physicians. In those instances, the nontreating physician is permitted to use the case history related to him by the patient and the subjective symptomatology related to him by the patient in arriving at and formulating his opinion as to causation and disability.

Section 17. Discovery and Depositions. (1) The parties may obtain discovery and take depositions in accordance with the provisions of Rules 26 to 37, inclusive, of the Kentucky Rules of Civil Procedure, except for Rules 27, 33, and 36 which are not adopted by the board and which shall not apply to practice before the administrative law judges or the board.

(2) Depositions may be taken by telephone provided the reporter administering the oath to the witness and reporting the deposition is physically present with the witness at the time the deposition is given and provided the notice of deposition contains the following information:

(a) That the deposition is being taken by telephone;

(b) The address and telephone number from which the telephone call will be placed to the witness;

(c) The address where the witness will be giving the deposition and the number of the telephone on which the witness will receive the deposition call; and

(d) That all opposing parties may appear to participate at the deposition either at the place from which the deposition is being given by the witness or at the place the telephone call is placed to the witness.

(3) After a party has served notice of its intention to take a deposition by telephone, any opposing party may participate in the deposition for cross-examination by conference call from places other than where the deposition is given by the witness or where the call is placed to the witness but must contribute its proportionate cost of the conference telephone call.

(4) The commissioner shall establish a medical qualifications index, and an index number will be assigned to a physician upon the filing by the physician of his qualifications. Any physician who has been assigned an index number may testify to the assigned number at deposition in lieu of stating his qualifications. Previously filed medical qualifications may be revised or updated by submitting such revision to the commissioner. Nothing in this rule shall preclude any party from inquiring further into the qualifications of the physician at the deposition.

~~[Section 18. Depositions of Physicians Appointed under KRS 342.121. (1) An examining physician appointed by an administrative law judge pursuant to KRS 342.121(1) shall make his report to the administrative law judge on either Form 107 or Form 108 as appropriate, and his report shall be filed as direct testimony. An examining physician appointed by the administrative law judge shall not be examined by deposition on his report except by permission of the administrative law judge.~~

~~(2) Motions to join the special fund shall include a designation of the area of medical specialty for appointment of the physician designated pursuant to KRS 342.121.~~

~~Section 19. Examinations by Disinterested Physicians. When a disinterested physician or surgeon has been appointed by an administrative law judge pursuant to KRS 342.315, no party shall furnish to the physician or surgeon any copies of reports previously made or depositions given by any physicians or surgeons who have examined the claimant in the case. Either party, however, may transmit to the appointed physician or surgeon, through the administrative law judge, properly identified x-ray photographs made by another person. The transmittal shall be accompanied by certification of service upon all parties.~~]

Section 18. ~~[20.]~~ Appearances. (1) Only attorneys-at-law duly licensed in Kentucky may appear or practice before the administrative law judges or the board, except that any natural person who is a party to any proceeding may represent himself only but shall not, either directly or indirectly, represent or appear in behalf of any legal entity other than himself.

(2) If no prior application for adjustment of claim has been filed in any dispute involving KRS 342.020 or 342.035, any provider of medical services, employer, insurance carrier, self-insured, self-insured group, self-insured group administrator, insurance adjuster, or surety for employer may contest the same without representation by an attorney through the appearance of a person who is an officer of or regularly employed in a managerial capacity by a corporation or partnership which is involved in the dispute.

(3) ~~[(2)]~~ Any party who elects to represent himself without the aid of counsel shall be held accountable in the same manner, and to the same degree, as qualified counsel.

(4) Every pleading shall be signed by the person filing the pleading together with his full address and telephone number(s).

Section 19. ~~[21.]~~ Withdrawal of Records. (1) No paper or other portion of any original record of the board shall be withdrawn except on order of the administrative law judge.

(2) All physical exhibits, including x-rays, will be disposed of sixty (60) days after the case is finally closed, unless the filing party makes arrangements to claim the exhibit prior to that time. If the unclaimed exhibit has no money value, it will be destroyed; if the unclaimed exhibit has a value of more than $100, it will be sold as surplus property; the unclaimed exhibit will be donated to an appropriate state agency if it has a value of less than $100; if the unclaimed exhibit has historic

or museum value, it will be sent to the state archives.

Section 20. [~~22.~~] Routine Records Admission. Any party may file in the record of a case any routine hospital, armed forces and Social Security records. These shall be made part of the record and considered for their statistical content only, and any opinion contained therein shall be stricken and not considered. A party, however, may depose the proper agent in the manner provided in these regulations in order to have these records admitted as to any opinion contained therein.

~~[Section 23. Exceptions. Formal exceptions to rulings or orders of the administrative law judges or the board are unnecessary.]~~

Section 21. [~~24.~~] Frivolous Filings. All provisions of Rule 11 and Rule 73.02(4), Kentucky Rules of Civil Procedure, are incorporated into this regulation [~~rule~~] by reference.

Section 22. [~~25.~~] Retraining Incentive Benefits. If an applicant for retraining incentive benefits is working in the coal industry at the time his application is filed, the insurance company responsible is the one insuring the applicant's employer on the date of the filing. Otherwise, the insurance company responsible is the one insuring the applicant's employer on the date of his last exposure.

Section 23. [~~26.~~] Forms. (1) Forms 101, 102, 103 (rev. 1/8/92), 104, 105, 106, 107 (rev. 1/8/92), 108 (rev. 1/8/92), 109, 110, and 112 [~~111~~] are hereby adopted by reference.

(2) Incorporation by reference. One (1) copy of Forms 101, 102, 103 (rev. 1/8/92), 104, 105, 106, 107 (rev. 1/8/92), 108 (rev. 1/8/92), 109, 110, and 112 is filed herewith and incorporated by reference.

(3) Information available.

(a) Information and material is available for public inspection and copying at main, regional, and branch offices of the agency:

1. Frankfort - Perimeter Park West - Building C, 1270 Louisville Road, Frankfort, Kentucky 40601;
2. Louisville - 620 South Third Street, Louisville, Kentucky 40202;
3. Lexington - 950 Commerce National Building, Lexington, Kentucky 40507;
4. Paducah - Suite B, Room 2, 400 Park Avenue, Paducah, Kentucky 42001; and
5. Pikeville - 111 Caroline Avenue, Pikeville, Kentucky 41501.

(b) Office hours of each office are 9 a.m. to 4 p.m., Monday through Friday, inclusive, for this purpose.

Section 24. [~~27.~~] Payment of Compensation from Uninsured Employers' Fund. (1) Payment from the uninsured employers' fund of compensation which has been awarded a claimant in the case where the defendant-employer, or any other party liable for the payment thereof, has not secured payment of compensation as provided for by KRS Chapter 342 shall be made only after the claimant, or any other party in interest, has filed in the circuit court of the county where the injury occurred an action pursuant to KRS 342.305 to enforce payment of the award against the defendantemployer, or any other person liable for payment of the [~~said~~] action, judgment has been rendered thereon, and there has been default in payment of the [~~said~~] judgment by the defendant-employer, or any other party liable for payment thereof, except the uninsured employers' fund.

(2) When the procedure provided in subsection (1) of this section has been complied with, the claimant may file a motion with the administrative law judge, together with proof of compliance with the requirement of subsection (1) of this section, requesting that the administrative law judge order payment from the uninsured employers' fund in accordance with KRS 342.760. Upon satisfactory proof of such compliance, the administrative law judge shall enter an order directing payment of compensation or any portion thereof from the uninsured employers' fund.

(3) This section shall not be construed [~~as~~] to prohibit the voluntary payment of compensation by an employer, or any other person liable for payment thereof, who has failed to secure payment of compensation as provided for by KRS Chapter 342, the compromise and settlement of a claim or award approved by the board pursuant to KRS 342.265, or the payment of its proportionate share of a claim or award by the special fund.

(4) Compliance with subsection (1) of this section shall not be required and the compensation awarded shall be deemed uncollectible from the defendant-employer upon a showing that the defendant-employer has filed a petition in bankruptcy in the United States Bankruptcy Court under either Chapter 7 or Chapter 11 of the Federal Bankruptcy Code.

Section 25. Use of American Medical Association Guidelines in Coal Workers' Pneumoconiosis Cases. (1) The predicted normal values of FVC and FEV_1, which are identical in both the 1984 and 1988 editions of the American Medical Association Guidelines, are given in graph form with ages and heights given in even years and even centimeters. The guidelines are silent as to the determination of the proper predicted values when the plaintiff's age is in an odd year or his height is in odd centimeters.

(2) If the plaintiff's age at the time of the exam is an odd year, the next highest even year shall be used.

(3) The plaintiff's height, as measured in his stocking feet, shall be rounded out to the nearest centimeter. If the plaintiff's height is an odd number of centimeters, the next highest even height in centimeters shall be used.

Section 26. Resolution of Medical Fee Disputes. (1) Any employee, provider of medical services, employer, insurance carrier, self-insured, self-insured group, self-insured group administrator, or surety for employer, whether a natural person, partnership, or corporation, may seek, by motion (Form 112), resolution of a dispute regarding the payment or nonpayment of medical expenses before an application for adjustment of claim is filed.

(2) The movant shall file with his motion affidavits setting forth facts sufficient to show that the movant is entitled to the relief sought. The opposing party may file, within twenty (20) days after notice of the motion a response, if any, along with affidavits setting forth facts sufficient to show that the movant is not entitled to the relief sought.

(3) An administrative law judge shall review all pleadings, affidavits, or other evidence in the record and render a decision which shall be filed of record and served on all parties to the dispute. The administrative law judge shall not be precluded from taking any other action deemed necessary to resolve the dispute, including an order directing the parties to file a formal application for adjustment of claim.

(4) If the administrative law judge determines that such proceedings have been brought, prosecuted, or defended without reasonable ground, the whole cost of the proceedings may be assessed upon the party who has so brought, prosecuted, or defended the proceedings without reasonable ground as provided by KRS 342.310.

(5) Any party aggrieved by the decision of the administrative law judge may appeal to the Workers' Compensation Board by following the procedures set out in Section 12 of this regulation.

JUDGE ARMAND ANGELUCCI, Chairman

APPROVED BY AGENCY: January 8, 1992

FILED WITH LRC: January 10, 1992 at 11 a.m.

PUBLIC HEARING: A public hearing will be held at the Farnham Dudgeon Civic Center, Capital Plaza Complex, Conference Rooms ABC, 405 Mero Street, Frankfort, Kentucky 40601, 10 a.m. on February 24, 1992. Individuals

interested in attending this hearing shall notify this agency in writing by February 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. 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: Valerie L. Salven, General Counsel, Department of Workers' Claims, Perimeter Park West - Building C, 1270 Louisville Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Valerie L. Salven

(1) Type and number of entities affected: This amended regulation will affect the parties to contested workers' compensation claims. Employers, employees, insurers, the special fund, the uninsured employers' fund, and attorneys representing these persons or entities will be affected. During calendar year 1990, there were 6,368 contested workers' compensation claims or reopened cases filed with the Department of Workers' Claims.

(a) Direct and indirect costs or savings to those affected:

1. First year: Amendments relating to telephone depositions and motions to resolve medical fee disputes should reduce the costs of litigation to all parties by permitting the use of less complex or less time-consuming procedures.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None known.

(b) Reporting and paperwork requirements: Employers will be required to file employee's payroll records with administrative law judge in all cases unless parties stipulate to employee's average weekly wage or good cause is shown for failure to file the records. Format requirements for the filing of medical reports have been relaxed.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Costs of printing new form for Motion to Resolve Medical Fee Dispute and of typesetting and printing the three revised forms are estimated at not more than $8,000.

2. Continuing costs or savings: Continuing costs, if any, past the first year should be minimal.

3. Additional factors increasing or decreasing costs: None known.

(b) Reporting and paperwork requirements: Processing of the new Form 112, Motion to Resolve Medical Fee Dispute, will be required. Use of this new form may result in the filing of fewer forms (such as Forms 101 and 102) which are longer and more complicated, however. Form 111, Final Compensation Settlement Receipt, will no longer be processed or filed.

(3) Assessment of anticipated effect on state and local revenues: There should be no effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: These amendments are deemed to be the most reasonable and equitable means of simplifying hearings and appeals in workers' compensation cases.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No conflicts known. Some duplication or overlap of statutes contained in original regulation has been eliminated.

(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 appropriate since there are no multiple classes involved. Regulation applies equally to all litigants before administrative law judges and the Workers' Compensation Board.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction
Division of Plumbing
(Proposed Amendment)

815 KAR 20:020. Parts or materials list.

RELATES TO: KRS Chapter 318

STATUTORY AUTHORITY: KRS Chapter 13A, 318.130

NECESSITY AND FUNCTION: The department is directed by KRS 318.130 through the State Plumbing Code Committee to adopt and put into effect a State Plumbing Code. This regulation will allow the department to permit the use of new parts and materials without amending specific regulations for each new item. This regulation will eliminate the repetitious amending of the Plumbing Code now required to include new materials item by item. This amendment is necessary to add a new product approved by the Plumbing Code Committee on November 6, 1991. [~~This amendment adds new products approved by the Plumbing Code Committee on July 17, 1991.~~]

Section 1. Definitions as used in this regulation. (1) "APML" shall mean the "Approved Parts or Materials List."

(2) "ABS" means acrylonitrile-butadiene-styrene pipe.

(3) "ASTM" means American Society for Testing Materials.

(4) "Parts or materials" shall mean all types of fittings and piping used in the soil, waste and vent systems, house sewers, potable water supply, plumbing fixtures, appurtenances, and mechanical sewage systems in plumbing systems.

(5) "Committee" shall mean the State Plumbing Code Committee.

(6) "Code" as defined by KRS 318.010(11).

(7) "Department" as defined by KRS 318.010(1).

(8) "Person" as defined by KRS 318.010(9).

(9) "PVC" means polyvinyl chloride pipe.

Section 2. Approved Parts or Materials List (APML). The use of any part or material in any drainage or plumbing system, other than those currently authorized by the code, is prohibited unless the use of the part or material has been considered by the committee and approved by the department as being equal to or better than other similarly approved items for inclusion in the APML. The APML may also specify methods of installation or restrictions applicable to a particular part or material.

Section 3. Amending the APML. (1) A person may petition the committee, in writing, no later than fourteen (14) days prior to the committee's next scheduled meeting for the purpose of amending the APML. The request shall include a description of the part or material for which approval is sought, available technical data, and a listing of other authorities which have approved the use of the part or material, and any other pertinent information requested by the committee.

(2) The committee shall consider all parts or materials for which approval is sought and shall forward thirty (30) days thereafter its recommended disposition to the department. A hearing shall be held before the committee if requested, within thirty (30) days following the determination of the committee, by a person having an interest in the subject matter. Upon approval of a recommendation by the department, the APML shall be amended by listing the new part or material in Section 5 of this regulation.

Section 4. Custody of the APML. It shall be the responsibility of the Director, Division of Plumbing, to maintain an up-to-date APML and to make it available for inspection during regular office hours. Copies of the APML may be obtained by mailing a self-addressed stamped envelope to the Division of Plumbing, Department of Housing, Buildings and Construction, Frankfort, Kentucky 40601. The cost of reproduction shall not exceed ten (10) cents per page.

Section 5. Content of Approved Parts or Materials List. The following list of parts or materials have been approved by the Kentucky Plumbing Code Committee and the Division of Plumbing and shall be allowed for installation in Kentucky.

(1) Flexible three-fourths (3/4) inch hot and cold water connectors for hot water heaters, minimum wall thickness, .032.

(2)(a) Flushmate water closet tank.

(b) Microphor company. Two (2) quart flush toilets.

(c) Jomar 3 and 4 water conserver water closets to operate efficiently on three and one-half (3 1/2) gallons of water per flush.

(d) Superinse toilet that operates on one (1) gallon of water per flush as manufactured by Universal Rundle for the Thetford Wastewater Treatment Systems.

(e) IFO Sanitar AB Model-3160 and 3180 China Water Closet equipped with a Fluidmaster 4003A-F77 Ballcock.

(f) Cashsaver MX (quantum 150-1) Water Closet Combination and Flushmate II Flushometer/Tank as manufactured by Mansfield Plumbing Products.

(3) Tubular traps with gasket in trap seal.

(4)(a) Polyethylene sump pump basin. Polyethylene sump pump basin shall be constructed of polyethylene material and shall be provided with a sump cover.

(b) Liberty Pump Model 402, Laundry Tray Pump for pipe size one and one-half (1 1/2) inch for light commercial and household usage.

(c) Zoeller Drain pump and HiLo Industries Power Drain for pipe sizes one and one-half (1 1/2) inch and two (2) inch for light commercial and household usage.

(d) Sewage ejector pit - eighteen (18) inch by twenty-two (22) inch with steel cover pit and eighteen (18) inch by thirty (30) inch with steel cover sump pit as manufactured by Lunsford and Associates, Inc.

(e) Little Giant Pump Company, Drainosaur Water Removal System, Model #WRS-6. This approval shall be limited to two (2) drainage fixture units since it has a one and one-half (1 1/2) inch drain.

(f) Add A Drain (Waste Discharge System) as manufactured by Lunsford and Associates.

(5)(a) No-caulk roof flashing. No-caulk roof flashing shall be eighteen (18) inch by eighteen (18) inch galvanized iron base with a neoprene boot forming a water tight seal with the stack that it serves.

(b) Polyethylene roof flashing. Polyethylene roof flashing shall have a base which shall extend six (6) inches in all directions from the base of a stack and shall have a boot with a preformed thermoplastic rubber gasket.

(c) Dektite pipe flashing system to be used on metal building decks for plumbing vent stacks as manufactured by Buildex Corporation.

(d) Oatey eighteen (18) inch by eighteen (18) inch no caulk thermoplastic flashing, one (1) piece construction, positive double seal in three (3) inch only.

(e) Carlisle syntec systems. Vent flashings for sureseal and Brite-Ply roofing systems as required by Carlisle Corporation.

(f) Trocal roofing systems. Vent flashings for Trocal roofing systems as required by Dynamit Nobel of American, Inc.

(g) Masterflash Pipe Flashing system for plumbing vent stacks as manufactured by Aztec Washer Company.

(h) Hi-Tuff Roofing Systems pipe flashing system for plumbing vent stacks as required by J.P. Stevens and Company, Inc.

(6)(a) Kitchen sink faucet. Kitchen sink faucets may have corrugated supply piping if the piping has a wall thickness equal to Type M copper pipe.

(b) Sink and lavatory faucets and pop-up lavatory assembly parts manufactured by CPVC plastic as manufactured by Nibco Co.

(c) Series 1000 Automatic Faucets as Manufactured by Hydrotek USA, Inc.

(7) Lab-Line Enfield L-E acid waste systems, one and one-half (1 1/2) through four (4) inch inside measurement for above and below ground installation on acid waste only. Underground shall be laid on six (6) inches of sand grillage and shall be backfilled by hand and tamped six (6) inches around piping or may be surrounded by six (6) inches of sand grillage.

(8) Floor drains, shower drains, urinal drains and clean--outs manufactured by Plastic Oddities, Inc.

(9) Tubular plastic components conforming to ASTM F409-75, bathtub waste and overflow, traps, continuous sink wastes and extension tubes as manufactured by J & B Products Corporation.

(10)(a) Water heaters. Heat pump water heaters as manufactured by Dec International, Inc., Therma-Stor Products Group.

(b) Water heaters, point of use or instantaneous.

1. In-Sink-Erator's Ultra System. For instant hot water to serve individual fixtures, Model #777W, W, WH, WA and WHA, W-152 and W-154.

2. Eemax Electric Tankless water heaters - nonpressure type without the requirement of a temperature and pressure relief valve; the pressure type with the requirement that the temperature and pressure relief valve be of a one-half (1/2) inch short shank valve and shall be installed with the product.

3. Vitaclimate Control Systems, Inc. - Heatrae Instantaneous Water Heaters Models 7000 and 9000, pressure type, point of use water heater and shall be equipped with an approved temperature and pressure relief valve installed so that the thermo couple of the relief valve extends into the heat chamber discharge.

4. Paloma Automatic Instantaneous Gas Water Heaters Numbers PH-6DN, PH-6DP, PH-12A-DN, PH-12A-DP, PH-12M-DN, PH-12M-DP, PH-16A-DN, PH-16A-DP, PH-16M--DN, PH-16M-DP, PH-24A-DN, PH-24A-DP, PH-24M-DN and PH-24M-DP.

5. Rinnai Gas Fired Instantaneous Water Heaters Model Numbers REU-95GS-2R, REU-95GS-3R, REU-90, REU-130 pressure type and shall be equipped with an approved temperature and pressure relief valve.

6. Elkay Aqua-Temp tankless water heaters - nonpressure type without the requirement of a temperature and pressure relief valve.

7. International Technology Sales Corporation AEG Telefunken MDT instantaneous water heater and shall be equipped with an approved temperature and pressure relief valve.

8. International Technology Sales Corporation Zanker Faucet Model W05U without a temperature and pressure relief valve.

9. Amtrol hot water maker model numbers WH7P, WH7 and WH7C with a minimum three-fourths (3/4) inch inlet and outlet.

10. Chronomite Laboratories, Inc. - instantaneous water heater and shall be equipped with an approved temperature and pressure relief valve. Chronomite Instant-Flow Tankless Water Heater without a temperature and pressure relief valve.

11. Nova Hot Water Generator Models: VES5/10, VES6/12, VES7/14, VES8/16, VES9/18 and VES11/22 as manufactured by Hot Water Generators, Inc.

12. Aqua Star tankless gas water heaters, model numbers 125 VP and 80 VP and shall be equipped with an approved temperature and pressure relief valve.

13. Ariston electric water heaters, model numbers P-15S

and P-10S and shall be equipped with an approved temperature and pressure relief valve.

14. Vaillant Corporation gas fired point of use water heater.

15. Trinom Hot Man Tankless Water Heater as manufactured by Siemens.

16. Field Controls Company Power Venter - Models PVAE and SWG for use in conjunction with gas and oil fired water heaters.

(11) Compression joints. Fail-safe hot and cold water systems.

(12) Orion fittings for acid waste piping systems for above and below ground.

(13) R & G Slone Manufacturing Company. Fuseal mechanical joint for the connection of polypropylene and waste piping.

(14) Johns Manville Flex I drain roof drain system.

(15) Hydrocide liquid membrane (HLM) to be used as a shower pan material conforming to ASTM C836-76. The density of the material shall be at least one-sixteenth (1/16) inch thick.

(16) Scotch-Clad brand waterproofing system as manufactured by the 3M Company for thin-set installation of ceramic and quarry tile in shower stalls, bathrooms, janitorial closets limited to those applications on concrete floors and using metallic soil and waste piping.

(17) Elkay Aqua-chill water dispensers.

(18) Flexible connectors for hot and cold potable water supply in plumbing fixture connections as manufactured by Aqua-Flo Corporation limited to thirty (30) inch length except dishwashers which shall be forty-eight (48) inches maximum.

(19)(a) Delta Faucet Company's quick-connect fitting known as "grabber" to be used with hot and cold potable water installations above ground only.

(b) REMCO Angle Stop Quick connect valve for use with hot and cold potable water installations above ground only.

(20) Interceptors.

(a) Town and Country plastic interceptors to be used as a grease trap.

(b) Grease recovery unit (GRU) as manufactured by Lowe Engineering, Lincoln Park, NJ.

(c) Scienco, Inc., models SI-101-20G, SI-104-35G, SI-102-50G and SI-103-100G with PVC solvent connections only.

(d) Rockford separators for grease, oil, hair and solids in various styles and sizes and being more specifically model series G, G LO, G M, G LOM, GF, GFE, GAS, GPS, GSS, OS, RHS, GSC, RMS, RSD, SD, SDE, GTD, and RTD that are used for their intended purpose and installed in accordance to the manufacturer's specification and the plumbing code.

(e) Grease interceptors as manufactured by Enpoco, Inc. of St. Charles, IL.

(21) Plastic Oddities Srv (sewer relief vent) clean-out.

(22) Contech A-2000 - a PVC corrugated pipe with smooth interior meeting or exceeding all the material and service test requirements of ASTM D-3034-74 except dimensions at the time of manufacture.

(23) Nonchemical water treatment to control lime scale and corrosion buildup superior water conditioners as manufactured by Kemtune, Inc.

(24) Eljer plumbing ware - Elgers ultra one/G water closet.

(25) "Power Flush" and "Quik Jon" as manufactured by Zoeller Company; shall have a three (3) inch vent; alternate additional waste openings to be located in pump chamber above top of base chamber.

(26) Exemplar Energy garden solar water heater.

(27) ProSet systems for pipe penetrations in fire rated structures. System A for copper and steel pipe. System C using solvent weld joints only. ProSet E-Z flex coupling is approved for similar or dissimilar materials.

(28) ABS and PVC backwater valves, Models 3281, 3282, 3283 and 3284 for solvent cement joints only as manufactured by Canplas Industries.

(29) Clamp-All Corporation Pipe Coupling Systems is approved size for size on dissimilar materials on new or existing installations. Snap-All Increaser/Reducer transition bushings are approved only for repairs using dissimilar materials or sizes.

(30) Mission Rubber Company "Band-Seal Specialty Coupling" is approved as a transition between any combination of the following materials: cast iron, copper, galvanized steel, schedule 40 PVC and ABS and SDR 35.

(31)(a) Laticrete 9235 Waterproof Membrane to be used as a safing material for floors and walls in showers, bathtubs and floor drain pans.

(b) Ultra-Set as manufactured by Bostik Construction Products to be used as a water proofing material.

(32) DFW Elastomeric PVC coupling manufactured by DFW Plastics, Inc. for use on building sewers only.

(33) Fernco Lowflex Shielded Couplings, approved for connecting extra heavy, no-hub and service weight cast iron pipe, DWV PVC and ABS pipe, SDR 35 sewer pipe, galvanized steel pipe and copper pipe or as a transition between any of these materials in soil waste and vent systems above or below grade.

CHARLES A. COTTON, Commissioner
EDWARD J. HOLMES, Secretary
APPROVED BY AGENCY: January 2, 1992
FILED WITH LRC: January 8, 1992 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 25, 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 February 20, 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: Manufacturers of new products not yet made part of a national standard allowed by the Kentucky Plumbing Code.

(a) Direct and indirect costs or savings to those affected: There are no costs or savings because the regulation only establishes acceptability of previously unapproved products. Provides ability of manufacturer to market his product in state.

1. First year:

2. Continuing costs or savings:

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

(b) Reporting and paperwork requirements: Paperwork requirements and recordkeeping needs remain the same; no costs or savings involved.

(2) Effects on the promulgating administrative body: Formalizes, with proper regulatory oversight the procedure for acceptability of new products in the State Plumbing Code.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Unchanged by this amendment.

(3) Assessment of anticipated effect on state and local revenues: No effect on revenues because the regulation merely identifies existing procedures in regulatory form.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The previous method of filing new parts or materials did not statutorily meet KRS Chapter 13A requirements.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: This is the only known law or policy dealing with this product.

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments:

TIERING: Was tiering applied? Yes. Tiering was used in that each product presented for approval is considered separately for compliance with generally recognized safety and workability standards.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings & Construction
Division of Plumbing
(Proposed Amendment)

815 KAR 20:060. Quality and weight of materials.

RELATES TO: KRS Chapters 198B, 318

STATUTORY AUTHORITY: KRS 13A.120, 198B.040(10), 318.130

NECESSITY AND FUNCTION: The department is directed by KRS 318.130 through the State Plumbing Code Committee to adopt and put into effect a State Plumbing Code. This regulation relates to quality and weights of materials that will be used in the installation of plumbing systems and is necessary to establish minimum standards for this quality and weight and to conform to accepted practices. This amendment is necessary to identify new standards used in the manufacturing of plastic pipe (Section 10(2) of this regulation). This amendment was approved by the State Plumbing Code Committee on November 6, 1991. [~~This amendment is necessary to bring the regulation into technical compliance with KRS Chapter 13A. No other substantive changes were made.~~]

Section 1. Definition of Terms. (1) "ABS" means acrylonitrile-butadiene-styrene.

(2) "ASSE" means American Society of Sanitary Engineers and copies of standards may be obtained by writing the American Society of Sanitary Engineers, P.O. Box 40362, Bay Village, Ohio 44140.

(3) "ASTM" means American Society for Testing and Materials and copies of standards may be obtained by writing the American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103.

(4) "Drain pipe" means any pipe which carries wastewater or waterborne wastes in a building drainage system.

(5) "Drainage System" means all the piping within a public or private premises which conveys sewage, rain water or other liquid wastes to a point of disposal. It does not include the mains of public sewer systems or a private or public sewage treatment or disposal plant.

(6) "DWV pipe" means an abbreviated term for drain, waste and vent piping, including aluminum, as used in common plumbing practice.

(7) "Plumbing system" means the water supply and distribution pipes; plumbing fixtures and traps; soil, waste and vent pipes; and sanitary and storm sewers and building drains; including their respective connections, devices and appurtenances within a building or premises.

(8) "Potable water" means water free from impurities present in amounts sufficient to cause disease or harmful physiological effects and conforming in its bacteriological and chemical quality to the requirements of the Public Health Service Drinking Water Standards or the regulations of the public health authority having jurisdiction.

(9) "PVC" means polyvinyl chloride.

(10) "Stack" means any vertical line of soil, waste, vent, or inside conductor piping, except vertical vent branches which do not extend through the roof and which pass through less than two (2) stories before being reconnected to a vent stack or stack vent.

(11) "Trap" means a fitting or device which provides a liquid seal to prevent the emission of sewer gases without materially affecting the flow of sewage or wastewater through it.

(12) "Vent system" means a pipe or pipes installed to provide a flow of air to or from a drainage system, or to provide a circulation of air within the system to protect trap seals from siphonage and back pressure.

(13) "Waste pipe" means a pipe which conveys only waste.

Section 2. Materials, Quality of. All materials used in any drainage or plumbing system or part of a system shall be free of defects.

Section 3. Label, Cast or Stamped. Each length of pipe, fitting, trap, fixture and device used in a plumbing or drainage system shall be stamped or indelibly marked with the weight or quality and with the maker's mark or name.

Section 4. Vitrified Clay Pipe, Concrete Pipe, Truss Pipe, Extra Heavy SDR 35 Sewer Piping, Polyethylene Sewer Piping, Polyethylene and Corrugated Polyethylene Subsoil Drainage Tubing.

(1) Vitrified clay pipe shall conform to ASTM Standard Specifications C-200.

(2) Concrete pipe shall conform to ASTM Standard Specifications C-14.

(3) Truss pipe shall conform to ASTM Standard Specifications D-2680-74. (Solid wall shall conform to ASTM Standard Specifications D-2751-74.)

(4) Extra heavy SDR 35 sewer piping shall conform to ASTM Standard Specifications D-3033-74 and D-3034-74.

(5) Polyethylene sewer piping shall conform to ASTM D-3350 and shall be used only between a septic tank and a distribution box or boxes.

(6) Polyethylene and corrugated polyethylene subsoil drainage tubing shall conform to ASTM Standard Specifications F-405-74 and shall bear the National Sanitation Foundation (NSF) seal of approval. No pipe or fittings shall be used unless the manufacturer of the material submits to the department a sample of the pipe and fittings that will be used, along with an analysis of the material from a private testing laboratory approved by the department. The report shall be submitted to the department on an annual basis as of July 1, of each year. Polyvinyl Chloride subsoil drainage tubing shall conform to ASTM D-2729. The tubing shall have two (2) rows of three-fourths (3/4) inch holes within an arch of 120 degrees of circumference of the piping and shall be on four (4) inch centers. The tubing shall be visibly marked with the name of the manufacturer and the commercial standard number at ten (10) feet intervals.

Section 5. Cast-iron Pipe. (Hub and Spigot and No-hub). (1) Extra heavy. Extra heavy cast-iron pipe and fittings shall conform to ASTM A74-82.

(2) Service-weight. Service-weight cast-iron pipe and fittings shall conform to ASTM A74-82.

(3) Coating. Cast-iron pipe and fittings for underground use shall be coated with asphaltum, coal tar pitch or using a coating conforming to ASTM A-174.

Section 6. Wrought-iron Pipe. All wrought-iron pipe shall conform to the latest ASTM "standard specifications for welded wrought iron pipe."

Section 7. Mild-steel Pipe. All steel pipe shall conform to the latest ASTM "standard specifications for welded and seamless steel pipe."

Section 8. Brass pipe; Copper Pipe; and Brass Tubing. Brass pipe, copper pipe and brass tubing shall conform [~~respectively~~] to the latest standard specifications of ASTM for "brass pipe, copper pipe, and brass tubing, standard sizes."

Section 9. Aluminum Drain, Waste and Vent (DWV) Pipe with End Cap Components. [~~All~~] Aluminum drain, waste and vent pipe with end cap adapters shall conform to the requirements of American Society of Sanitary Engineering (ASSE) Standard No. 1045.

Section 10. Borosilicate Pipe. (1) Borosilicate pipe shall conform to the latest ASTM standards.

(2) Plastic pipe. All plastic piping used in a drainage, waste and vent system shall be schedule 40 or 80, Type 1, Grade 1, polyvinyl chloride compounds as defined and described in tentative specifications for rigid polyvinyl chloride (PVC) (ASTM Designation: D 1784-75), or cellular core PVC conforming to ASTM F-891, or Schedule 40 or 80 acrylonitrile--butadiene-styrene compound as defined and described in standard specification for acrylonitrile-butadiene-styrene (ABS) (ASTM Designation: D 1788-73) or cellular core ABS conforming to ASTM F-628. Pipe and fittings shall be produced and labeled in accordance with the provisions of Commercial Standard ASTM-D-2665-76, as amended, for PVC and ASTM-D-2661-76 for ABS, and both shall bear the National Sanitation Foundation [~~NSF~~] seal of approval. Copies of National Sanitation Foundation [~~NSF~~] standards may be obtained by writing the National Sanitation Foundation (NSF), 3475 Plymouth Road, P.O. Box 1468, Ann Arbor, MI 48106. All pipe and fittings shall bear the ASTM designation together with the NSF seal, the manufacturer's identification and the size. The use of plastic pipe and fittings (PVC or ABS) as outlined here shall be restricted to buildings if the soil or waste and vent stack do not exceed forty-five (45) feet in height, the vertical distance from the base of the stack to its terminus through the roof of the building.

(3) Stainless steel tubing. Stainless steel tubing for hot and cold water piping shall be Grade H conforming to ASTM A268-68. Stainless steel tubing for the soil, waste and vent system shall be either Grade G or H conforming to ASTM A-268-68.

(4) Polyethylene pipe. Polyethylene pipe used in acid waste systems shall conform to ASTM D-1204-62T.

(5) Polypropylene pipe. Polypropylene pipe used in acid waste systems shall conform to ASTM D-2146-65T.

Section 11. Lead Pipe, Diameter, Weights. (1) Lead soil, waste and vent pipes shall be in accordance with the standards of the Lead Industries Association and Federal Specifications WW-P-325, which are identical in substance, and shall not be lighter than the following weights:

Size Inside Diameter Inches	Commercial Designation "D" or "XL"	Wall Thickness Inches	Weight Pounds	Per Foot Ounces
1 1/2	D XL	0.138	3	8
2	D XL	0.142	4	12
3	D XL	0.125	6	0
4	D XL	0.125	8	0

(2) All lead bends and lead traps shall be of the weight known as extra heavy (XH) and shall have at least one-eighth (1/8) inch wall thickness. Weights for lead water service or supply pipes shall be according to the maximum working pressure in pounds per square inch as given in federal specifications WW-P-325.

Section 12. On roofing systems requiring integral flashings, a flashing material which is part of the manufactured roofing system and required by the roofing manufacturer to guarantee or warranty the roofing system, shall be used.

Section 13. Sheet Lead. Sheet lead for shower pans shall not weigh less than four (4) lbs. per sq. ft. and shall not weigh less than three (3) lbs. per sq. ft. for vent pipe flashings.

Section 14. Sheet Copper or Brass. Sheet copper or brass shall not be lighter than No. 18 B. & S. gauge, except local and interior ventilating pipe shall not be lighter than No. 26 B. & S. gauge.

Section 15. Threaded Fittings. (1) Plain screwed fittings shall be either cast-iron, malleable iron, or brass of standard weight and dimensions.

(2) Drainage fittings shall be either cast-iron, malleable iron, or brass, with smooth interior waterway, with threads tapped out of solid metal.

(3) All cast-iron fittings used in a water supply distribution shall be galvanized.

(4) All malleable iron fittings shall be galvanized.

Section 16. Caulking Ferrules. Caulking ferrules shall be of red brass and shall be in accordance with the following table:

Pipe Sizes Inches	Inside Diameter Inches	Length Inches	Minimum Weight Each
2	2 1/4	2 1/2	1 lb. 0 oz.
3	3 1/4	4 1/2	1 lb. 12 oz.
4	4 1/4	4 1/2	2 lb. 8 oz.

Section 17. Soldering Nipples. Soldering nipples shall be recessed red cast brass, iron pipe size. When cast, they shall be full bore and of minimum weight.

Section 18. Floor Flanges for Water Closets and Service Sinks or Similar Fixtures. Floor flanges shall either be hard lead, brass, cast iron, galvanized malleable iron, ABS or PVC. Hard lead and brass flanges shall not be less than one-eighth (1/8) inch thick. Cast iron and galvanized malleable iron shall not be less than one-fourth (1/4) inch thick and shall have a two (2) inch caulking depth.

Section 19. The use of lead (defined as solders and flux containing more than two-tenths (0.2) percent lead, and pipes and pipe fittings containing more than eight (8.0) percent lead) in the installation or repair of any public or private water system providing potable water for human consumption shall not be used.

Section 20. New Materials. [~~Any~~] Materials other than those [~~that~~] specified in this regulation shall be [~~code is~~] prohibited unless the material is specifically approved by the State Plumbing Code Committee and the Department of Housing, Buildings and Construction as being equal to or better than the material specified in the State Plumbing Code. It shall be the responsibility of any person or company seeking the approval of a material not included in this code to prove to the satisfaction of these agencies that the material is equal to or better than the material which it is intended to replace. Procedural requirements for approval of new parts and materials are set forth in 815 KAR 20:020.

CHARLES A. COTTON, Commissioner
EDWARD J. HOLMES, Secretary
APPROVED BY AGENCY: January 14, 1992
FILED WITH LRC: January 15, 1992 at 10 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 25, 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 February 20, 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: All licensed master and journeyman plumbers.
(a) Direct and indirect costs or savings to those affected: No costs or savings involved with the implementation of this amendment.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None created by this amendment.
(2) Effects on the promulgating administrative body: None beyond requirements of updating the State Plumbing Code with approved amendments to regulations.
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: State or local revenues will not be affected by this amendment.
(4) Assessment of alternative methods; reasons why alternatives were rejected: Plumbing Code Committee and Board of Housing review all proposed amendments and accept on basis within limits defined. This amendment has been approved by the Plumbing Code Committee and the Board of Housing.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No known conflict.
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? Yes. Tiering is used in that each standard approved is considered separately for compliance.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings & Construction
Division of Plumbing
(Proposed Amendment)

815 KAR 20:090. Soil, waste and vent systems.

RELATES TO: KRS Chapter 318
STATUTORY AUTHORITY: KRS 318.130
NECESSITY AND FUNCTION: The department is directed by KRS 318.130 through the State Plumbing Code Committee to adopt and put into effect a State Plumbing Code. This regulation relates to material and the design of the soil, waste and vent systems that shall [~~will~~] be used in all types of plumbing systems that are constructed throughout the Commonwealth. This amendment is necessary to bring the regulation into compliance with KRS Chapter 13A and to recognize a new standard for pipe which is designed for use in house sewers (Section 6 of this regulation). This amendment was approved by the state Plumbing Code Committee on November 6, 1991. [~~includes the deletion of archaic material; combining some material for more efficient application; creating an exception to allow the use of floor recessed receptables with fixed strainer in a tilting braising pan or cooker if the receptor receives no other waste and adding a new standard of PVC pipe.~~]

Section 1. Grades and Supports of Horizontal Piping. [All] Horizontal piping[~~s~~] shall [~~be~~] run in practical alignment and at a uniform grade of not less than one-eighth (1/8) inch per foot, and shall be supported or anchored in accordance with the manufacturer's recommendations but shall not [~~in no instance to~~] exceed ten (10) feet in length. [~~All~~] Stacks shall be supported at their bases and all pipes shall be rigidly secured. No-hub pipe and fittings shall be supported at each joint of pipe and fittings. Polyvinyl chloride and acrylonitrilebutadiene--styrene schedule forty (40) horizontal piping shall be supported at intervals not to exceed four (4) feet and at the base of all vertical stacks and at all trap branches as close to the trap as possible. Polyethylene pipe and fittings must be continuously supported with a V channel. Stacks shall be rigidly supported at their bases and at the [~~each~~] floor level.

Section 2. Change in Direction. [~~All~~] Changes in direction shall be made by the appropriate use of forty-five (45) degree wyes, half-wyes, quarter, sixth, eighth or 16th bends, except that a single sanitary tee may be used in a vertical stack, or a sanitary tee may be turned on its back or side at an angle of not more than forty-five (45) degrees.

Section 3. Prohibited Fittings. [~~No~~] Double hub bends and [~~or~~] double hub tees or inverted hubs shall not be used on sewers, soil or waste line. The drilling and tapping of house sewers or house drains, soil, waste or vent pipes, and the use of saddle hubs and bands is prohibited. Double sanitary tees may be used on vertical soil, waste and vent lines. [All] Pipes shall be installed without hubs or restrictions that [~~would~~] reduce the area or capacity of the pipe.

Section 4. Dead Ends. In the installation of a [~~any~~] drainage system, dead ends shall be avoided.

Section 5. Protection of Material. [~~All~~] Pipes passing under or through walls shall be protected from breakage. [~~All~~] Pipes passing through or under cinder, concrete, or other corrosive material shall be protected against external corrosion.

Section 6. Materials. [~~All~~] Main or branch soil, waste and vent pipes and fittings within or underneath a building shall be hub and spigot extra heavy or service weight cast iron, no-hub service weight cast iron, aluminum, galvanized steel, galvanized wrought iron, lead, brass, Types K, L, M, DWV copper, standard high frequency welded tubing conforming to ASTM B-586-73, Types R-K, R-L, R-DWV brass tubing, DWV brass tubing conforming to ASTM B-587-73, seamless stainless steel tubing, Grade G or H conforming to CS-268-68, polyvinyl chloride schedule 40 or 80 conforming to ASTM D-2665-76, D-1784-75 and F-891, acrylonitrile- butadiene-styrene sched-

ule 40 or 80 conforming to ASTM D-2661-76, D-1788-73 or F-628, silicon iron or borosilicate. All mains or branch soil waste and vent pipe and fittings underground shall either be hub and spigot extra heavy or service weight cast iron, No-hub service weight cast iron, aluminum, Type K or L copper pipe, Type R-K, R-L brass tubing, lead, silicon iron or borosilicate pipe and fittings or plastics DWV listed above.

Section 7. Size of Soil and Waste Pipe per Fixture Unit on [~~any~~] One Stack. The following table, based on the rate of discharge from a lavatory as a unit, shall be employed to determine fixture equivalents:

Pipe Size (In Inches)	Maximum Developed Length	Fixture Units
1 1/4	25 ft.	1
1 1/2	60 ft.	2
2	80 ft.	6
2 1/2	100 ft.	12
3	225 ft.	36
4		96
5		180
6		420
8		1200
10		2400
12		4200

[~~All~~] Water closets shall be on a minimum of a three (3) inch waste with a maximum of three (3) water closets or soil discharging fixtures per three (3) inch stack.

Section 8. Soil, and Vent Stacks. [~~Every~~] Building in which plumbing fixtures are installed shall have a soil or waste and vent stack, or stacks extending full size through the roof, unless exempted [~~except as otherwise provided for~~] in Sections 7 of this regulation. Soil or waste and vent stacks shall be as direct as possible and free from sharp bends or turns. The required size of the soil or waste and vent stack shall be determined from the total [~~of all~~] fixture units connected to the stack in accordance with Section 7 of this regulation except that no more than three (3) water closets shall discharge into a three (3) inch stack.

Section 9. Future Openings. An existing opening or an opening [~~All openings left or~~] installed in a plumbing system for future use [~~openings~~] shall be complete with its soil, waste and vent piping and shall comply with all other sections of this regulation [~~code~~].

Section 10. House Drain. (1) The size of the house drain shall be determined by the total number of fixture units connecting to the house drain. The total area of vents through the roof shall be equal to that of the house drain with a minimum of one (1) three (3) inch stack.

(2) If [~~When~~] a three (3) inch house drain enters a building, it shall be attached to [~~provided with~~] a three (3) inch stack. One (1) floor drain shall be added to the house drain with a three (3) inch trap if it conforms with the requirements of Section 24 of this regulation, without counting toward the fixture units of the system.

Section 11. Soil and Waste Stacks, Fixture Connections. [~~All~~] Soil and waste stacks and branches shall have [~~be provided with~~] correctly faced inlets for fixture connections. Each fixture shall be independently connected to the soil or waste system. Fixture connections to water closets, floor outlet pedestal sinks, pedestal urinals, or other similar plumbing fixtures shall be [~~made by~~] either cast iron, lead, brass, copper, or plastic closet bends. [~~All~~] Three (3) inch closet bends shall have a four (4) inch by three (3) inch flange.

Section 12. Changing Soil and Vent Pipes in an Existing Building. In an existing building where the soil, waste and vent piping is not extended undiminished through the roof or where there is [a] sheet metal soil or waste piping and the fixtures are to be changed or replaced, the [~~, such~~] piping shall be replaced with appropriate sizes and materials as prescribed for new work [~~when a fixture or fixtures are changed or replaced~~].

Section 13. Prohibited Connections. [~~No~~] Fixture connections shall not be made to a lead bend or a branch of a water closet or a similar fixture. Vent pipes above the highest installed fixture on a branch or main shall not be used as a soil or waste pipe.

Section 14. Soil, Waste and Vent Pipe Protected. [~~No~~] Soil, waste, or vent pipe shall not be installed or permitted outside a building unless adequate provision shall be [~~is~~] made to protect it from frost. The piping shall be wrapped with one (1) layer of heavy hair felt and at least two (2) layers of two (2) ply tar paper, [~~all~~] properly bound with copper wire, or [~~in lieu thereof,~~] the vent shall be increased to full size, the size of the increaser required as if it were passing through the roof.

Section 15. Roof Extensions. [~~All~~] Roof extensions of soil and waste stacks shall [~~be~~] run full size at least one (1) foot above the roof. If [~~, and when~~] the roof is used for [~~other~~] purposes other than weather protection, the extensions shall not be less than five (5) feet above the roof. [~~All~~] Stacks of less than three (3) inches in diameter shall be increased to a minimum of three (3) inches in diameter before passing through a roof. If [~~When~~] a change in diameter is made, the fitting shall be placed at least one (1) foot below the roof.

Section 16. Terminals. If a roof terminus of a [~~any~~] stack or vent is within ten (10) feet of the top, bottom, face or side edge of a [any] door, window, scuttle, or air shaft, and not screened from the opening by a projecting roof or building wall, it shall extend [~~be extended~~] at least two (2) feet above the top edge of the window or opening.

Section 17. Terminals Adjoining High Buildings. [~~No~~] Soil, waste or vent pipe extension of a [~~any~~] new or existing building shall not [~~be~~] run or shall not be placed on an [~~the~~] outside [~~of a~~] wall, but shall be installed [~~carried up in the~~] inside [~~of~~] the building unless the piping is protected from freezing. If the new building is built higher than the existing building, the owner of the new building shall not locate windows within ten (10) feet of an [~~any~~] existing vent stack on the lower building.

Section 18. Traps, Protected; Vents. [~~Every~~] Fixture traps shall be protected against siphonage and backpressure. Air circulation shall be assured by means of an individual vent. Crown vents shall [~~are~~] not be permitted.

Section 19. Distance of Trap from Vent. (1) The distance between the vent and the fixture trap shall be measured along the center line of the waste or soil pipe from the vertical inlet of the trap to the vent opening. The fixture trap vent, except for water closets and similar fixtures, shall not be below the dip of the trap, and all ninety (90) degree turns in the waste line of the main waste, soil, or vent pipes shall be washed. [~~Each~~] Fixture traps shall have a vent located with a developed length not greater than that set forth in the table below:

Size of Fixture Drain (In Inches)	Distance Trap to Vent
1 1/4	2 ft. 6 in.
1 1/2	3 ft. 6 in.
2	5 ft.

3	6 ft.
4	0 ft.

(2) A fixture branch on a water closet shall not be more than three (3) feet.

Section 20. Main Vents to Connect at Base. When a main vent or vent stack is used, it shall connect full size at the base of the main soil or waste pipe at or below the lowest fixture branch and shall extend undiminished in size through the roof or shall be reconnected with the main soil or vent stack at least six (6) inches above the rim of the highest fixture. This section shall not apply to one (1) and two (2) story installations. If [~~When~~] it becomes necessary to increase a vertical vent stack, it [~~then~~] becomes a main vent and shall comply with other sections of this regulation code.

Section 21. Vents; Required Sizes. (1) The required size of a vent or vent stacks shall be determined by the total number of fixture units it serves and the developed length of the vent, in accordance with the following table, interpolating, when necessary, between permissible length of vent given in the following table:

MAXIMUM PERMISSIBLE LENGTHS OF VENTS

Pipe Size (In Inches)	Maximum Length (In Feet)	Fixture Units
1 1/4	30	2
1 1/2	150	10
2	200	24
2 1/2	250	36
3	300	72
4	400	240
5	800	720

(2) Except for residential installations, if a fixture opening is installed more than twenty-five (25) feet of developed length from the point where it is connected to the main soil or waste systems, or, if more than ten (10) feet of vertical piping is used, the vent shall be continued full size through the roof or returned full size to the main vent.

Section 22. Branch and Individual Vents. [~~In no instance shall~~] A branch or individual vent shall not be less than one and one-fourth (1 1/4) inches in diameter and shall not exceed the maximum length permitted for a main vent.

Section 23. Vent Pipes Grades and Connections. [~~All~~] Vent and branch vent pipes shall be free from drops or sags and be so graded and connected as to drip back to the soil or waste pipe by gravity. Where vent pipes connect to a horizontal soil or waste pipe, the vent branch shall be taken off above the center line of the pipe, and the vent pipe must rise vertically at an angle of forty-five (45) degrees to the vertical, to a point six (6) inches above the fixture it is venting before offsetting horizontally or connecting to the branch, main, waste, soil or vent.

Section 24. Vents not Required; Backwater Traps, Subsoil Catch Basin and Basement Floor Drains. Vents shall not be required on a backwater trap, subsoil catch basin trap or a basement floor drain if the basement floor drain branches into the house drain so that measuring along the flow line from the center of the stack, the floor drain shall not be closer than five (5) feet of the stack, nor farther than twenty (20) feet. A basement floor drain [~~also~~] shall not require an individual vent if it branches into the house drain so that measuring along the flow line from the center of the house drain the basement floor drain shall not be farther than ten (10) feet from the house drain.

Section 25. When Common Vent Permissible. Where two (2) water closets, two (2) lavatories or two (2) [~~of any~~] fixtures of identical purpose are located on opposite sides of a wall or partition, or directly adjacent to each other within the prescribed distance as set forth in Section 19 of this regulation measured along the center line of the flow of water, the fixtures may have a common soil or waste pipe and a common vent. It shall be vented in accordance with the other sections of this regulation [~~code~~].

Section 26. Floor Drain Individual Vent not Required. Manufacturers' floor drains shall [~~do~~] not require individual vents when [~~they are~~] placed on a waste line for floor drains only within the prescribed distance of ten (10) feet from the main waste line, or stack, if the base of the stack is washed and the stack or stacks are undiminished through the roof, or connected to a main vent stack.

Section 27. Floor drains and service sinks installed on the operational floor level of sewage and water treatment plant facilities which discharge into an open sump and are not connected directly to the sanitary sewage system shall [~~are~~] not be required to be trapped or vented.

Section 28. House Drain Material. House drains shall be either extra heavy cast iron, service weight cast iron, brass Type (K) or (L) copper, lead, ABS or PVC plastic, or duriron.

Section 29. Indirect Waste Connections. Waste pipe from a refrigerator drain or [~~any~~] other receptacle where food is stored or waste water from a water cooled compressor, shall connect indirectly with the house drain, soil or waste pipe. The drain shall be vented to the outside air. The waste pipes shall discharge into an open sink or another approved open receptacle that is properly supplied with water in accordance with other sections of this regulation [~~code~~]. The connections shall not be located in an inaccessible or unventilated area.

Section 30. Bar and Soda Fountain Wastes. Bar and soda fountain wastes, sinks and receptacles shall have a one and one-half (1 1/2) inch P trap and branches. The main shall not be less than two (2) inches. The fresh air pipe shall not be less than one and one-half (1 1/2) inches. The main waste line shall discharge into a properly vented and trapped open receptacle inside or outside a building. Food storage compartment drains shall be indirectly connected through a trapped receptacle whose upper edge is raised at least one (1) inch above the finished floor line. Floor receptors or floor sinks installed specifically for the indirect wastes from tilting braising pans, tilting kettles and other similar equipment may be installed level with or slightly recessed in the floor if the receptor is equipped with a proper strainer and receives no other indirect waste.

Section 31. Open Receptacles. Soil or waste piping receiving the discharge from an open receptacle shall be at least six (6) inches above the surface of the ground when it discharges into a septic system.

Section 32. Refrigerator Wastes. Refrigerator waste pipes shall not be less than one and one-half (1 1/2) inches for one (1) to three (3) openings, and at least two (2) inches for four (4) to eight (8) openings. Each opening shall be trapped. The [~~Such~~] waste piping shall be equipped [~~provided~~] with sufficient clean-outs to allow for thorough cleaning.

Section 33. Overflow Pipes. Waste from a water supply tank or exhaust from a water lift shall not be directly connected to a house drain, soil, or waste pipe. The waste pipe shall discharge upon a roof or into a trapped open receptacle.

Section 34. Acid and Chemical Wastes. [~~Except as provided in this regulation, no~~] Corrosive liquids shall not be

permitted to discharge into the soil, waste or sewer system unless otherwise permitted by this regulation. The waste shall be thoroughly diluted or neutralized by passing through a properly constructed and acceptable dilution or neutralizing pit before entering the house sewer.

Section 35. Laboratory Waste Piping. Laboratory waste piping shall be sized in accordance with the other sections of this regulation [~~code~~]. All [~~Each~~] fixtures shall be individually trapped. A continuous waste and vent pipe system may be used, if the waste discharges into a vented dilution pit outside the building with a vent equal to the size of the drain. The vent may be eliminated when a pit has a ventilated cover. If under certain conditions a dilution pit is not required and is not used, the [~~each~~] fixtures shall be individually vented. If construction conditions permit, the base of the stack of the continuous waste and vent system shall be washed by the last fixture opening, and continue full size independently through the roof. [~~All~~] Fixture branches exceeding more than the distance specified in the table in Section 19 of this regulation from the main shall be revented. The distance shall be measured from the center of the main to the center of the vertical riser. Fixture connections shall rise vertically to a height so that the trap shall [~~will~~] not be lower than twelve (12) inches from the bottom of the sink. Two (2) or more sinks may be connected into a common waste before entering the riser of the continuous waste and vent system, if the fixtures are not more than five (5) feet from the center of one (1) fixture to the center of the other.

Section 36. Acid Waste Piping. Underground piping for acid wastes shall be extra heavy salt glazed vitrified pipe, silicon iron, lead, polyethylene pipe and fittings conforming to ASTM D-1204-62T, polypropylene pipe conforming to ASTM D-4101-85, or other materials approved by the department. Piping for acid wastes and vents above ground shall be of silicon iron, lead, borosilicate, or polyethylene pipe conforming to ASTM D-1204-62T, polypropylene pipe conforming to ASTM D-4101-85, or filament-wound reinforced thermosetting resin pipe conforming to ASTM D-2996 (green or poly thread).

Section 37. Special Vents. Flat or wet vents serving a plumbing fixture shall [~~may~~] be constructed only with special permission from the department when a plumbing system is being remodeled or when additions are added to an original system; except that flat vents in new construction may also be allowed in commercial buildings when the design of the building prohibits the type of venting required by other sections of this regulation.

Section 38. Basement Floor Drains and Sanitary Sewage Systems. Basement floor drains shall be connected to the house sewer and properly trapped and vented as set forth in this regulation. EXEMPTION: Basement floor drains, in single family dwellings, shall not be connected to the house sewer and shall be exempt from this section if, prior to the installation, the local health department or sanitary sewage system board, plant, district, or treatment plant owner notifies the Division of Plumbing, in writing, that connection is detrimental to the functioning of the sanitary sewer system or subsurface system. If the drain is not to be connected to the house sewer, the installation is also exempt from the waste, trap and venting provisions of the State Plumbing Code.

CHARLES A. COTTON, Commissioner
EDWARD J. HOLMES, Secretary
APPROVED BY AGENCY: January 14, 1992
FILED WITH LRC: January 15, 1992 at 10 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 25, 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 February 20, 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: All licensed master and journeyman plumbers.
(a) Direct and indirect costs or savings to those affected: No costs or savings involved with the implementation of this amendment.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None created by this amendment.
(2) Effects on the promulgating administrative body: None beyond requirements of updating the State Plumbing Code with approved amendments to regulations.
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: State or local revenues will not be affected by this amendment.
(4) Assessment of alternative methods; reasons why alternatives were rejected: Plumbing Code Committee and Board of Housing review all proposed amendments and accept on basis within limits defined. This amendment has been approved by the Plumbing Code Committee and the Board of Housing.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No known conflict.
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? Yes. Tiering is used in that each standard approved is considered separately for compliance.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction
Division of Plumbing
(Proposed Amendment)

815 KAR 20:130. House sewers and storm water piping; methods of installation.

RELATES TO: KRS Chapter 318
STATUTORY AUTHORITY: KRS 13A.120, 318.130
NECESSITY AND FUNCTION: The department is directed by KRS 318.130 through the State Plumbing Code Committee to adopt and put into effect a State Plumbing Code. This regulation relates to outlining the materials that may be used

in the construction of house sewers, storm water piping as well as the methods of installation. This amendment is necessary to bring the regulation into compliance with KRS Chapter 13A and to recognize a new standard for pipe which is designed for use in house sewers. [~~This amendment approves a new type of material for house sewers or combined sewers in Section 7 of this regulation and allows the use of plastic pipe for storm water up to forty five (45) feet from the base through the terminus through the roof in Section 23 of this regulation.~~]

Section 1. Independent System. The drainage and plumbing system of each new building and of new work installed in an existing building shall be separate from, and independent of, that of any other building except as outlined in this regulation. [~~provided below, and~~] Every building shall have an independent connection with either a public or private sewer or sewer system.

Section 2. Exception. Where a building stands in the rear of another building or on an interior lot and a sewer connection cannot be made available to the rear building through an adjoining alley, court, yard or driveway, the sewer from the front building may be extended to the rear building and it shall be considered as one (1) sewer. This exception shall not apply to corner lots where a sewer connection is available from the street or alley or to a new or existing building which abuts a street or alley.

Section 3. Connection with Private Sewage Disposal System. When a sewer is not available, the house drain from a building shall connect with an approved private sewage disposal system.

Section 4. Excavations. All excavations made for the installation of a house sewer shall be open trench work, and the [~~. All such~~] trenches shall be kept open until the piping has been inspected, tested and approved.

Section 5. Depth of Sewer at the Property Line. (1) Where possible the sewer at the property line shall be at a sufficient depth to properly serve any plumbing connection that shall [~~may~~] be installed in the basement of any building.

(2) House sewers shall be laid on a grade of not less than one-eighth (1/8) inch nor more than one-fourth (1/4) inch per foot. All sewers shall have at least an eighteen (18) inch cover. Sewer piping installed under property subject to vehicular traffic (e.g., driveways, parking lots and similar locations shall have at least three (3) feet cover unless constructed of cast iron piping. When less than [~~Unless there is~~] a three (3) foot cover is available, sewer [~~provided, other~~] piping shall be encased in a minimum of six (6) inches of concrete on all sides and the top. Sewers shall be backfilled by hand and tamped six (6) inches above the piping, or [~~in lieu thereof may be~~] filled with six (6) inches grillage above the piping. All joints in cast iron and vitrified clay pipe shall be made in a manner to conform to other sections of this code.

Section 6. New House Sewer Connections. House sewers installed where a private sewerage system has been discarded may connect to the house drain, if [~~provided in the opinion of the department~~] the existing plumbing system meets this code or a previous one.

Section 7. Materials for House Sewers. House sewers or combined sewers, beginning two (2) feet outside the foundation wall of a building, shall be made of either extra heavy cast iron pipe, service weight cast iron, aluminum, vitrified clay, concrete, PVC or ABS plastic pipe schedules 40 and 80 and cellular core PVC conforming to ASTM F-891, cellular core ABS conforming to ASTM 628, truss pipe and extra heavy SDR 35 pipe and Type PS-46, Poly(Vinyl Chloride) (PVC) in sizes four (4) inches through fifteen (15) inches conforming to ASTM F 789-82 and PVC ribbed pipe conforming to ASTM 795.

Section 8. Material for Storm Sewers Inside Buildings. Material for storm sewers inside of buildings to a point two (2) feet outside a building in sizes eight (8) inches and smaller shall be cast iron pipe, aluminum or Schedule 40 ABS or PVC DWV pipe. Storm sewers in sizes of ten (10) inches and larger shall [~~may~~] be either cast iron, aluminum, vitrified clay or concrete conforming to appropriate commercial standards with approved joints.

Section 9. Change of Direction. Change in direction of a sewer shall be made with long curves, one-eighth (1/8) bends or Y's.

Section 10. Size of House Sewers and Horizontal Branches. The minimum size of a house sewer shall not be less than four (4) inches nor less than that of the house drain. House sewers receiving branches shall be sized in the same manner as house drains (see 815 KAR 20:090).

Section 11. Size of Storm Systems. The required sizes of storm sewers shall be determined on the basis of the total drained areas in horizontal projection in accordance with the following table. No storm sewer shall be laid parallel to or within two (2) feet of any bearing wall. The storm sewer shall be laid at a sufficient depth to protect it from freezing.

Diameter of pipe - inches	Maximum drained roof area square feet*	
	Slope 1/8 in. fall to 1 ft.	Slope 1/4 in. fall to 1 ft.
3		1,160
4	1,880	2,650
5	3,340	4,720
6	5,350	7,550
8	11,500	6,300
10	20,700	29,200
12	33,300	47,000
15	59,500	84,000

*The calculations in this table are based on a rate of rainfall of four (4) inches per hour.

Section 12. Combined Storm and Sanitary Sewer System. When[~~ever~~] a combined sewer system is used, the required size of the house drain or house sewer shall be determined by multiplying the total number of fixture units carried by the drain or sewer by the conversion factor corresponding to the drained area and the total fixture units, adding the product to the drained area and applying the sum of the preceding table for storm water sewers. No combined house drain or house sewer shall be less than five (5) inches in diameter, and no combined house drain or house sewer shall be smaller in size than that required for the same number of fixture units or for the same roof area in separate systems.

CONVERSION FACTORS FOR COMBINED STORM AND SANITARY SYSTEM

Number of fixture units on sanitary system

Drained roof area in square feet	Up to 6	7 to 18	19 to 36	37 to 60	61 to 96	97 to 144	145 to 216	217 to 324
Up to 120	180	105	60	45	30	22	18	15
121 to 240	160	98	57	43	29	21	17.6	14.7
241 to 480	120	75	50	39	27	20	16.9	14.3
481 to 720	75	62	42	35	24	18	15.4	13.2
721 to 1,080	54	42	33	29	20	15	13.6	12.1

1,081 to 1,620	30	18	16	15	12	11.5	11.1	10.4
1,621 to 2,430	15	12	11	10.5	9.1	8.8	8.6	8.3
2,431 to 3,645	7.5	7.2	7.0	6.9	6.6	6.5	6.4	6.3
3,646 to 5,460	2.0	2.4	3.0	3.3	4.1	4.2	4.3	4.4
5,461 to 8,190	0	2.0	2.1	2.2	2.3	2.4	2.5	2.6
8,191 to 12,285	0	0	2.0	2.1	2.1	2.2	2.3	2.3
12,286 to 18,420	0	0	0	2.1	2.1	2.1	2.2	2.2
18,421 to 27,630	0	0	0	0	2.0	2.1	2.2	2.2
27,631 to 40,945	0	0	0	0	0	2.0	2.1	2.2
40,946 to 61,520	0	0	0	0	0	0	2.0	2.1
Over 61,520	0	0	0	0	0	0	0	2.0

Number of fixture units on sanitary system

Drained roof area in square feet	325 to 486	487 to 732	733 to 1,098	1,099 to 1,644	1,645 to 2,466	2,467 to 3,702	3,703 to 5,556	Over 5,556
Up to 120	12	10.2	9.2	8.4	8.2	8.0	7.9	7.8
121-240	11.8	9.9	9.1	8.3	8.1	8.0	7.9	7.8
241-480	11.5	9.7	8.8	8.2	8.0	7.9	7.8	7.7
481-720	10.8	9.2	8.6	8.1	7.9	7.9	7.8	7.7
721-1,080	10.1	8.7	8.3	8.0	7.8	7.8	7.7	7.6
1,081-1,620	9.8	8.4	8.1	7.9	7.7	7.7	7.6	7.5
1,621-2,430	8.0	7.9	7.8	7.7	7.6	7.5	7.4	7.4
2,431-3,645	6.2	6.3	6.4	6.4	6.8	7.0	7.1	7.2
3,646-5,460	4.5	4.7	5.0	5.1	6.1	6.4	6.9	6.9
5,461-8,190	2.8	3.2	3.7	4.6	5.0	5.6	6.2	6.4
8,191-12,285	2.4	2.5	2.6	2.7	3.5	4.5	5.2	5.6
12,286-18,420	2.3	2.3	2.4	2.4	2.6	3.2	4.2	4.7
18,421-27,630	2.2	2.3	2.3	2.3	2.4	2.5	2.8	3.1
27,631-40,945	2.2	2.2	2.2	2.2	2.2	2.2	2.3	2.4
40,946-61,520	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1
Over 61,520	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0

Section 13. House Sewer in Undisturbed or Filled [~~Made~~] Ground. House sewers laid in undisturbed ground shall be laid on at least four (4) inches of pea gravel, sand or other approved grillage. House sewers laid in [~~made or~~] filled ground shall be embedded to the lower quadrant with at least a four (4) inch concrete pad below the invert, or other support that shall [~~may~~] be approved by the department. Supports in filled [~~or made~~] ground shall be on ten (10) feet centers to a solid footing, either undisturbed earth or rock. House sewers constructed of flexible thermoplastic sewer piping shall be installed with at least six (6) inches of gravel on the bottom, top and sides of the piping.

Section 14. Storm Sewers in Undisturbed or Filled [~~Made~~] Ground. Storm sewers laid in undisturbed ground shall not require grillage. Storm sewers laid in [~~made or~~] filled ground shall be embedded to the lower quadrant with at least a four (4) inch concrete pad below the invert or other support that shall [~~may~~] be approved by the department. Supports in filled [~~or made~~] ground shall be on ten (10) feet centers to a solid footing, either undisturbed earth or rock.

Section 15. Drainage Below Sewer Level (Public). In public buildings in which the whole or part of the building [~~house~~] drain and plumbing system [~~thereof~~] lies below the level of the main sewer, sewage and waste shall be lifted by an approved artificial means and discharged into the house sewer.

Section 16. Drainage Below Sewer Level (Residential). In homes where the house sewer level is above the basement floor, waste water shall be lifted by means of an approved sump pump. The sump pit shall be constructed of either poured or precast concrete, approved fiberglass or polyethylene material with a tight fitting cover. The sump pit shall be provided with a two (2) inch vent which may also act as a waste and vent for a laundry tray. The pump discharge piping shall discharge into a two (2) inch waste pipe extended inside the building to a height at least twelve (12) inches above the outside grade. The sump well shall be provided with a tight-fitting concrete cover. On the outside of the building this waste piping shall connect into a four (4) inch by two (2) inch sanitary tee which shall connect into a four (4) inch P trap and then into the sanitary sewer. The four (4) inch by two (2) inch sanitary tee shall be extended at least two (2) inches above the finished grade and shall be provided with a ventilated cap.

Section 17. Sumps and Receiving Tanks. All subsoil drains shall discharge into an air tight sump or receiving tank so located as to receive the sewage by gravity. The sewage shall be lifted and discharged into the house sewer by a pump, ejector or any equally efficient method. The [~~Such~~] sumps shall automatically discharge.

Section 18. Ejectors, Vented. All ejectors shall be vented with a three (3) inch vent. Fixtures or appliances connected to an ejector [~~thereto~~] shall be vented in accordance with other sections of this regulation [~~code~~].

Section 19. Ejector Power: Motors, Compressors, Etc. All motors, air compressors and air tanks shall be located where they are open for inspection and repair at all times. The air tanks shall be proportioned so as to furnish sufficient air at suitable pressure to the ejector to completely empty the sump or storage tank with the compressor not operating. The end pressure in the tank shall be not less than two (2) pounds for each foot of height through which sewage is raised.

Section 20. Ejectors for Subsoil Drainage. When subsoil catch basins are installed below the sewer level, an approved automatic ejectors shall [~~, or an approved type, may~~] be used. The [~~Such~~] ejector or any device raising subsoil water shall discharge into a properly trapped fixture or into a storm-water drain.

Section 21. Drainage of Yards, Areas and Roofs. All roofs, paved areas, courts, and courtyards shall be drained into a storm water system or a combined sewerage system, but not into sewers intended for sewage only. When drains are connected to a combined sewerage system, they shall be trapped. If roof leaders, conductors, or gutter openings are located more than ten (10) feet from a window, scuttle, or air shaft, a trap shall not be required. Traps shall be set below the frost line or on the inside of the building. Where there is no [~~a~~] storm or combined sewer available, the line [~~it~~] may discharge into a drainage area unless prohibited by the local health department or sewer district. When the [~~such~~] drains are not connected to a combined sewer, a trap shall not be required.

Section 22. Size of Rain Water Leader. An [~~No~~] inside leader shall not be less size than the following:

Area of Roof (In Square Feet)	Leader, Diameter (Inches)
Up to 90	1 1/2
91 to 270	2
271 to 810	3
811 to 1,800	3 1/2
1,801 to 3,600	4
3,601 to 5,500	5
5,501 to 9,600	6

Section 23. Inside Conductors or Roof Leaders. When conductors and roof leaders are placed within the walls of any building, or in an interior court or ventilating pipe shaft, they shall be constructed of cast iron pipe, galvanized wrought iron, galvanized steel, copper, aluminum, schedule 40 ABS/PVC DMV pipe or reinforced thermosetting resin pipe

conforming to ASTM D-2996 (red and silver thread). The vertical distance of PVC or ABS conductors shall not exceed forty-five (45) feet from the base through the terminus through the roof. Provisions shall be made for the expansion and contraction of plastic pipe.

Section 24. Outside Conductors. When outside sheet metal conductors or downspouts are connected to a house drain, they shall be connected by means of a cast iron pipe extending vertically at least one (1) foot above the grade line. Along public driveways, without side walks, they shall be placed in niches in the walls, protected by wheel guards, or enter the building through the wall at a forty-five (45) degree slope at least twelve (12) inches above the grade.

Section 25. Defective Conductor Pipes. When an existing sheet metal conductor pipe within the walls of any building becomes defective, the [~~such a~~] conductor shall be replaced by one which conforms to this regulation [~~code~~].

Section 26. Vent Connections with Conductors Prohibited. A conductor pipe shall not be used as a soil, waste or vent pipe, nor shall any soil, waste, or vent pipe be used as a conductor.

Section 27. Overflow Pipes. Overflow pipes from cisterns, supply tanks, expansion tanks, or drip pans shall connect only indirectly with any house sewer, house drain, soil or waste pipe.

Section 28. Subsoil Drains, Below Sewer Level. Subsoil drains shall discharge into a sump or receiving tank. It shall be automatically lifted and discharged into the storm drainage system or upon the ground outside the building that it serves.

CHARLES A. COTTON, Commissioner
EDWARD J. HOLMES, Secretary
APPROVED BY AGENCY: January 14, 1992
FILED WITH LRC: January 15, 1992 at 10 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 25, 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 February 20, 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: All licensed master and journeyman plumbers.
(a) Direct and indirect costs or savings to those affected: No costs or savings involved with the implementation of this amendment.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None created by this amendment.
(2) Effects on the promulgating administrative body: None beyond requirements of updating the State Plumbing Code with approved amendments to regulations.
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: State or local revenues will not be affected by this amendment.
(4) Assessment of alternative methods; reasons why alternatives were rejected: Plumbing Code Committee and Board of Housing review all proposed amendments and accept on basis within limits defined. This amendment has been approved by the Plumbing Code Committee and the Board of Housing.
(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: Additional amendments were made to this regulation in an attempt to bring it into compliance with KRS Chapter 13A.
TIERING: Was tiering applied? Yes. Tiering is used in that each standard approved is considered separately for compliance.

CABINET FOR HUMAN RESOURCES
Department of Health Services
(Proposed Amendment)

902 KAR 8:030. Merit system for local health departments.

RELATES TO: KRS 211.170, 212.170(4), 212.870
STATUTORY AUTHORITY: KRS 194.050, 211.090, 212.170(4)
NECESSITY AND FUNCTION: KRS 211.170, 212.170, and 212.870 require the Cabinet for Human Resources to supervise the personnel functions and prescribe merit system standards for local health departments. In addition, 5 CFR Part 900, Intergovernmental Act Programs contains requirements for establishing and maintaining a system of personnel administration on a merit basis as a condition precedent to the receipt of federal funds for the conduct of certain federally funded health programs. The Cabinet for Human Resources is authorized by KRS 194.050 to adopt administrative [~~such~~] regulations [~~as are~~] necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds, and [~~as are~~] necessary to cooperate with federal agencies for the proper administration of the cabinet and its programs. The function of this administrative regulation is to incorporate by reference the merit system regulations for local health departments in accordance with applicable federal and state laws and regulations and KRS 212.170(4).

Section 1. Merit System Regulations. (1) The Cabinet for Human Resources incorporates by reference [~~hereby adopts~~] the publication entitled "Regulations for the Local Health Departments of Kentucky" (January 9, 1992) [~~as amended to August 29, 1990 by reference, as the merit system requirements for local health departments in Kentucky~~] governing all phases of personnel management[~~, including but not limited to appointments, promotions, examinations, separations, and disciplinary actions.~~]
(2) This document may be inspected, copied, or obtained from the Cabinet for Human Resources, Department for Health Services, 275 East Main Street, Frankfort, Kentucky

40621, Monday through Friday, 8 a.m. to 4:30 p.m. It may also be inspected, copied, or obtained from each local health department.

C. HERNANDEZ, M.D., Commissioner
LEONARD E. HELLER, Secretary
APPROVED BY AGENCY: January 10, 1992
FILED WITH LRC: January 14, 1992 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for February 21, 1992 at 9 a.m. in the Vital Statistics Conference Room located on the first floor of the Cabinet for Human Resources Building. However, this hearing will be cancelled unless interested persons notify the following office in writing by February 16, 1992 of their desire to appear and testify at the hearing: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Robert L. Nelson
(1) Type and number of entities affected: Regulation applies to all local health departments except Louisville-Jefferson, Lexington-Fayette, and Northern Kentucky District.
(a) Direct and indirect costs or savings to those affected:
1. First year: The regulation continues a personnel program for the local health departments and their costs involved are already an integral part at both local health department and promulgating administrative body. The costs incurred include personnel costs of employees administering the program at the local and state level. There would be costs for allowing part-time 100 hour employees to earn sick leave if that leave is used. The regulation incorporates by reference a personnel program for local health departments.
2. Continuing costs or savings: See explanation of #1.
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: The regulation maintains an existing personnel program which has reporting and paperwork requirements. These include personnel action request forms, certification of eligibles, employee files, and applicant communications.
(2) Effects on the promulgating administrative body: No additional costs as this is an existing program with an incurred cost.
(a) Direct and indirect costs or savings:
1. First year: The regulation would not have any additional effects on the administrative body as it is an ongoing administrative activity.
2. Continuing costs or savings: Same as (2)1.
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: No additional reporting and paperwork requirements.
(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: No alternatives were considered as this regulation continues an existing administrative activity.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, regulation or policy is in conflict.
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? No. The regulation establishes personnel policies for the local health departments and their employees which are to be applied uniformly.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Intergovernmental Act 5 CFR Part 900 requires a system of personnel administration on merit basis in order to receive certain federal funds.
2. State compliance standards. This regulation incorporates by reference a personnel administration program on merit principles.
3. Minimum or uniform standards contained in the federal mandate. There are no specific federal standards.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The regulation will comply with the concept of merit.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes___ No X
If yes, complete questions 2-4.
2. State what unit, part or division of local government this administrative regulation will affect. The regulation applies to local health departments which are not part of a local government. The local health departments are established under the authority of KRS Chapter 212.
3. State the aspect or service of local government to which this administrative regulation relates. See above.
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: See above.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Proposed Amendment)

907 KAR 1:040. Payments for vision care services.

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050, 42 CFR 440.40, 440.60, 447 Subpart B, 42 USC 1396a-d
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance. KRS 205.520 empowers the cabinet, by regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation sets forth the method for determining amounts payable by the cabinet for vision care services.

Section 1. Definitions. For purposes of determination of payment the following definition shall be applicable: "usual and customary charge" means the uniform amount the individual optometrist or ophthalmic dispenser charges in the majority of cases for a specific covered procedure or service.

Section 2. Reimbursement for Covered Procedures and Materials for Optometrists. (1) ~~[Effective with regard to services provided on or after July 1, 1991,]~~ Reimbursement for covered services, except materials, shall be the optometrists' usual and customary actual billed charges up to the fixed upper limit per procedure established by the cabinet at 100 percent of the median billed charge using 1989 calendar year billed charges. If there is no median available for a procedure, or the cabinet determines that available data relating to the median for a procedure is unreliable, the cabinet shall set a reasonable fixed upper limit for the procedure consistent with the general array of upper limits for the

type of service. Fixed upper limits not determined in accordance with the principle shown in this subsection of the regulation (if any) due to consideration of other factors (such as recipient access) shall be specified in the regulation.

(2) Reimbursement for materials (eyeglasses or parts of eyeglasses) shall be made at the laboratory cost of the materials not to exceed upper limits for materials as set by the cabinet. A laboratory invoice, or proof of actual acquisition cost of materials, shall be maintained in the recipient's medical records for postpayment review.

Section 3. Maximum Reimbursement for Covered Procedures and Materials for Ophthalmic Dispensers. (1) ~~[Effective with regard to services provided on or after July 1, 1991,]~~ Reimbursement for covered services (a dispensing service fee or a repair service fee) rendered by licensed ophthalmic dispensers to eligible recipients shall be the ophthalmic dispensers' usual and customary actual billed charges up to the fixed upper limit per procedure established by the cabinet at 100 percent of the median billed charge using 1989 calendar year billed charges. If there is no median available for a procedure, or the cabinet determines that available data relating to the median for a procedure is unreliable, the cabinet shall set a reasonable fixed upper limit for the procedure consistent with the general array of upper limits for the type of service. Fixed upper limits not determined in accordance with the principle shown in this section of the regulation (if any) due to consideration of other factors (such as recipient access) shall be specified in the regulation.

(2) Reimbursement for materials (eyeglasses or parts of eyeglasses) shall be made at the laboratory cost of the materials not to exceed upper limits for materials as set by the cabinet. A laboratory invoice, or proof of actual acquisition cost of materials, shall be maintained in the recipients's medical records for postpayment review.

Section 4. Reimbursement for other Supplies and Materials. Other supplies and materials such as cleaning fluid, cleaning cloth, carrying cases, etc., which are not eyeglasses or replacement/repair parts for eyeglasses, are considered to be provided in conjunction with and paid for as a part of the vision services rendered, and additional charges shall not be made to the cabinet or the recipient for these items.

Section 5. Effect of Third Party Liability. When payment for a covered service is due and payable from a third party source, such as private insurance, or some other third party with a legal obligation to pay, the amount payable by the cabinet shall be reduced by the amount of the third party payment.

Section 6. Limitations. (1) Program reimbursement for eyeglasses shall be inclusive. The cost of both laboratory materials and dispensing fees shall be billed to either the program or the recipient. If any portion of the amount is billed to or paid by the recipient, no responsibility for reimbursement shall attach to the cabinet and no bill for the service shall be paid by the cabinet. This limitation shall not, however, preclude the issuance of billings for the purpose of establishing the liability of, or collecting from, liable third parties.

(2) Telephone contacts are excluded from payment.

(3) Contact lenses are excluded from payment.

(4) Safety glasses are covered when medically necessary, subject to prior authorization ~~[excluded from payment, unless the recipient is blind in one (1) eye and safety glasses are prescribed for protection]~~.

Section 7. ~~[For services provided on or after July 1, 1991,]~~ Optometrist laboratory services shall be reimbursed based on the Medicare allowable payment rates. For laboratory services with no established allowable payment rate, the payment shall be sixty-five (65) percent of the usual and customary actual billed charges.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: November 6, 1991
FILED WITH LRC: December 19, 1991 at 3 p.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 Room, 1st Floor, 275 East Main Street, 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: Roy Butler

(1) Type and number of entities affected: All optometrists participating in the Medicaid program.

(a) Direct and indirect costs or savings to those affected: None

1. First year:

2. Continuing costs or savings:

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

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: (Cost) $2,000.

2: Continuing costs or savings: (Cost) $2,000.

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments:

TIERING: Was tiering applied? No. Federal Medicaid regulations require that similarly situated providers be treated in a similar manner.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Proposed Amendment)

907 KAR 1:376. Incorporation by reference of the Hospital Services Manual.

RELATES TO: KRS 205.520[~~, Title XIX of the Social Security Act~~]

STATUTORY AUTHORITY: KRS Chapter 13A, 194.050

NECESSITY AND FUNCTION: The Cabinet for Human Resources has the responsibility to administer the Medicaid [~~Medical Assistance~~] Program [~~in accordance with Title XIX of the Social Security Act and KRS 205.520. KRS 205.520~~] empowers the cabinet to comply with any requirement that is

imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation incorporates into regulatory form, by reference, materials used by the cabinet in the implementation of the hospital services component of the Medicaid [~~Medical Assistance~~] Program. In the event of a conflict between manual materials incorporated by reference in this regulation and the primary subject administrative regulations of the cabinet relating to this component, the latter shall prevail.

Section 1. Incorporation by Reference. The cabinet incorporates by reference the Hospital Services Manual, revised November 1, 1991 [~~September 1, 1988~~], used in the implementation of this component of the Kentucky Medicaid [~~Medical Assistance~~] Program. This manual contains the policies and procedures issued by the cabinet for the implementation of this program element including benefit descriptions and operating instructions used by agency staff and participating providers.

Section 2. This manual incorporated by reference may be reviewed Monday through Friday between the hours of 8 a.m. and 4:30 p.m., Eastern time, in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky. Copies may be obtained from that office upon payment of an appropriate fee which shall [~~will~~] not exceed approximate cost.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 29, 1991
FILED WITH LRC: December 19, 1991 at 3 p.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 1st Floor, 275 East Main Street, 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: Roy Butler
(1) Type and number of entities affected: All participating providers of hospital services are potentially affected.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: There is no direct or indirect cost or savings to affected entities because this administrative regulation adopts manual materials incorporated by reference that outline procedures and operating instructions for agency staff and participating providers. Any direct or indirect cost or savings would be addressed in the primary component administrative regulation.
TIERING: Was tiering applied? No. Federal Medicaid regulations require that similarly situated providers be treated in a similar manner.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Proposed Amendment)

907 KAR 1:410. Incorporation by reference of the Vision Services Manual.

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050, 42 USC 1396a, 1396c, 1396d
NECESSITY AND FUNCTION: The Cabinet for Human Resources has the responsibility to administer the Medicaid [~~Medical Assistance~~] Program. The cabinet is empowered to comply with any requirement that is imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation incorporates into regulatory form, by reference, materials used by the cabinet in the implementation of the vision services component of the Medicaid [~~Medical Assistance~~] Program. In the event of a conflict between manual materials incorporated by reference in this regulation and the primary subject administrative regulations of the cabinet relating to this component, the latter shall prevail.

Section 1. Incorporation by Reference. The cabinet incorporates by reference the Vision Services Manual, revised November [~~June~~] 1, 1991, used in the implementation of this component of the Kentucky Medicaid [~~Medical Assistance~~] Program. This manual contains the policies and procedures issued by the cabinet for the implementation of this program element including benefit descriptions and operating instructions used by agency staff and participating providers.

Section 2. This manual incorporated by reference may be reviewed Monday through Friday between the hours of 8 a.m. and 4:30 p.m., Eastern time, in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky. Copies may be obtained from that office upon payment of an appropriate fee which shall [~~will~~] not exceed approximate cost.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: November 6, 1991
FILED WITH LRC: December 19, 1991 at 3 p.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 Room, 1st Floor, 275 East Main Street, 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 opportuni-

ty to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler

(1) Type and number of entities affected: All participating providers of vision services are potentially affected.

(a) Direct and indirect costs or savings to those affected: None

1. First year:

2. Continuing costs or savings:

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

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments: There is no direct or indirect cost or savings to affected entities because this administrative regulation adopts manual materials incorporated by reference that outline procedures and operating instructions for agency staff and participating providers. Any direct or indirect cost or savings would be addressed in the primary component administrative regulation.

TIERING: Was tiering applied? No. Federal Medicaid regulations require that similarly situated providers be treated in a similar manner.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Proposed Amendment)

907 KAR 1:432. Incorporation by reference of the Home and Community Based Waiver Services Manual.

RELATES TO: KRS 205.520[~~, Title XIX of the Social Security Act~~]

STATUTORY AUTHORITY: KRS Chapter 13A, 194.050

NECESSITY AND FUNCTION: The Cabinet for Human Resources has the responsibility to administer the Medicaid [~~Medical Assistance~~] Program [~~in accordance with Title XIX of the Social Security Act and KRS 205.520~~]. KRS 205.520 empowers the cabinet to comply with any requirement that is imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation incorporates into regulatory form, by reference, materials used by the cabinet in the implementation of this waiver component of the Medicaid [~~Medical Assistance~~] Program. In the event of a conflict between manual materials incorporated by reference in this regulation and the primary subject administrative regulations of the cabinet relating to this component, the latter shall prevail.

Section 1. Incorporation by Reference. The cabinet incorporates by reference the Home and Community Based Waiver Services Manual, revised November 1, 1991 [~~May 1, 1989~~], used in the implementation of this component of the Kentucky Medicaid [~~Medical Assistance~~] Program. This manual contains the policies and procedures issued by the cabinet for the implementation of this program element including benefit descriptions and operating instructions used by agency staff and participating providers.

Section 2. This manual incorporated by reference may be reviewed Monday through Friday between the hours of 8 a.m. and 4:30 p.m., Eastern time, in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky. Copies may be obtained from that office upon payment of an appropriate fee which shall [~~will~~] not exceed approximate cost.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 29, 1991
FILED WITH LRC: December 19, 1991 at 3 p.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 1st Floor, 275 East Main Street, 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: Roy Butler

(1) Type and number of entities affected: All participating providers of home and community based waiver services are potentially affected.

(a) Direct and indirect costs or savings to those affected: None

1. First year:

2. Continuing costs or savings:

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

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the

proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: There is no direct or indirect cost or savings to affected entities because this administrative regulation adopts manual materials incorporated by reference that outline procedures and operating instructions for agency staff and participating providers. Any direct or indirect cost or savings would be addressed in the primary component administrative regulation.

TIERING: Was tiering applied? No. Federal Medicaid regulations require that similarly situated providers be treated in a similar manner.

PROPOSED REGULATIONS RECEIVED THROUGH NOON, JANUARY 15, 1992

GENERAL GOVERNMENT CABINET
Kentucky Board of Pharmacy

201 KAR 2:167. Facsimile prescription orders.

RELATES TO: KRS Chapter 315
STATUTORY AUTHORITY: KRS 315.191(1), (5)
NECESSITY AND FUNCTION: The Kentucky Board of Pharmacy is authorized by KRS 315.191(1) to adopt rules and regulations relating to the control of drugs sold by prescription and by KRS 315.191(5) to adopt regulations necessary to control the dispensing of prescriptions by pharmacies licensed by it. This regulation accommodates technological advances in electronic transmission and sets forth acceptable criteria for its utilization.

Section 1. Prescription orders for drugs other than Schedule II Controlled Substances may be transmitted using a facsimile ("Fax") machine provided:

(1) The transmittal document or title page contains the date, time, telephone number, location of the transmitting machine, the signature of its operator, and the name of the pharmacy intended to receive the transmission.

(2) The facsimile operator transmitting the prescription order is a health care professional or an employee directly responsible to the health care facility, the licensed practitioner, or the dispensing pharmacist.

(3) The electronically transmitted prescription shall become the pharmacy's primary distribution record, be detailed to best describe all aspects of the distribution, and remain legible for at least five (5) years.

(4) Pharmacists shall guarantee the accuracy and authenticity of the order and dispense in a manner consistent with existing federal and state statutes and regulations.

Section 2. Facsimile orders transmitted in a closed system controlled by responsible health care intermediaries, e.g., those intended for hospital inpatients, institutiionalized nursing facility patients, and home health care recipients, shall be regarded as internal communications and not governed by this rule.

Section 3. Facsimile orders shall not preclude the freedom of choice nor result in additional charges to those patients so served.

TOM M. HOUCHENS, R.PH., President
APPROVED BY AGENCY: January 8, 1992
FILED WITH LRC: January 10, 1992 at 8 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 25, 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 February 20, 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 amendments to the administrative regulation to: Richard L. Ross, Executive Director, Kentucky Board of Pharmacy, 1228 U.S. 127 South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Richard L. Ross
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected:
1. First year: No additional costs or savings from use of telephone now utilized or use of fax machine in place of the telephone order of the prescription medication.
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: No additional reporting or paperwork requirements.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: (Same as 1-a-1 above).
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 requirements.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternative is use of telephone. Fax transmissions are more advanced and documentation superior.
(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. N/A

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

401 KAR 50:047. Test procedures for capture efficiency.

RELATES TO: KRS 224.20-100, 224.20-110, 224.20-120
STATUTORY AUTHORITY: KRS 224.10-100
NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides capture efficiency test procedures for volatile organic compounds.

Section 1. Definitions. As used in this regulation, all terms not defined in this section shall have the meaning given them in 401 KAR 50:010.

(1) "Capture" means the containment or recovery of emissions from a process for direction into a duct which may be exhausted through a stack or sent to a control device.

(2) "Capture system" means all equipment (including, but not limited to, hoods, ducts, fans, booths, ovens, dryers, etc.) that contains, collects, and transports an air pollutant to a control device.

(3) "Capture efficiency" means the weight per unit time of volatile organic compounds (VOCs) entering a capture system and delivered to a control device divided by the weight per unit time of total VOCs generated by a source of VOCs, expressed as a percentage.

(4) "Control device" means equipment such as an incinerator or carbon adsorber used to reduce, by destruction

or removal, the amount of air pollutants in an air stream prior to discharge to the ambient air.

(5) "Control system" means a combination of one (1) or more capture systems and control devices working in concert to reduce discharges of pollutants to the ambient air.

(6) "Destruction or removal efficiency" means the efficiency, expressed as a decimal fraction, of a control device in destroying or removing contaminants. It is calculated as one (1) minus the quotient of the amount of VOCs exiting the control device divided by the amount of VOCs entering the control device, i.e., 1-{(VOC exiting)/(VOC entering)}.

(7) "Gas-gas method" means either of two (2) methods for determining capture of emissions which rely on only gas phase measurements. One (1) method requires construction of a total temporary enclosure to assure all would-be fugitive emissions are measured; the other method uses the room or building which houses the emission source as an enclosure.

(8) "Hood" means a partial enclosure or canopy for capturing and exhausting, by means of a draft, the organic vapors or other fumes rising from a coating process or other source.

(9) "Liquid-gas method" means either of two (2) methods for determining capture of emissions which require both gas phase and liquid phase measurements and analysis. One (1) liquid-gas method requires construction of a temporary enclosure; the other uses the building or room which houses the facility as an enclosure.

(10) "Overall emission reduction efficiency" means the weight per unit time of VOC removed by a control device divided by the weight per unit time of VOC emitted by an emission source, expressed as a percentage. With the efficiencies expressed as decimal fractions, the overall emission reduction efficiency is the product of the capture efficiency and the control equipment destruction or removal efficiency.

(11) "PTE" means a permanent total enclosure which contains a process that emits VOC and meets the specifications given in Procedure T.

(12) "TTE" means a temporary total enclosure which is built around a process that emits VOC and meets the specifications given in Procedure T.

(13) "BE" means a building or room enclosure that contains a process that emits VOC. If a BE is to serve as a PTE or TTE, the appropriate requirements given in Procedure T shall be met.

(14) "Procedure F.1" means Procedure F.1 in "VOM Measurement Techniques for Capture Efficiency," which has been incorporated by reference in Section 5 of this regulation.

(15) "Procedure F.2" means Procedure F.2 in "VOM Measurement Techniques for Capture Efficiency," which has been incorporated by reference in Section 5 of this regulation.

(16) "Procedure G.2" means Procedure G.2 in "VOM Measurement Techniques for Capture Efficiency," which has been incorporated by reference in Section 5 of this regulation.

(17) "Procedure L" means Procedure L in "VOM Measurement Techniques for Capture Efficiency," which has been incorporated by reference in Section 5 of this regulation.

(18) "Procedure T" means Procedure T in "VOM Measurement Techniques for Capture Efficiency," which has been incorporated by reference in Section 5 of this regulation.

Section 2. Applicability. Except as provided in subsections (1) and (2) of this section, this regulation shall apply to all regulated VOC emitting processes employing a control system which are located in an ozone nonattainment area except marginal.

(1) If a source installs a PTE which directs all VOCs to a control device, the capture efficiency shall be assumed to be 100 percent, and the source shall be exempt from Section 3 of this regulation. This exemption shall not exempt a source from performance of control device efficiency testing required under this or other regulations. In addition, a source shall demonstrate that all criteria for a PTE are met during the testing for control efficiency.

(2) If a source uses a control device designed to collect and recover VOCs (e.g., carbon adsorber), an explicit measurement of capture efficiency shall not be necessary if the overall control of the system can be determined by directly comparing the input liquid VOC to the recovered liquid VOC. The general procedure of 401 KAR 59:213 shall be used to compare the input liquid VOC to the recovered liquid VOC with the following additional restrictions:

(a) The source shall be able to equate solvent usage with solvent recovery on a twenty-four (24) hour (daily) basis, rather than a thirty (30) day weighted average as given in 401 KAR 59:213. Daily means midnight to midnight unless the cabinet is notified of and approves a different twenty-four (24) hour period. This shall be done within seventy-two (72) hours following each twenty-four (24) hour period; and

(b) The solvent recovery system (i.e., capture and control system) shall be dedicated to a single process line (e.g., one (1) process line venting to a carbon adsorber system); or

(c) If the solvent recovery system controls multiple process lines, the source shall be able to demonstrate that the overall control (i.e., the total recovered solvent VOC divided by the sum of liquid VOC input to all process lines venting to the control system) meets or exceeds the most stringent standard applicable for any process line venting to the control system.

Section 3. Testing Protocols. (1) An error margin associated with a test protocol shall not be incorporated into the results of a capture efficiency test.

(2) An affected facility shall use one (1) of the following protocols to measure capture efficiency, unless an alternative protocol is approved by the cabinet. Case-by-case alternatives approved by the cabinet, but not previously authorized by the U.S. EPA, shall be submitted to the U.S. EPA as a SIP revision.

(a) Protocol 1: gas-gas method using TTE. The specifications in Procedure T shall be used to determine if a temporary enclosure is a TTE. For this protocol, the following capture efficiency equation shall be used:

$$CE = Gw / (Gw + Fw)$$

Where:

CE = Capture efficiency, decimal fraction.

Gw = Mass of VOCs captured and delivered to the control device, using a TTE. Procedure G.2 shall be used to obtain Gw.

Fw = Mass of fugitive VOC that escapes from a TTE. Procedure F.1 shall be used to obtain Fw.

(b) Protocol 2: liquid-gas method using TTE. The specifications in Procedure T shall be used to determine if a temporary enclosure is a TTE. For this protocol, the following capture efficiency equation shall be used:

$$CE = (L - F) / L$$

Where:

CE = Capture efficiency, decimal fraction.

L = Mass of liquid VOCs input to process. Procedure L shall be used to obtain L.

F = Mass of fugitive VOC that escapes from a TTE. Procedure F.1 shall be used to obtain F.

(c) Protocol 3: gas-gas method using BE in which the affected facility is located as the enclosure and in which the mass of VOC captured and delivered to a control device and the mass of VOC leaving the process as gaseous fugitive emissions are measured while operating only the affected facility. All fans and blowers in the building or room shall be operated as they would be under normal production. For this protocol, the following capture efficiency equation shall be used:

$$CE = G / (G + F_B)$$

Where:

CE = Capture efficiency, decimal fraction.

G = Mass of VOCs captured and delivered to a control device. Procedure G.2 shall be used to obtain G.

F_B = Mass of fugitive VOC that escapes from BE. Procedure F.2 shall be used to obtain F_B.

(d) Protocol 4: liquid-gas method using BE in which the affected facility is located as the enclosure and in which the mass of VOC input to the process in liquid form and the mass of VOC leaving the process as gaseous fugitive emissions are measured while operating only the
affected facility. All fans and blowers in the building or room shall be operated as they would be under normal production. For this protocol, the following capture efficiency equation shall be used:

$$CE = (L - F_B) / L$$

Where:

CE = Capture efficiency, decimal fraction.

L = Mass of liquid VOC input to process. Procedure L shall be used to obtain L.

F_B = Mass of fugitive VOC that escapes from BE. Procedure F.2 shall be used to obtain F_B.

Section 4. Recordkeeping and Reporting. (1) All affected facilities shall maintain on file a copy of the capture efficiency protocol submitted to the cabinet. All results of the appropriate test methods and capture efficiency protocols shall be reported to the cabinet within sixty (60) days of the test date. A copy of the results shall be kept on file with the source.

(2) If a change is made to capture or control equipment, the source shall notify the cabinet of these changes and a new test may be required.

(3) The source shall notify the cabinet thirty (30) days prior to performing a capture efficiency or control efficiency test.

(4) A source utilizing a PTE shall demonstrate that this enclosure meets the requirements given in Procedure T for a PTE during testing of the control device.

(5) A source utilizing a TTE shall demonstrate that its TTE meets the requirements given in Procedure T for a TTE during testing of the control device. The source shall also provide documentation that the quality assurance criteria for a TTE have been achieved.

Section 5. Reference Material. (1) Incorporation by reference. The following document is incorporated by reference: "VOM Measurement Techniques for Capture Efficiency," available in 40 CFR 52, Subpart O, Appendix B, published in 55 FR 26887 (June 29, 1990).

(2) The document incorporated by reference in subsection (1) of this section is available for public inspection and copying, subject to copyright law, at the following main and regional offices of the Kentucky Division for Air Quality during the normal working hours of 8:00 a.m. to 4:30 p.m., local time.

(a) Kentucky Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky 40601, (502) 564-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky 41101, (606) 325-8569;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky 42104, (502) 843-5475;

(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky 41042, (606) 292-6411;

(e) Hazard Regional Office, 233 Birch Street, Hazard, Kentucky 41701, (606) 439-2391;

(f) Owensboro Regional Office, 311 West Second Street, Owensboro, Kentucky 42301, (502) 686-3304; and

(g) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky 42003, (502) 898-8468.

PHILLIP J. SHEPHERD, Secretary
RONALD P. MILLS, Acting Commissioner
APPROVED BY AGENCY: January 7, 1992
FILED WITH LRC: January 15, 1992 at noon

PUBLIC HEARING: A public hearing to receive comments on this proposed regulation and proposed amendments will be conducted on February 28, 1992, at 10 a.m. (ET) in the Auditorium of the State Office Building, Clinton and High Streets, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing: Kenneth M. Hines, Manager, Program Planning and Administration Branch, Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Hisham M. Saaid

(1) Type and number of entities affected: This regulation applies to all regulated processes which emit volatile organic compounds (VOC) and employ a control system which are located in ozone nonattainment areas except marginal. This regulation presents the new procedures and methods required by the United States Environmental Protection Agency (U.S. EPA) to eliminate deviations between U.S. EPA policy and Kentucky's State Implementation Plan (SIP) for measuring VOC collection efficiencies. The entities affected are actually controlled by the division's individual applicable regulation. Previously, entities used the old U.S. EPA method which is contained in 401 KAR 50:016, policies incorporated by reference.

(a) Direct and indirect costs or savings to those affected: There have been questions raised by industry and other states concerning cost, universal applicability, improvement in accuracy, length of test, and, possibly, safety of the new method. This new method is required by the U.S. EPA for ozone nonattainment areas except marginal, however, Section 3(2) of this regulation allows case-by-case alternatives if approved by the cabinet and the U.S. EPA. The U.S. EPA is conducting a project to address these concerns. Phase 1 addressed the costs.

1. First year: Industry reports the cost of testing in the range of $6,000 to $8,000 per test for the old method. A report developed for Phase 1 by Midwest Research Institute titled "Cost and Feasibility of the Temporary Total Enclosure Method of Determining Capture Efficiency" presented total costs for five industries for this new method ranging from $20,100 to $29,800. Design costs were $500. Construction and dismantling cost $4,600-$9,400. Testing costs ranged from $15,000 to $22,600. However, the flexible packaging industry has presented estimates for test costs of $109,935.

2. Continuing costs or savings: Please see discussion under First year, 1. above.

3. Additional factors increasing or decreasing costs (note any effects upon competition): The length of the test influences the hours of lost production and, therefore, the cost. This more expensive test is required in areas designated ozone nonattainment except marginal, but not in areas designated attainment or marginal nonattainment for ozone.

(b) Reporting and paperwork requirements: Section 4 of this regulation contains the recordkeeping and reporting requirements.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Testing activities are part of the division's normal day-to-day operations and are budgeted accordingly.

2. Continuing costs or savings: Testing activities are part of the division's normal day-to-day operations and are budgeted accordingly.

3. Additional factors increasing or decreasing costs: It is possible that training for the new method could add to first year costs. The longer length of time for the new method could add to continuing costs.

(b) Reporting and paperwork requirements: The division

will review data and issue reports as part of normal day-to-day operations.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternatives were not considered at this time because this method is a U.S. EPA requirement. However, case-by-case alternatives are allowed under Section 3(2).

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is conflict on the capture efficiency procedures between this regulation and 401 KAR 50:016, policies incorporated by reference in areas designated ozone nonattainment except marginal.

(a) Necessity of proposed regulation if in conflict: This regulation contains the new capture efficiency protocols required by the U.S. EPA in ozone nonattainment areas except marginal. 401 KAR 50:016 requires the previous U.S. EPA capture efficiency procedure. The U.S. EPA identified capture efficiency procedures as a deviation between Kentucky's State Implementation Plan (SIP) and U.S. EPA policy. 401 KAR 50:016 is not part of Kentucky's SIP. This regulation will be part of the SIP. Amending 401 KAR 50:016 would not eliminate the SIP deviation.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: 401 KAR 50:016 will be amended or replaced to eliminate the conflict. 401 KAR 50:016 is not part of Kentucky's SIP, therefore, amending only 401 KAR 50:016 would not satisfy the deviation between EPA's new policy and Kentucky's SIP.

(6) Any additional information or comments: There have been questions raised by industry and other states concerning cost, universal applicability, improvement in accuracy, length of test, and, possibly, safety of the new method. This new method is required by the U.S. EPA in ozone nonattainment areas except marginal, however, Section 3(2) of this regulation allows case-by-case alternatives if approved by the cabinet and U.S. EPA. The U.S. EPA is conducting a project to address these concerns.

TIERING: Was tiering applied? No. This method is required by the U.S. EPA for all sources in an ozone nonattainment area except marginal. However, case-by-case alternatives are allowed under Section 3(2).

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. This regulation is being proposed to maintain Kentucky's State Implementation Plan (SIP) under the Clean Air Act as amended November 15, 1990. This proposed regulation eliminates deviations between Kentucky's SIP and U.S. EPA policy.

2. State compliance standards. This proposed regulation contains the U.S. EPA's new procedures for capture efficiency.

3. Minimum or uniform standards contained in the federal mandate. The procedures in the proposed regulation are the new procedures required by the U.S. EPA.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This regulation imposes the same requirements, and responsibilities as required by the U.S. EPA.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This regulation imposes no stricter standards, responsibilities or requirements.

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

401 KAR 51:001. Definitions and abbreviations of terms used in 401 KAR Chapter 51.

RELATES TO: KRS 224.20-100, 224.20-110, 224.20-120
STATUTORY AUTHORITY: KRS 224.10-100
NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides for the defining of terms used in 401 KAR Chapter 51.

Section 1. General Definitions. As used in the Division for Air Quality regulations of 401 KAR Chapter 51, unless the content clearly indicates otherwise in a specific regulation, the following terms shall have the following meanings:

(1) "Affected facility" means an apparatus, building, operation, road, or other entity or series of entities which emits or may emit an air contaminant into the outdoor atmosphere.

(2) "Air contaminant" has the meaning given it in KRS 224.01-010.

(3) "Air pollutant" means an air contaminant.

(4) "Air pollution" has the meaning given it in KRS 224.01-010.

(5) "Air pollution control equipment" means a mechanism, device or contrivance used to control or prevent air pollution, which is not, aside from air pollution control laws and regulations, vital to production of the normal product of the source or to its normal operation.

(6) "Alteration" means:

(a) The installation or replacement of air pollution control equipment at a source;

(b) A physical change in or change in the method of operation of an affected facility which increases the potential to emit of a pollutant (to which a standard applies) emitted by the facility or which results in the emission of an air pollutant (to which a standard applies) not previously emitted.

(7) "Alternative method" means a method of sampling and analyzing for an air pollutant which is not a reference or equivalent method but which has been demonstrated to the cabinet's and the U.S. EPA's satisfaction to, in specific cases, produce results adequate for its determination of compliance.

(8) "Ambient air" means that portion of the atmosphere, external to buildings, to which the general public has access.

(9) "Ambient air quality standard" means a numerical expression of a specified concentration level for a particular air contaminant and the time averaging interval over which that concentration level is measured and is a goal to be achieved in a stated time through the application of appropriate preventive or control measures.

(10) "Cabinet" has the meaning given it in KRS 224.01-010.

(11) "Commence" means that an owner or operator has undertaken a continuous program of construction, modification, or reconstruction of an affected facility, or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction, modification, or reconstruction of an affected facility.

(12) "Compliance schedule" means a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with a limitation or standard.

(13) "Construction" means fabrication, erection, installation or modification of an air contaminant source.

(14) "Continuous monitoring system" means the total equipment, required under the applicable regulations used to sample, to condition (if applicable), to analyze and to provide a permanent record of emissions or process parameters.

(15) "Director" means Director of the Division for Air Quality of the Natural Resources and Environmental Protection Cabinet.

(16) "District" has the meaning given it in KRS 224.01-010.

(17) "Emission standard" means that numerical limit which fixes the amount of an air contaminant or air contaminants that may be vented into the atmosphere (open air) from an affected facility or from air pollution control equipment installed in an affected facility.

(18) "Equivalent method" means a method of sampling and analyzing for an air pollutant which has been demonstrated to the cabinet's and the U.S. EPA's satisfaction to have a consistent and quantitatively known relationship to the reference method, under specified conditions.

(19) "Exempt solvent" means an organic compound listed in the definition of volatile organic compound as not participating in atmospheric photochemical reactions.

(20) "Existing source" means a source which is not a new source.

(21) "Extreme nonattainment county" or "extreme nonattainment area" means a county or portion of a county designated extreme nonattainment in 401 KAR 51:010.

(22) "Fixed capital cost" means the capital needed to provide all the depreciable components.

(23) "Fuel" means natural gas, petroleum, coal, wood, and any form of solid, liquid, or gaseous fuel derived from these materials for the purpose of creating useful heat.

(24) "Fugitive emissions" means the emissions of an air contaminant into the open air other than from a stack or air pollution control equipment exhaust.

(25) "Hydrocarbon" means an organic compound consisting predominantly of carbon and hydrogen.

(26) "Incineration" means the process of igniting and burning solid, semisolid, liquid, or gaseous combustible wastes.

(27) "Intermittent emissions" means emissions of particulate matter into the open air from a process which operates for less than any six (6) consecutive minutes.

(28) "Major source" means a source of which the potential emission rate is equal to or greater than 100 tons per year of any one (1) of the following pollutants: particulate matter, sulfur oxides, nitrogen oxides, volatile organic compounds or carbon monoxide.

(29) "Malfunction" means a failure of air pollution control equipment, or process equipment, or of a process to operate in a normal or usual manner.

(30) "Marginal nonattainment county" or "marginal nonattainment area" means a county or portion of a county designated marginal nonattainment in 401 KAR 51:010.

(31) "Moderate nonattainment county" or "moderate nonattainment area" means a county or portion of a county designated moderate nonattainment in 401 KAR 51:010.

(32) "Modification" means a physical change in, or change in the method of operation of an affected facility which increases the potential to emit of an air pollutant (to which a standard applies) emitted by the facility, or which results in the emission of an air pollutant (to which a standard applies) not previously emitted, except that:

(a) Routine maintenance, repair, and replacement of component parts shall not be considered physical changes;

(b) The following shall not be considered a change in the method of operation:

1. An increase in the production rate, if the increase does not exceed the operating design capacity of the affected facility, or the maximum operating capacity specified as a condition to a permit issued by the cabinet;

2. An increase in hours of operation;

3. Use of an alternative fuel or raw material if, prior to the date a standard becomes applicable to the facility, the affected facility is designed to accommodate the alternative use.

(33) "Monitoring device" means the total equipment, required in applicable regulations, used to measure and record (if applicable) process parameters.

(34) "New source" means a source, the construction, reconstruction, or modification of which commenced on or after the classification date as defined in the applicable regulation. A source, upon reconstruction, becomes a new source, irrespective of a change in emission rate.

(35) "Nitrogen oxides" means all oxides of nitrogen except nitrous oxide, as measured by test methods specified by the cabinet.

(36) "Opacity" means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.

(37) "Owner or operator" means a person who owns, leases, operates, controls, or supervises an affected facility or a source to which an affected facility is a part.

(38) "Particulate matter" means a material, except uncombined water, which exists in a finely divided form as a liquid or a solid as measured by the appropriate approved test method.

(39) "Particulate matter emissions" means, except as used in 40 CFR 60, all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by applicable reference methods, or an equivalent or alternative method specified in 40 CFR Chapter I, or by a test method specified in the approved state implementation plan.

(40) "Person" means an individual, public or private corporation, political subdivision, government agency, municipality, industry, copartnership, association, firm, trust, estate, or other entity.

(41) "PM_{10}" means particulate matter with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers as measured by a reference method based on Appendix J to 40 CFR 50, which has been incorporated by reference in 401 KAR 50:015, and designated in accordance with 40 CFR 53, or by an equivalent method designated in accordance with 40 CFR 53.

(42) "PM_{10} emissions" means finely divided solid or liquid material with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternative method, specified in 40 CFR Chapter I, or by a test method specified in the approved state implementation plan.

(43) "Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. A physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions shall not count in determining the potential to emit of a stationary source.

(44) "Reconstruction" means the replacement of components of an existing affected facility to the extent that the fixed capital cost of the new components exceeds fifty (50) percent of the fixed capital cost that would be required to construct a comparable entirely new affected facility, and it is technologically and economically feasible to meet the applicable new source standards. Individual sections of these regulations may include specific provisions which refine and delimit the concept of reconstruction set forth in this subsection. The cabinet's determination as to whether the proposed replacement constitutes reconstruction shall be based on:

(a) The fixed capital cost of the replacements in comparison to the fixed capital cost that would be required to construct a comparable entirely new facility;

(b) The estimated life of the affected facility after the replacements compared to the life of a comparable entirely new affected facility;

(c) The extent to which the components being replaced cause or contribute to the emissions from the affected facility;

and

(d) Economic or technical limitations on compliance with applicable standards of performance which are inherent in the proposed replacements.

(45) "Reference method" means a method of sampling and analyzing for an air pollutant as prescribed by Appendices A through K to 40 CFR 50, Appendices A and B to 40 CFR 60, and Appendix B to 40 CFR 61. This term may be more narrowly defined within a specific regulation.

(46) "Run" means the net period of time during which an emission sample is collected. Unless otherwise specified, a run may be either intermittent or continuous within the limits of good engineering practice.

(47) "Secondary emissions" means emissions which occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. Secondary emissions shall be specific, well defined, quantifiable, and shall impact the same general area as does the stationary source modification which causes the secondary emissions. Secondary emissions may include, but are not limited to emissions from an off-site support facility which would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include emissions which come directly from a mobile source, such as the emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

(48) "Serious nonattainment county" or "serious nonattainment area" means a county or portion of a county designated serious nonattainment in 401 KAR 51:010.

(49) "Severe nonattainment county" or "severe nonattainment area" means a county or portion of a county designated severe nonattainment in 401 KAR 51:010.

(50) "Shutdown" means the cessation of an operation.

(51) "Source" means one (1) or more affected facilities contained within a given contiguous property line. The property shall be considered contiguous if separated only by a public thoroughfare, stream, or other right of way.

(52) "Stack or chimney" means a flue, conduit, or duct arranged to conduct emissions to the atmosphere.

(53) "Standard" means an emission standard, a standard of performance, or an ambient air quality standard as promulgated under the regulations of the Division for Air Quality or the emission control requirements necessary to comply with 401 KAR Chapter 51, of the regulations of the Division for Air Quality.

(54) "Standard conditions":

(a) For source measurements means twenty (20) degrees Celsius (sixty-eight (68) degrees Fahrenheit) and a pressure of 760 mm Hg (29.92 in. of Hg);

(b) For the purpose of air quality determinations means twenty-five (25) degrees Celsius and a reference pressure of 760 mm Hg.

(55) "Start-up" means the setting in operation of an affected facility.

(56) "State implementation plan" means the most recently prepared plan or revision required by Section 110 of the Clean Air Act which has been approved by the U.S. EPA.

(57) "Total suspended particulate" means particulate matter as measured by the method described in Appendix B of 40 CFR 50, which has been incorporated by reference in 401 KAR 50:015.

(58) "Uncombined water" means water which can be separated from a compound by ordinary physical means and which is not bound to a compound by internal molecular forces.

(59) "Urban county" means a county which is a part of an urbanized area with a population of greater than 200,000 based upon the 1980 census. If a portion of a county is a part of an urbanized area, then the entire county shall be classified as urban with respect to the regulations of the Division for Air Quality.

(60) "Urbanized area" means an area defined as such by the U.S. Department of Commerce, Bureau of Census.

(61) "Volatile organic compound" or "VOC" means an organic compound which participates in atmospheric photochemical reactions. This includes an organic compound other than the following compounds: methane; ethane; carbon monoxide; carbon dioxide; carbonic acid; metallic carbides; ammonium carbonates; methylene chloride; 1,1,1-trichloroethane (methyl chloroform) trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12) chlorodifluoromethane (CFC-22); trifluoromethane (FC-23); trichlorotrifluoroethane (CFC-113); dichlorotetrafluoroethane (CFC-114); chloropentafluoroethane (CFC- 115); dichlorotrifluoroethane (HCFC-123); tetrafluoroethane (HFC134a); dichlorofluoroethane (HCFC-141b); chlorodifluoroethane (HCFC-142b); 2-chloro-1,1,1, 2-tetrafluoroethane (HCFC-124); pentafluoroethane (HFC-125); 1,1,2,2-tetrafluoroethane (HFC-134); 1,1,1-trifluoroethane (HFC-143a); 1,1-difluoroethane (HFC-152a); and perfluorocarbon compounds which fall into these classes:

(a) Cyclic, branched, or linear, completely fluorinated alkanes;

(b) Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;

(c) Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and

(d) Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine. These compounds have been determined to have negligible photochemical reactivity. For purposes of determining compliance with emission limits, VOCs shall be measured by test methods that have been approved by the cabinet. Approval by the cabinet shall not constitute or imply approval by the U.S. EPA. The cabinet will not approve a test method that has been disapproved for use by the U.S. EPA. If a method used also inadvertently measures compounds with negligible photochemical reactivity, an owner or operator may exclude these negligibly reactive compounds when determining compliance with an emissions standard.

Section 2. Abbreviations. The abbreviations used in the regulations of 401 KAR Chapter 59 shall have the following meanings:

AOAC - Association of Official Analytical Chemists
ANSI - American National Standards Institute
ASTM - American Society for Testing and Materials
BOD - Biochemical oxidant demand
BTU - British Thermal Unit
°C - Degree Celsius (centigrade)
Cal - calorie
cfm - cubic feet per minute
CFR - Code of Federal Regulations
CH_4 - methane
CO - Carbon monoxide
CO_2 - Carbon dioxide
COD - Chemical oxidant demand
dscf - dry cubic feet at standard conditions
dscm - dry cubic meter at standard conditions
°F - Degree Fahrenheit
ft - feet
g - gram
gal - gallon
gr - grain
hr - hour
HCl - Hydrochloric acid
Hg - mercury
HF - Hydrogen fluoride
H_2O - water
H_2S - Hydrogen sulfide
H_2SO_4 - Sulfuric acid
in - inch
J - joule
KAR - Kentucky Administrative Regulations

kg - kilogram
KRS - Kentucky Revised Statutes
l - liter
lb - pound
m - meter
m^3 - cubic meter
min - minute
mg - milligram
MJ - megajoules
MM - million
mm - millimeter
mo - month
Ng - nanograms
N_2 - Nitrogen
NO - Nitric oxide
NO_2 - Nitrogen dioxide
NO_x - Nitrogen oxides
oz - ounce
O_2 - oxygen
O_3 - ozone
ppb - parts per billion
ppm - parts per million
ppm (w/w) - parts per million (weight by weight)
ug - microgram
psia - pounds per square inch absolute
psig - pounds per square inch gage
S - at standard conditions
sec - second
SIP - State implementation plan
SO_2 - Sulfur dioxide
sq - square
TAPPI - Technical Association of the Pulp and Paper Industry
TSP - Total suspended particulates
TSS - Total suspended solids
U.S. EPA - United States Environmental Protection Agency
UTM - Universal Transverse Mercator
VOC - Volatile organic compound
yd - yard

PHILLIP J. SHEPHERD, Secretary
RONALD P. MILLS, Acting Commissioner
APPROVED BY AGENCY: January 7, 1992
FILED WITH LRC: January 15, 1992 at noon
PUBLIC HEARING: A public hearing to receive comments on this proposed amendment will be conducted on February 28, 1992, at 10 a.m. (ET) in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact in writing, at least five (5) days prior to the hearing: Kenneth M. Hines, Manager, Program Planning and Administration Branch, Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Hisham M. Saaid
(1) Type and number of entities affected: This proposed regulation defines the terms used in 401 KAR Chapter 51. The effects of the regulation will depend upon the use of terms within a specific regulation. This regulation imposes no separate requirements. Therefore, effects are described in the RIA for the affected regulations.
(a) Direct and indirect costs or savings to those affected: There will be no additional costs or savings due to these amendments.
1. First year: There are no direct or indirect costs or savings in the first year.
2. Continuing costs or savings: There are no continuing costs or savings.
3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors increasing or decreasing costs.
(b) Reporting and paperwork requirements: There are no reporting and paperwork requirements.
(2) Effects on the promulgating administrative body: There are none due to the amendments to this regulation. Any impact is due to the changes in the individual regulations.
(a) Direct and indirect costs or savings:
1. First year: There are no direct or indirect costs or savings in the first year.
2. Continuing costs or savings: There are no continuing costs or savings.
3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.
(b) Reporting and paperwork requirements: There are no reporting and paperwork requirements.
(3) Assessment of anticipated effect on state and local revenues: No effect is anticipated on state or local revenues.
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because these changes were required to eliminate deviations with U.S. EPA policy and to comply with the requirements of KRS Chapter 13A.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflict, overlapping, or duplication.
(a) Necessity of proposed regulation if in conflict: There is no conflict.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no conflict.
(6) Any additional information or comments: This regulation provides the definitions and abbreviations by which all terms in the regulations of 401 KAR Chapter 51 are to be understood. It provides the new definition of volatile organic compounds (VOCs) and adds 5 classifications of nonattainment of national ambient air quality standards. The definition for VOC is being amended because the U.S. EPA, in the Federal Register of March 18, 1991 (56 FR 11390), has determined that additional organic compounds have negligible photochemical reactivity. In addition, the 5 classifications of nonattainment are being added to comply with the federal Clean Air Act as amended in 1990. The VOC definition is part of the changes being made to correct deviations from current U.S. EPA policy in SIP for ozone. All sources in Kentucky which emit VOCs will now use these definitions unless other definitions are specifically included in the individual chapter definition regulations or in the applicable regulation. Any impact from these amendments will be due to changes in specific regulations which use these terms. In addition to the amendments which address VOC SIP deviations, changes have also been made to this regulation to begin to address the requirements of KRS Chapter 13A which prohibit regulatory agencies from adopting a general definition regulation to define all the terms used in its administrative regulations. In response to the KRS Chapter 13A requirements, the division will promulgate definition regulations for all the chapters of the division's regulations. The division is currently proposing definition regulations for 401 KAR Chapters 51, 59, 61, and 63. Until a definition regulation is promulgated for each of the remaining chapters, 401 KAR 50:010 will continue to apply overall.
TIERING: Was tiering applied? No. Tiering is not applicable in these amendments since this regulation provides only the definitions and abbreviations for terms which are used in the other regulations for the Division for Air Quality.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Federal Register, March 18, 1991 (56 FR 11390), and Clean Air Act as amended November 15, 1990.
2. State compliance standards. 401 KAR 50:010, Section 1(21), (30), (31), (48), (49), and (61).
3. Minimum or uniform standards contained in the federal

mandate. The U.S. EPA has determined that additional organic compounds have negligible photochemical reactivity. The proposed regulation excludes these compounds from the definition of volatile organic compounds (VOCs). In addition, the Clean Air Act as amended November 15, 1990, requires that ambient air quality nonattainment areas be classified under one of five categories.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. The proposed regulation is being amended to eliminate deviations from U.S. EPA policy.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The proposed amendment does not impose stricter standards, or additional or different responsibilities or requirements.

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

401 KAR 59:001. Definitions and abbreviations of terms used in 401 KAR Chapter 59.

RELATES TO: KRS 224.20-100, 224.20-110, 224.20-120
STATUTORY AUTHORITY: KRS 224.10-100
NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides for the defining of terms used in 401 KAR Chapter 59.

Section 1. General Definitions. As used in the Division for Air Quality regulations of 401 KAR Chapter 59, unless the content clearly indicates otherwise in a specific regulation, the following terms shall have the following meanings:

(1) "Affected facility" means an apparatus, building, operation, road, or other entity or series of entities which emits or may emit an air contaminant into the outdoor atmosphere.

(2) "Air contaminant" has the meaning given it in KRS 224.01-010.

(3) "Air pollutant" means an air contaminant.

(4) "Air pollution" has the meaning given it in KRS 224.01-010.

(5) "Air pollution control equipment" means a mechanism, device or contrivance used to control or prevent air pollution, which is not, aside from air pollution control laws and regulations, vital to production of the normal product of the source or to its normal operation.

(6) "Alteration" means:

(a) The installation or replacement of air pollution control equipment at a source;

(b) A physical change in or change in the method of operation of an affected facility which increases the potential to emit of a pollutant (to which a standard applies) emitted by the facility or which results in the emission of an air pollutant (to which a standard applies) not previously emitted.

(7) "Alternative method" means a method of sampling and analyzing for an air pollutant which is not a reference or equivalent method but which has been demonstrated to the cabinet's and the U.S. EPA's satisfaction to, in specific cases, produce results adequate for its determination of compliance.

(8) "Ambient air" means that portion of the atmosphere, external to buildings, to which the general public has access.

(9) "Ambient air quality standard" means a numerical expression of a specified concentration level for a particular air contaminant and the time averaging interval over which that concentration level is measured and is a goal to be achieved in a stated time through the application of appropriate preventive or control measures.

(10) "Cabinet" has the meaning given it in KRS 224.01-010.

(11) "Commence" means that an owner or operator has undertaken a continuous program of construction, modification, or reconstruction of an affected facility, or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction, modification, or reconstruction of an affected facility.

(12) "Compliance schedule" means a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with a limitation or standard.

(13) "Construction" means fabrication, erection, installation or modification of an air contaminant source.

(14) "Continuous monitoring system" means the total equipment, required under the applicable regulations used to sample, to condition (if applicable), to analyze and to provide a permanent record of emissions or process parameters.

(15) "Director" means Director of the Division for Air Quality of the Natural Resources and Environmental Protection Cabinet.

(16) "District" has the meaning given it in KRS 224.01-010.

(17) "Emission standard" means that numerical limit which fixes the amount of an air contaminant or air contaminants that may be vented into the atmosphere (open air) from an affected facility or from air pollution control equipment installed in an affected facility.

(18) "Equivalent method" means a method of sampling and analyzing for an air pollutant which has been demonstrated to the cabinet's and the U.S. EPA's satisfaction to have a consistent and quantitatively known relationship to the reference method, under specified conditions.

(19) "Exempt solvent" means an organic compound listed in the definition of volatile organic compound as not participating in atmospheric photochemical reactions.

(20) "Existing source" means a source which is not a new source.

(21) "Extreme nonattainment county" or "extreme nonattainment area" means a county or portion of a county designated extreme nonattainment in 401 KAR 51:010.

(22) "Fixed capital cost" means the capital needed to provide all the depreciable components.

(23) "Fuel" means natural gas, petroleum, coal, wood, and any form of solid, liquid, or gaseous fuel derived from these materials for the purpose of creating useful heat.

(24) "Fugitive emissions" means the emissions of an air contaminant into the open air other than from a stack or air pollution control equipment exhaust.

(25) "Hydrocarbon" means an organic compound consisting predominantly of carbon and hydrogen.

(26) "Incineration" means the process of igniting and burning solid, semisolid, liquid, or gaseous combustible wastes.

(27) "Intermittent emissions" means emissions of particulate matter into the open air from a process which operates for less than any six (6) consecutive minutes.

(28) "Major source" means a source of which the potential emission rate is equal to or greater than 100 tons per year of any one (1) of the following pollutants: particulate matter, sulfur oxides, nitrogen oxides, volatile organic compounds or carbon monoxide.

(29) "Malfunction" means a failure of air pollution control equipment, or process equipment, or of a process to operate in a normal or usual manner.

(30) "Marginal nonattainment county" or "marginal nonattainment area" means a county or portion of a county designated marginal nonattainment in 401 KAR 51:010.

(31) "Moderate nonattainment county" or "moderate nonattainment area" means a county or portion of a county designated moderate nonattainment in 401 KAR 51:010.

(32) "Modification" means a physical change in, or change in the method of operation of an affected facility which

increases the potential to emit of an air pollutant (to which a standard applies) emitted by the facility, or which results in the emission of an air pollutant (to which a standard applies) not previously emitted, except that:

(a) Routine maintenance, repair, and replacement of component parts shall not be considered physical changes;

(b) The following shall not be considered a change in the method of operation:

1. An increase in the production rate, if the increase does not exceed the operating design capacity of the affected facility, or the maximum operating capacity specified as a condition to a permit issued by the cabinet;

2. An increase in hours of operation;

3. Use of an alternative fuel or raw material if, prior to the date a standard becomes applicable to the facility, the affected facility is designed to accommodate the alternative use.

(33) "Monitoring device" means the total equipment, required in applicable regulations, used to measure and record (if applicable) process parameters.

(34) "New source" means a source, the construction, reconstruction, or modification of which commenced on or after the classification date as defined in the applicable regulation. A source, upon reconstruction, becomes a new source, irrespective of a change in emission rate.

(35) "Nitrogen oxides" means all oxides of nitrogen except nitrous oxide, as measured by test methods specified by the cabinet.

(36) "Opacity" means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.

(37) "Owner or operator" means a person who owns, leases, operates, controls, or supervises an affected facility or a source to which an affected facility is a part.

(38) "Particulate matter" means a material, except uncombined water, which exists in a finely divided form as a liquid or a solid as measured by the appropriate approved test method.

(39) "Particulate matter emissions" means, except as used in 40 CFR 60, all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by applicable reference methods, or an equivalent or alternative method specified in 40 CFR Chapter I, or by a test method specified in the approved state implementation plan.

(40) "Person" means an individual, public or private corporation, political subdivision, government agency, municipality, industry, copartnership, association, firm, trust, estate, or other entity.

(41) "PM_{10}" means particulate matter with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers as measured by a reference method based on Appendix J to 40 CFR 50, which has been incorporated by reference in 401 KAR 50:015, and designated in accordance with 40 CFR 53, or by an equivalent method designated in accordance with 40 CFR 53.

(42) "PM_{10} emissions" means finely divided solid or liquid material with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternative method, specified in 40 CFR Chapter I, or by a test method specified in the approved state implementation plan.

(43) "Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. A physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions shall not count in determining the potential to emit of a stationary source.

(44) "Reconstruction" means the replacement of components of an existing affected facility to the extent that the fixed capital cost of the new components exceeds fifty (50) percent of the fixed capital cost that would be required to construct a comparable entirely new affected facility, and it is technologically and economically feasible to meet the applicable new source standards. Individual sections of these regulations may include specific provisions which refine and delimit the concept of reconstruction set forth in this subsection. The cabinet's determination as to whether the proposed replacement constitutes reconstruction shall be based on:

(a) The fixed capital cost of the replacements in comparison to the fixed capital cost that would be required to construct a comparable entirely new facility;

(b) The estimated life of the affected facility after the replacements compared to the life of a comparable entirely new affected facility;

(c) The extent to which the components being replaced cause or contribute to the emissions from the affected facility; and

(d) Economic or technical limitations on compliance with applicable standards of performance which are inherent in the proposed replacements.

(45) "Reference method" means a method of sampling and analyzing for an air pollutant as prescribed by Appendices A through K to 40 CFR 50, Appendices A and B to 40 CFR 60, and Appendix B to 40 CFR 61. This term may be more narrowly defined within a specific regulation.

(46) "Run" means the net period of time during which an emission sample is collected. Unless otherwise specified, a run may be either intermittent or continuous within the limits of good engineering practice.

(47) "Secondary emissions" means emissions which occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. Secondary emissions shall be specific, well defined, quantifiable, and shall impact the same general area as does the stationary source modification which causes the secondary emissions. Secondary emissions may include, but are not limited to emissions from an off-site support facility which would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include emissions which come directly from a mobile source, such as the emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

(48) "Serious nonattainment county" or "serious nonattainment area" means a county or portion of a county designated serious nonattainment in 401 KAR 51:010.

(49) "Severe nonattainment county" or "severe nonattainment area" means a county or portion of a county designated severe nonattainment in 401 KAR 51:010.

(50) "Shutdown" means the cessation of an operation.

(51) "Source" means one (1) or more affected facilities contained within a given contiguous property line. The property shall be considered contiguous if separated only by a public thoroughfare, stream, or other right of way.

(52) "Stack or chimney" means a flue, conduit, or duct arranged to conduct emissions to the atmosphere.

(53) "Standard" means an emission standard, a standard of performance, or an ambient air quality standard as promulgated under the regulations of the Division for Air Quality or the emission control requirements necessary to comply with Title 401, Chapter 51, of the regulations of the Division for Air Quality.

(54) "Standard conditions:"

(a) For source measurements means twenty (20) degrees Celsius (sixty- eight (68) degrees Fahrenheit) and a pressure of 760 mm Hg (29.92 in. of Hg);

(b) For the purpose of air quality determinations means twenty-five (25) degrees Celsius and a reference pressure of 760 mm Hg.

(55) "Start-up" means the setting in operation of an

affected facility.

(56) "State implementation plan" means the most recently prepared plan or revision required by Section 110 of the Clean Air Act which has been approved by the U.S. EPA.

(57) "Total suspended particulate" means particulate matter as measured by the method described in Appendix B of 40 CFR 50, which has been incorporated by reference in 401 KAR 50:015.

(58) "Uncombined water" means water which can be separated from a compound by ordinary physical means and which is not bound to a compound by internal molecular forces.

(59) "Urban county" means a county which is a part of an urbanized area with a population of greater than 200,000 based upon the 1980 census. If a portion of a county is a part of an urbanized area, then the entire county shall be classified as urban with respect to the regulations of the Division for Air Quality.

(60) "Urbanized area" means an area defined as such by the U.S. Department of Commerce, Bureau of Census.

(61) "Volatile organic compound" or "VOC" means an organic compound which participates in atmospheric photochemical reactions. This includes an organic compound other than the following compounds: methane; ethane; carbon monoxide; carbon dioxide; carbonic acid; metallic carbides; ammonium carbonates; methylene chloride; 1,1,1-trichloroethane (methyl chloroform) trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12) chlorodifluoromethane (CFC-22); trifluoromethane (FC-23); trichlorotrifluoroethane (CFC-113); dichlorotetrafluoroethane (CFC-114); chloropentafluoroethane (CFC-115); dichlorotrifluoroethane (HCFC-123); tetrafluoroethane (HFC-134a); dichlorofluoroethane (HCFC-141b); chlorodifluoroethane (HCFC-142b); 2-chloro-1,1,1, 2-tetrafluoroethane (HCFC-124); pentafluoroethane (HFC-125); 1,1,2,2-tetrafluoroethane (HFC-134); 1,1,1-trifluoroethane (HFC-143a); 1,1-difluoroethane (HFC-152a); and perfluorocarbon compounds which fall into these classes:

(a) Cyclic, branched, or linear, completely fluorinated alkanes;

(b) Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;

(c) Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and

(d) Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine. These compounds have been determined to have negligible photochemical reactivity. For purposes of determining compliance with emission limits, VOCs shall be measured by test methods that have been approved by the cabinet. Approval by the cabinet shall not constitute or imply approval by the U.S. EPA. The cabinet will not approve a test method that has been disapproved for use by the U.S. EPA. If a method used also inadvertently measures compounds with negligible photochemical reactivity, an owner or operator may exclude these negligibly reactive compounds when determining compliance with an emissions standard.

Section 2. Abbreviations. The abbreviations used in the regulations of Title 401, Chapter 59, shall have the following meanings:

AOAC - Association of Official Analytical Chemists
ANSI - American National Standards Institute
ASTM - American Society for Testing and Materials
BOD - Biochemical oxidant demand
BTU - British Thermal Unit
°C - Degree Celsius (centigrade)
Cal - calorie
cfm - cubic feet per minute
CFR - Code of Federal Regulations
CH_4 - methane
CO - Carbon monoxide
CO_2 - Carbon dioxide
COD - Chemical oxidant demand
dscf - dry cubic feet at standard conditions
dscm - dry cubic meter at standard conditions
°F - Degree Fahrenheit
ft - feet
g - gram
gal - gallon
gr - grain
hr - hour
HCl - Hydrochloric acid
Hg - mercury
HF - Hydrogen fluoride
H_2O - water
H_2S - Hydrogen sulfide
H_2SO_4 - Sulfuric acid
in - inch
J - joule
KAR - Kentucky Administrative Regulations
kg - kilogram
KRS - Kentucky Revised Statutes
l - liter
lb - pound
m - meter
m^3 - cubic meter
min - minute
mg - milligram
MJ - megajoules
MM - million
mm - millimeter
mo - month
Ng - nanograms
N_2 - Nitrogen
NO - Nitric oxide
NO_2 - Nitrogen dioxide
NO_x - Nitrogen oxides
oz - ounce
O_2 - oxygen
O_3 - ozone
ppb - parts per billion
ppm - parts per million
ppm (w/w) - parts per million (weight by weight)
mg - microgram
psia - pounds per square inch absolute
psig - pounds per square inch gage
S - at standard conditions
sec - second
SIP - State implementation plan
SO_2 - Sulfur dioxide
sq - square
TAPPI - Technical Association of the Pulp and Paper Industry
TSP - Total suspended particulates
TSS - Total suspended solids
U.S. EPA - United States Environmental Protection Agency
UTM - Universal Transverse Mercator
VOC - Volatile organic compound
yd - yard

PHILLIP J. SHEPHERD, Secretary
RONALD P. MILLS, Acting Commissioner
APPROVED BY AGENCY: January 7, 1992
FILED WITH LRC: January 15, 1992 at noon
PUBLIC HEARING: A public hearing to receive comments on this proposed amendment will be conducted on February 28, 1992, at 10 a.m. (ET) in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact in writing, at least five (5) days prior to the hearing: Kenneth M. Hines, Manager, Program Planning and Administration Branch, Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Hisham M. Saaid

(1) Type and number of entities affected: This proposed regulation defines the terms used in 401 KAR Chapter 59. The effects of the regulation will depend upon the use of terms within a specific regulation. This regulation imposes no separate requirements. Therefore, effects are described in the RIA for the affected regulations.

(a) Direct and indirect costs or savings to those affected: There will be no additional costs or savings due to these amendments.

1. First year: There are no direct or indirect costs or savings in the first year.

2. Continuing costs or savings: There are no continuing costs or savings.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There are no reporting and paperwork requirements.

(2) Effects on the promulgating administrative body: There are none due to the amendments to this regulation. Any impact is due to the changes in the individual regulations.

(a) Direct and indirect costs or savings:

1. First year: There are no direct or indirect costs or savings in the first year.

2. Continuing costs or savings: There are no continuing costs or savings.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There are no reporting and paperwork requirements.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because these changes were required to eliminate deviations with U.S. EPA policy and to comply with the requirements of KRS Chapter 13A.

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

(a) Necessity of proposed regulation if in conflict: There is no conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no conflict.

(6) Any additional information or comments: This regulation provides the definitions and abbreviations by which all terms in the regulations of 401 KAR Chapter 59 are to be understood. It provides the new definition of volatile organic compounds (VOCs) and adds 5 classifications of nonattainment of national ambient air quality standards. The definition for VOC is being amended because the U.S. EPA, in the Federal Register of March 18, 1991 (56 FR 11390), has determined that additional organic compounds have negligible photochemical reactivity. In addition, the 5 classifications of nonattainment are being added to comply with the federal Clean Air Act as amended in 1990. The VOC definition is part of the changes being made to correct deviations from current U.S. EPA policy in SIP for ozone. All sources in Kentucky which emit VOCs will now use these definitions unless other definitions are specifically included in the individual chapter definition regulations or in the applicable regulation. Any impact from these amendments will be due to changes in specific regulations which use these terms. In addition to the amendments which address VOC SIP deviations, changes have also been made to this regulation to begin to address the requirements of KRS Chapter 13A which prohibit regulatory agencies from adopting a general definition regulation to define all the terms used in its administrative regulations. In response to the KRS Chapter 13A requirements, the division will promulgate definition regulations for all the chapters of the division's regulations. The division is currently proposing definition regulations for 401 KAR Chapters 51, 59, 61, and 63. Until a definition regulation is promulgated for each of the remaining chapters, 401 KAR 50:010 will continue to apply overall.

TIERING: Was tiering applied? No. Tiering is not applicable in these amendments since this regulation provides only the definitions and abbreviations for terms which are used in the other regulations for the Division for Air Quality.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Federal Register, March 18, 1991 (56 FR 11390), and Clean Air Act as amended November 15, 1990.

2. State compliance standards. 401 KAR 50:010, Section 1(21), (30), (31), (48), (49), and (61).

3. Minimum or uniform standards contained in the federal mandate. The U.S. EPA has determined that additional organic compounds have negligible photochemical reactivity. The proposed regulation excludes these compounds from the definition of volatile organic compounds (VOCs). In addition, the Clean Air Act as amended November 15, 1990, requires that ambient air quality nonattainment areas be classified under one of five categories.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. The proposed regulation is being amended to eliminate deviations from U.S. EPA policy.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The proposed amendment does not impose stricter standards, or additional or different responsibilities or requirements.

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

401 KAR 59:315. Specific new sources.

RELATES TO: KRS 224.20-100, 224.20-110, 224.20-120
STATUTORY AUTHORITY: KRS 224.10-100
NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides for the control of volatile organic compound emissions for specific new sources.

Section 1. Definitions. Terms used in this regulation shall have the meaning given them in 401 KAR 59:001.

Section 2. Applicability. (1) 401 KAR 61:055, 401 KAR 61:090, 401 KAR 61:105, 401 KAR 61:110, 401 KAR 61:125, 401 KAR 61:130, 401 KAR 61:137, 401 KAR 61:155, and 401 KAR 61:175 shall apply to:

(a) Each affected facility commenced on or after the classification date defined in Section 1 of the corresponding regulation and located in a county or portion of a county designated as nonattainment for ozone in 401 KAR 51:010, for any classification except marginal; and

(b) Each affected facility commenced on or after the effective date of this regulation which is part of a major source located in a county or portion of a county designated attainment or marginal nonattainment for ozone in 401 KAR 51:010.

(2) Each affected facility commenced on or after the classification date defined in Section 1 of the corresponding regulation but prior to the effective date of this regulation which is part of a major source located in a county or portion of a county designated attainment or marginally nonattainment for ozone in 401 KAR 51:010 shall be exempt from this

regulation except that control devices and procedures required at the time it commenced shall continue to be maintained.

(3) If a requirement of any other regulation of the Division for Air Quality is more stringent, then the more stringent requirement shall apply.

PHILLIP J. SHEPHERD, Secretary
RONALD P. MILLS, Acting Commissioner
APPROVED BY AGENCY: January 7, 1992
FILED WITH LRC: January 15, 1992 at noon
PUBLIC HEARING: A public hearing to receive comments on the proposed regulation will be conducted on February 28, 1992, at 10 a.m. (ET) in the Auditorium of the State Office Building, Clinton and High Streets, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing: Kenneth M. Hines, Manager, Program Planning and Administration Branch, Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Hisham M. Saaid

(1) Type and number of entities affected: This regulation is being proposed to meet a U.S. EPA requirement to eliminate deviations between Kentucky's SIP and federal policy. The U.S. EPA requires that sources in ozone nonattainment areas (except marginal nonattainment) meet the standards presented in the Control Techniques Guidelines (CTG) documents issued by the U.S EPA. The division previously fulfilled this requirement by writing regulations for existing and new sources based on the CTG documents. However, as the federal government promulgated new source performance standards (NSPS) for new sources in the same industrial categories, Kentucky repealed the corresponding CTG based new source regulation for that category and adopted a regulation based on the NSPS. The current U.S. EPA policy is that both the CTG and NSPS requirements should apply to new sources in nonattainment areas (except marginal). This regulation reinstates the CTG based requirements for new sources in nonattainment areas. It also continues the Kentucky ozone control strategy of applying the CTG requirements to major new sources in all counties after the effective date of this regulation. The CTG based regulation and the corresponding NSPS regulations are as follows: 401 KAR 61:055 - Existing loading facilities at bulk gasoline terminals; 401 KAR 59:099 - New bulk gasoline terminals; 401 KAR 61:090 - Existing automobile and light-duty truck surface coating operations; 401 KAR 59:181 - New automobile and light-duty truck coating operations; 401 KAR 61:105 - Existing metal furniture surface coating operations; 401 KAR 59:196 - New metal furniture coating operations; 401 KAR 61:110 - Existing large appliance surface coating operations; 401 KAR 59:201 - New large appliance coating operations; 401 KAR 61:125 - Existing can surface coating operations; 401 KAR 59:216 - New beverage can coating operations; 401 KAR 61:130 - Existing coil surface coating operations; 401 KAR 59:221 - New metal coil coating operations; 401 KAR 61:137 - Leaks from existing petroleum refinery equipment; 401 KAR 59:049 - New petroleum refinery equipment leaks; 401 KAR 61:155 - Existing pneumatic rubber tire manufacturing plants; 401 KAR 59:236 - New rubber tire manufacturing industry; 401 KAR 61:175 - Leaks from existing synthetic organic chemical and polymer manufacturing equipment; 401 KAR 59:305 - New synthetic organic chemical manufacturing industry equipment leaks.

This regulation incorporates an applicability compatible with the requirements of the Clean Air Act as amended November 15, 1990. The Clean Air Act amendments eliminate the distinction between urban and nonurban ozone nonattainment areas. Previously, for example, minor sources in Boone, Campbell, and Kenton Counties (an urban nonattainment area) were subject to this regulation while similar sources in Boyd County (a nonurban nonattainment area) were not. This regulation eliminates that distinction. Minor sources in Boyd County will now be subject to regulation. Further, the Clean Air Act amendments define 5 classifications of nonattainment. The redesignation of a county from attainment to any of the nonattainment classifications, except marginal nonattainment, would make additional entities subject to this regulation. Sources which become subject to this regulation because of the changes in applicability required by the Clean Air Act amendments shall achieve final compliance by May 31, 1995. A review of the division's records indicates that 1 entity currently operating will be affected. This entity is a petroleum refinery. The affected facilities are currently subject to 401 KAR 59:049 and now will also be subject to review under 401 KAR 61:137. The more stringent provision will apply. Any new sources locating in a nonattainment area (except marginal) and any new major sources commenced after the effective date of this regulation will be affected.

(a) Direct and indirect costs or savings to those affected: Since the affected source is currently under a leak detection program, it is anticipated that the impact of this regulation on first year and continuing costs will be minimal. Any new major source constructed after the effective date of this regulation will have to meet the same costs as required of controlled existing sources and the costs of complying with the NSPS based regulation.

1. First year: Please see direct and indirect costs or savings to those affected (a) above.

2. Continuing costs or savings: Please see direct and indirect costs or savings to those affected (a) above.

3. Additional factors increasing or decreasing costs (note any effects upon competition): Minor sources in nonattainment areas (except marginal nonattainment) are subject to this regulation, while minor sources in attainment areas are not.

(b) Reporting and paperwork requirements: Since the affected source is currently under a leak protection program, no substantial changes in reporting and paperwork requirements are anticipated. Any new major sources constructed after the effective date of this regulation will have to meet the reporting and paperwork requirements of the CTG based regulation and the NSPS based regulation.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division will review and process permits for any new sources. Costs will be recovered by a permit fee.

2. Continuing costs or savings: The division presently inspects all permitted sources of air pollutants and maintains plant and emissions data for emissions inventory purposes. Such activities are part of the division's normal day-to-day operations and are budgeted accordingly. Any newly affected source will be inspected and the cost will be absorbed as a part of the operating budget.

3. Additional factors increasing or decreasing costs: The requirement to review both the CTG based regulation and the NSPS based regulation will take more time than reviewing only one regulation.

(b) Reporting and paperwork requirements: The division will review and issue permits for newly affected sources and will issue reports of inspections and emissions data as in 1. and 2. above.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: Since this regulation is proposed to meet a requirement of the U.S. EPA, no alternatives were considered.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: For 9 industrial source categories, the federal government has issued requirements both for sources in nonattainment areas and for new sources. Under current federal policy, sources which are both new and located in a

nonattainment area must meet the more stringent of these requirements. Please see discussion under type and numbers of entities affected (1) above.

(a) Necessity of proposed regulation if in conflict: This regulation is being proposed to make Kentucky's SIP consistent with the U.S. EPA policy of requiring new sources in nonattainment areas (except marginal) to meet both the requirements for new sources and the requirements for nonattainment areas.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: If there is conflict between the requirements for new sources and the requirements for sources in nonattainment areas, the more stringent provision applies.

(6) Any additional information or comments: This regulation is being proposed in response to the federal requirement to eliminate deviations between Kentucky's SIP and U.S. EPA policy.

TIERING: Was tiering applied? Yes. This regulation does not apply to new minor sources in marginal nonattainment areas and attainment areas.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The U.S. EPA is requiring the elimination of deviations between Kentucky's SIP and federal policy. The applicability of this regulation has been made compatible with the Clean Air Act as amended November 15, 1990.

2. State compliance standards. This regulation does not change the standards, but changes the applicability of the standards. The state's standards are the same as the federal standards.

3. Minimum or uniform standards contained in the federal mandate. The standards are presented in the federal CTG documents for nonattainment areas and the federal NSPS for new sources. The standards are already part of Kentucky's SIP. What this regulation does is to implement the federal policy of applying both the CTG based standard and the NSPS based standard to new sources in nonattainment areas (except marginal nonattainment). Further the Clean Air Act as amended November 15, 1990, no longer distinguishes between urban and nonurban nonattainment areas. This regulation is consistent with that update.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes. New major sources in marginal nonattainment areas and attainment areas which construct after the effective date of this regulation will be subject to this regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Kentucky is required by the Clean Air Act to maintain the National Ambient Air Quality Standards in attainment areas. Part of the strategy chosen by Kentucky to accomplish that is the application of this regulation to new major sources in attainment areas.

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

401 KAR 61:001. Definitions and abbreviations of terms used in 401 KAR Chapter 61.

RELATES TO: KRS 224.20-100, 224.20-110, 224.20-120

STATUTORY AUTHORITY: KRS 224.10-100

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides for the defining of terms used in 401 KAR Chapter 61.

Section 1. General definitions. As used in the Division for Air Quality regulations of 401 KAR Chapter 61, unless the content clearly indicates otherwise in a specific regulation, the following words shall have the following meanings:

(1) "Affected facility" means an apparatus, building, operation, road, or other entity or series of entities which emits or may emit an air contaminant into the outdoor atmosphere.

(2) "Air contaminant" has the meaning given it in KRS 224.01-010.

(3) "Air pollutant" means an air contaminant.

(4) "Air pollution" has the meaning given it in KRS 224.01-010.

(5) "Air pollution control equipment" means a mechanism, device or contrivance used to control or prevent air pollution, which is not, aside from air pollution control laws and regulations, vital to production of the normal product of the source or to its normal operation.

(6) "Alteration" means:

(a) The installation or replacement of air pollution control equipment at a source;

(b) A physical change in or change in the method of operation of an affected facility which increases the potential to emit of a pollutant (to which a standard applies) emitted by the facility or which results in the emission of an air pollutant (to which a standard applies) not previously emitted.

(7) "Alternative method" means a method of sampling and analyzing for an air pollutant which is not a reference or equivalent method but which has been demonstrated to the cabinet's and the U.S. EPA's satisfaction to, in specific cases, produce results adequate for its determination of compliance.

(8) "Ambient air" means that portion of the atmosphere, external to buildings, to which the general public has access.

(9) "Ambient air quality standard" means a numerical expression of a specified concentration level for a particular air contaminant and the time averaging interval over which that concentration level is measured and is a goal to be achieved in a stated time through the application of appropriate preventive or control measures.

(10) "Cabinet" has the meaning given it in KRS 224.01-010.

(11) "Commence" means that an owner or operator has undertaken a continuous program of construction, modification, or reconstruction of an affected facility, or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction, modification, or reconstruction of an affected facility.

(12) "Compliance schedule" means a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with a limitation or standard.

(13) "Construction" means fabrication, erection, installation or modification of an air contaminant source.

(14) "Continuous monitoring system" means the total equipment, required under the applicable regulations used to sample, to condition (if applicable), to analyze and to provide a permanent record of emissions or process parameters.

(15) "Director" means Director of the Division for Air Quality of the Natural Resources and Environmental Protection Cabinet.

(16) "District" has the meaning given it in KRS 224.01-100.

(17) "Emission standard" means that numerical limit which fixes the amount of an air contaminant or air contaminants that may be vented into the atmosphere (open air) from an affected facility or from air pollution control equipment installed in an affected facility.

(18) "Equivalent method" means a method of sampling and analyzing for an air pollutant which has been demonstrated to the cabinet's and the U.S. EPA's satisfaction to have a consistent and quantitatively known relationship to the

reference method, under specified conditions.

(19) "Exempt solvent" means an organic compound listed in the definition of volatile organic compound as not participating in atmospheric photochemical reactions.

(20) "Existing source" means a source which is not a new source.

(21) "Extreme nonattainment county" or "extreme nonattainment area" means a county or portion of a county designated extreme nonattainment in 401 KAR 51:010.

(22) "Fixed capital cost" means the capital needed to provide all the depreciable components.

(23) "Fuel" means natural gas, petroleum, coal, wood, and any form of solid, liquid, or gaseous fuel derived from these materials for the purpose of creating useful heat.

(24) "Fugitive emissions" means the emissions of an air contaminant into the open air other than from a stack or air pollution control equipment exhaust.

(25) "Hydrocarbon" means an organic compound consisting predominantly of carbon and hydrogen.

(26) "Incineration" means the process of igniting and burning solid, semisolid, liquid, or gaseous combustible wastes.

(27) "Intermittent emissions" means emissions of particulate matter into the open air from a process which operates for less than any six (6) consecutive minutes.

(28) "Major source" means a source of which the potential emission rate is equal to or greater than 100 tons per year of any one (1) of the following pollutants: particulate matter, sulfur oxides, nitrogen oxides, volatile organic compounds or carbon monoxide.

(29) "Malfunction" means a failure of air pollution control equipment, or process equipment, or of a process to operate in a normal or usual manner.

(30) "Marginal nonattainment county" or "marginal nonattainment area" means a county or portion of a county designated marginal nonattainment in 401 KAR 51:010.

(31) "Moderate nonattainment county" or "moderate nonattainment area" means a county or portion of a county designated moderate nonattainment in 401 KAR 51:010.

(32) "Modification" means a physical change in, or change in the method of operation of an affected facility which increases the potential to emit of an air pollutant (to which a standard applies) emitted by the facility, or which results in the emission of an air pollutant (to which a standard applies) not previously emitted, except that:

(a) Routine maintenance, repair, and replacement of component parts shall not be considered physical changes;

(b) The following shall not be considered a change in the method of operation:

1. An increase in the production rate, if the increase does not exceed the operating design capacity of the affected facility, or the maximum operating capacity specified as a condition to a permit issued by the cabinet;

2. An increase in hours of operation;

3. Use of an alternative fuel or raw material if, prior to the date a standard becomes applicable to the facility, the affected facility is designed to accommodate the alternative use.

(33) "Monitoring device" means the total equipment, required in applicable regulations, used to measure and record (if applicable) process parameters.

(34) "New source" means a source, the construction, reconstruction, or modification of which commenced on or after the classification date as defined in the applicable regulation. A source, upon reconstruction, becomes a new source, irrespective of a change in emission rate.

(35) "Nitrogen oxides" means all oxides of nitrogen except nitrous oxide, as measured by test methods specified by the cabinet.

(36) "Opacity" means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.

(37) "Owner or operator" means a person who owns, leases, operates, controls, or supervises an affected facility or a source to which an affected facility is a part.

(38) "Particulate matter" means a material, except uncombined water, which exists in a finely divided form as a liquid or a solid as measured by the appropriate approved test method.

(39) "Particulate matter emissions" means, except as used in 40 CFR 60, all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by applicable reference methods, or an equivalent or alternative method specified in 40 CFR Chapter I, or by a test method specified in the approved state implementation plan.

(40) "Person" means an individual, public or private corporation, political subdivision, government agency, municipality, industry, copartnership, association, firm, trust, estate, or other entity.

(41) "PM_{10}" means particulate matter with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers as measured by a reference method based on Appendix J to 40 CFR 50, which has been incorporated by reference in 401 KAR 50:015, and designated in accordance with 40 CFR 53, or by an equivalent method designated in accordance with 40 CFR 53.

(42) "PM_{10} emissions" means finely divided solid or liquid material with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternative method, specified in 40 CFR Chapter I, or by a test method specified in the approved state implementation plan.

(43) "Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. A physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions shall not count in determining the potential to emit of a stationary source.

(44) "Reconstruction" means the replacement of components of an existing affected facility to the extent that the fixed capital cost of the new components exceeds fifty (50) percent of the fixed capital cost that would be required to construct a comparable entirely new affected facility, and it is technologically and economically feasible to meet the applicable new source standards. Individual sections of these regulations may include specific provisions which refine and delimit the concept of reconstruction set forth in this subsection. The cabinet's determination as to whether the proposed replacement constitutes reconstruction shall be based on:

(a) The fixed capital cost of the replacements in comparison to the fixed capital cost that would be required to construct a comparable entirely new facility;

(b) The estimated life of the affected facility after the replacements compared to the life of a comparable entirely new affected facility;

(c) The extent to which the components being replaced cause or contribute to the emissions from the affected facility; and

(d) Economic or technical limitations on compliance with applicable standards of performance which are inherent in the proposed replacements.

(45) "Reference method" means a method of sampling and analyzing for an air pollutant as prescribed by Appendices A through K to 40 CFR 50, Appendices A and B to 40 CFR 60, and Appendix B to 40 CFR 61. This term may be more narrowly defined within a specific regulation.

(46) "Run" means the net period of time during which an emission sample is collected. Unless otherwise specified, a run may be either intermittent or continuous within the limits of good engineering practice.

(47) "Secondary emissions" means emissions which occur

as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. Secondary emissions shall be specific, well defined, quantifiable, and shall impact the same general area as does the stationary source modification which causes the secondary emissions. Secondary emissions may include, but are not limited to emissions from an off-site support facility which would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include emissions which come directly from a mobile source, such as the emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

(48) "Serious nonattainment county" or "serious nonattainment area" means a county or portion of a county designated serious nonattainment in 401 KAR 51:010.

(49) "Severe nonattainment county" or "severe nonattainment area" means a county or portion of a county designated severe nonattainment in 401 KAR 51:010.

(50) "Shutdown" means the cessation of an operation.

(51) "Source" means one (1) or more affected facilities contained within a given contiguous property line. The property shall be considered contiguous if separated only by a public thoroughfare, stream, or other right of way.

(52) "Stack or chimney" means a flue, conduit, or duct arranged to conduct emissions to the atmosphere.

(53) "Standard" means an emission standard, a standard of performance, or an ambient air quality standard as promulgated under the regulations of the Division for Air Quality or the emission control requirements necessary to comply with 401 KAR Chapter 51, of the regulations of the Division for Air Quality.

(54) "Standard conditions:"

(a) For source measurements means twenty (20) degrees Celsius (sixty-eight (68) degrees Fahrenheit) and a pressure of 760 mm Hg (29.92 in. of Hg);

(b) For the purpose of air quality determinations means twenty-five (25) degrees Celsius and a reference pressure of 760 mm Hg.

(55) "Start-up" means the setting in operation of an affected facility.

(56) "State implementation plan" means the most recently prepared plan or revision required by Section 110 of the Clean Air Act which has been approved by the U.S. EPA.

(57) "Total suspended particulate" means particulate matter as measured by the method described in Appendix B of 40 CFR 50, which has been incorporated by reference in 401 KAR 50:015.

(58) "Uncombined water" means water which can be separated from a compound by ordinary physical means and which is not bound to a compound by internal molecular forces.

(59) "Urban county" means a county which is a part of an urbanized area with a population of greater than 200,000 based upon the 1980 census. If a portion of a county is a part of an urbanized area, then the entire county shall be classified as urban with respect to the regulations of the Division for Air Quality.

(60) "Urbanized area" means an area defined as such by the U.S. Department of Commerce, Bureau of Census.

(61) "Volatile organic compound" or "VOC" means an organic compound which participates in atmospheric photochemical reactions. This includes an organic compound other than the following compounds: methane; ethane; carbon monoxide; carbon dioxide; carbonic acid; metallic carbides; ammonium carbonates; methylene chloride; 1,1,1-trichloroethane (methyl chloroform) trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12) chlorodifluoromethane (CFC-22); trifluoromethane (FC-23); trichlorotrifluoroethane (CFC-113); dichlorotetrafluoroethane (CFC-114); chloropentafluoroethane (CFC-115); dichlorotrifluoroethane (HCFC-123); tetrafluoroethane (HFC-a); dichlorofluoroethane (HCFC-b); chlorodifluoroethane (HCFC-b); 2-chloro-1,1,1, 2-tetrafluoroethane (HCFC-124); pentafluoroethane (HFC-125); 1,1,2,2--tetrafluoroethane (HFC-134); 1,1,1-trifluoroethane (HFC-a); 1,1-difluoroethane (HFC-a); and perfluorocarbon compounds which fall into these classes:

(a) Cyclic, branched, or linear, completely fluorinated alkanes;

(b) Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;

(c) Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and

(d) Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine. These compounds have been determined to have negligible photochemical reactivity. For purposes of determining compliance with emission limits, VOCs shall be measured by test methods that have been approved by the cabinet. Approval by the cabinet shall not constitute or imply approval by the U.S. EPA. The cabinet will not approve a test method that has been disapproved for use by the U.S. EPA. If a method used also inadvertently measures compounds with negligible photochemical reactivity, an owner or operator may exclude these negligibly reactive compounds when determining compliance with an emissions standard.

Section 2. Abbreviations. The abbreviations used in the regulations of 401 KAR Chapter 59, shall have the following meanings:

AC - Association of Official Analytical Chemists
ANSI - American National Standards Institute
ASTM - American Society for Testing and Materials
BOD - Biochemical oxidant demand
BTU - British Thermal Unit
°C - Degree Celsius (centigrade)
Cal - calorie
cfm - cubic feet per minute
CFR - Code of Federal Regulations
CH_4 - methane
CO - Carbon monoxide
CO_2 - Carbon dioxide
COD - Chemical oxidant demand
dscf - dry cubic feet at standard conditions
dscm - dry cubic meter at standard conditions
°F - Degree Fahrenheit
ft - feet
g - gram
gal - gallon
gr - grain
hr - hour
HCl - Hydrochloric acid
Hg - mercury
HF - Hydrogen fluoride
H_2O - water
H_2S - Hydrogen sulfide
H_2SO_4 - Sulfuric acid
in - inch
J - joule
KAR - Kentucky Administrative Regulations
kg - kilogram
KRS - Kentucky Revised Statutes
l - liter
lb - pound
m - meter
m^3 - cubic meter
min - minute
mg - milligram
MJ - megajoules
MM - million
mm - millimeter
mo - month
Ng - nanograms
N_2 - Nitrogen
NO - Nitric oxide

NO_2 - Nitrogen dioxide
NO_x - Nitrogen oxides
oz - ounce
O_2 - oxygen
O_3 - ozone
ppb - parts per billion
ppm - parts per million
ppm (w/w) - parts per million (weight by weight)
mg - microgram
psia - pounds per square inch absolute
psig - pounds per square inch gage
S - at standard conditions
sec - second
SIP - State implementation plan
SO_2 - Sulfur dioxide
sq - square
TAPPI - Technical Association of the Pulp and Paper Industry
TSP - Total suspended particulates
TSS - Total suspended solids
U.S. EPA - United States Environmental Protection Agency
UTM - Universal Transverse Mercator
VOC - Volatile organic compound
yd - yard

PHILLIP J. SHEPHERD, Secretary
RONALD P. MILLS, Acting Commissioner
APPROVED BY AGENCY: January 7, 1992
FILED WITH LRC: January 15, 1992 at noon
PUBLIC HEARING: A public hearing to receive comments on this proposed amendment will be conducted on February 28, 1992, at 10 a.m. (ET) in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact in writing, at least five (5) days prior to the hearing: Kenneth M. Hines, Manager, Program Planning and Administration Branch, Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Hisham M. Saaid
(1) Type and number of entities affected: This proposed regulation defines the terms used in 401 KAR Chapter 61. The effects of the regulation will depend upon the use of terms within a specific regulation. This regulation imposes no separate requirements. Therefore, effects are described in the RIA for the affected regulations.
(a) Direct and indirect costs or savings to those affected: There will be no additional costs or savings due to these amendments.
1. First year: There are no direct or indirect costs or savings in the first year.
2. Continuing costs or savings: There are no continuing costs or savings.
3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors increasing or decreasing costs.
(b) Reporting and paperwork requirements: There are no reporting and paperwork requirements.
(2) Effects on the promulgating administrative body: There are none due to the amendments to this regulation. Any impact is due to the changes in the individual regulations.
(a) Direct and indirect costs or savings:
1. First year: There are no direct or indirect costs or savings in the first year.
2. Continuing costs or savings: There are no continuing costs or savings.
3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.
(b) Reporting and paperwork requirements: There are no reporting and paperwork requirements.
(3) Assessment of anticipated effect on state and local revenues: No effect is anticipated on state or local revenues.
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because these changes were required to eliminate deviations with U.S. EPA policy and to comply with the requirements of KRS Chapter 13A.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflict, overlapping, or duplication.
(a) Necessity of proposed regulation if in conflict: There is no conflict.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no conflict.
(6) Any additional information or comments: This regulation provides the definitions and abbreviations by which all terms in the regulations of 401 KAR Chapter 61 are to be understood. It provides the new definition of volatile organic compounds (VOCs) and adds 5 classifications of nonattainment of national ambient air quality standards. The definition for VOC is being amended because the U.S. EPA, in the Federal Register of March 18, 1991 (56 FR 11390), has determined that additional organic compounds have negligible photochemical reactivity. In addition, the 5 classifications of nonattainment are being added to comply with the federal Clean Air Act as amended in 1990. The VOC definition is part of the changes being made to correct deviations from current U.S. EPA policy in SIP for ozone. All sources in Kentucky which emit VOCs will now use these definitions unless other definitions are specifically included in the individual chapter definition regulations or in the applicable regulation. Any impact from these amendments will be due to changes in specific regulations which use these terms. In addition to the amendments which address VOC SIP deviations, changes have also been made to this regulation to begin to address the requirements of KRS Chapter 13A which prohibit regulatory agencies from adopting a general definition regulation to define all the terms used in its administrative regulations. In response to the KRS Chapter 13A requirements, the division will promulgate definition regulations for all the chapters of the division's regulations. The division is currently proposing definition regulations for 401 KAR Chapters 51, 59, 61, and 63. Until a definition regulation is promulgated for each of the remaining chapters, 401 KAR 50:010 will continue to apply overall.
TIERING: Was tiering applied? No. Tiering is not applicable in these amendments since this regulation provides only the definitions and abbreviations for terms which are used in the other regulations for the Division for Air Quality.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Federal Register, March 18, 1991 (56 FR 11390), and Clean Air Act as amended November 15, 1990.
2. State compliance standards. 401 KAR 50:010, Section 1(21), (30), (31), (48), (49), and (61).
3. Minimum or uniform standards contained in the federal mandate. The U.S. EPA has determined that additional organic compounds have negligible photochemical reactivity. The proposed regulation excludes these compounds from the definition of volatile organic compounds (VOCs). In addition, the Clean Air Act as amended November 15, 1990, requires that ambient air quality nonattainment areas be classified under one of five categories.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. The proposed regulation is being amended to eliminate deviations from U.S. EPA policy.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The

proposed amendment does not impose stricter standards, or additional or different responsibilities or requirements.

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

401 KAR 63:001. Definitions and abbreviations of terms used in 401 KAR Chapter 63.

RELATES TO: KRS 224.20-100, 224.20-110, 224.20-120
STATUTORY AUTHORITY: KRS 224.10-100
NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides for the definition of terms used in 401 KAR Chapter 63.

Section 1. General definitions. As used in the Division for Air Quality regulations of 401 KAR Chapter 63, unless the content clearly indicates otherwise in a specific regulation, the following words shall have the following meanings:

(1) "Affected facility" means an apparatus, building, operation, road, or other entity or series of entities which emits or may emit an air contaminant into the outdoor atmosphere.

(2) "Air contaminant" has the meaning given it in KRS 224.01-010.

(3) "Air pollutant" means an air contaminant.

(4) "Air pollution" has the meaning given it in KRS 224.01-010.

(5) "Air pollution control equipment" means a mechanism, device or contrivance used to control or prevent air pollution, which is not, aside from air pollution control laws and regulations, vital to production of the normal product of the source or to its normal operation.

(6) "Alteration" means:

(a) The installation or replacement of air pollution control equipment at a source;

(b) A physical change in or change in the method of operation of an affected facility which increases the potential to emit of a pollutant (to which a standard applies) emitted by the facility or which results in the emission of an air pollutant (to which a standard applies) not previously emitted.

(7) "Alternative method" means a method of sampling and analyzing for an air pollutant which is not a reference or equivalent method but which has been demonstrated to the cabinet's and the U.S. EPA's satisfaction to, in specific cases, produce results adequate for its determination of compliance.

(8) "Ambient air" means that portion of the atmosphere, external to buildings, to which the general public has access.

(9) "Ambient air quality standard" means a numerical expression of a specified concentration level for a particular air contaminant and the time averaging interval over which that concentration level is measured and is a goal to be achieved in a stated time through the application of appropriate preventive or control measures.

(10) "Cabinet" has the meaning given it in KRS 224.01-010.

(11) "Commence" means that an owner or operator has undertaken a continuous program of construction, modification, or reconstruction of an affected facility, or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction, modification, or reconstruction of an affected facility.

(12) "Compliance schedule" means a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with a limitation or standard.

(13) "Construction" means fabrication, erection, installation or modification of an air contaminant source.

(14) "Continuous monitoring system" means the total equipment, required under the applicable regulations used to sample, to condition (if applicable), to analyze and to provide a permanent record of emissions or process parameters.

(15) "Director" means Director of the Division for Air Quality of the Natural Resources and Environmental Protection Cabinet.

(16) "District" has the meaning given it in KRS 224.01-010.

(17) "Emission standard" means that numerical limit which fixes the amount of an air contaminant or air contaminants that may be vented into the atmosphere (open air) from an affected facility or from air pollution control equipment installed in an affected facility.

(18) "Equivalent method" means a method of sampling and analyzing for an air pollutant which has been demonstrated to the cabinet's and the U.S. EPA's satisfaction to have a consistent and quantitatively known relationship to the reference method, under specified conditions.

(19) "Exempt solvent" means an organic compound listed in the definition of volatile organic compound as not participating in atmospheric photochemical reactions.

(20) "Existing source" means a source which is not a new source.

(21) "Extreme nonattainment county" or "extreme nonattainment area" means a county or portion of a county designated extreme nonattainment in 401 KAR 51:010.

(22) "Fixed capital cost" means the capital needed to provide all the depreciable components.

(23) "Fuel" means natural gas, petroleum, coal, wood, and any form of solid, liquid, or gaseous fuel derived from these materials for the purpose of creating useful heat.

(24) "Fugitive emissions" means the emissions of an air contaminant into the open air other than from a stack or air pollution control equipment exhaust.

(25) "Hydrocarbon" means an organic compound consisting predominantly of carbon and hydrogen.

(26) "Incineration" means the process of igniting and burning solid, semisolid, liquid, or gaseous combustible wastes.

(27) "Intermittent emissions" means emissions of particulate matter into the open air from a process which operates for less than any six (6) consecutive minutes.

(28) "Major source" means a source of which the potential emission rate is equal to or greater than 100 tons per year of any one (1) of the following pollutants: particulate matter, sulfur oxides, nitrogen oxides, volatile organic compounds or carbon monoxide.

(29) "Malfunction" means a failure of air pollution control equipment, or process equipment, or of a process to operate in a normal or usual manner.

(30) "Marginal nonattainment county" or "marginal nonattainment area" means a county or portion of a county designated marginal nonattainment in 401 KAR 51:010.

(31) "Moderate nonattainment county" or "moderate nonattainment area" means a county or portion of a county designated moderate nonattainment in 401 KAR 51:010.

(32) "Modification" means a physical change in, or change in the method of operation of an affected facility which increases the potential to emit of an air pollutant (to which a standard applies) emitted by the facility, or which results in the emission of an air pollutant (to which a standard applies) not previously emitted, except that:

(a) Routine maintenance, repair, and replacement of component parts shall not be considered physical changes;

(b) The following shall not be considered a change in the method of operation:

1. An increase in the production rate, if the increase does not exceed the operating design capacity of the affected facility, or the maximum operating capacity specified as a condition to a permit issued by the cabinet;

2. An increase in hours of operation;

3. Use of an alternative fuel or raw material if, prior to the

date a standard becomes applicable to the facility, the affected facility is designed to accommodate the alternative use.

(33) "Monitoring device" means the total equipment, required in applicable regulations, used to measure and record (if applicable) process parameters.

(34) "New source" means a source, the construction, reconstruction, or modification of which commenced on or after the classification date as defined in the applicable regulation. A source, upon reconstruction, becomes a new source, irrespective of a change in emission rate.

(35) "Nitrogen oxides" means all oxides of nitrogen except nitrous oxide, as measured by test methods specified by the cabinet.

(36) "Opacity" means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.

(37) "Owner or operator" means a person who owns, leases, operates, controls, or supervises an affected facility or a source to which an affected facility is a part.

(38) "Particulate matter" means a material, except uncombined water, which exists in a finely divided form as a liquid or a solid as measured by the appropriate approved test method.

(39) "Particulate matter emissions" means, except as used in 40 CFR 60, all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by applicable reference methods, or an equivalent or alternative method specified in 40 CFR Chapter I, or by a test method specified in the approved state implementation plan.

(40) "Person" means an individual; public or private corporation, political subdivision, government agency, municipality, industry, co-partnership, association, firm, trust, estate, or other entity.

(41) "PM_{10}" means particulate matter with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers as measured by a reference method based on Appendix J to 40 CFR 50, which has been incorporated by reference in 401 KAR 50:015, and designated in accordance with 40 CFR 53, or by an equivalent method designated in accordance with 40 CFR 53.

(42) "PM_{10} emissions" means finely divided solid or liquid material with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternative method, specified in 40 CFR Chapter I, or by a test method specified in the approved state implementation plan.

(43) "Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. A physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions shall not count in determining the potential to emit of a stationary source.

(44) "Reconstruction" means the replacement of components of an existing affected facility to the extent that the fixed capital cost of the new components exceeds fifty (50) percent of the fixed capital cost that would be required to construct a comparable entirely new affected facility, and it is technologically and economically feasible to meet the applicable new source standards. Individual sections of these regulations may include specific provisions which refine and delimit the concept of reconstruction set forth in this subsection. The cabinet's determination as to whether the proposed replacement constitutes reconstruction shall be based on:

(a) The fixed capital cost of the replacements in comparison to the fixed capital cost that would be required to construct a comparable entirely new facility;

(b) The estimated life of the affected facility after the replacements compared to the life of a comparable entirely new affected facility;

(c) The extent to which the components being replaced cause or contribute to the emissions from the affected facility; and

(d) Economic or technical limitations on compliance with applicable standards of performance which are inherent in the proposed replacements.

(45) "Reference method" means a method of sampling and analyzing for an air pollutant as prescribed by Appendices A through K to 40 CFR 50, Appendices A and B to 40 CFR 60, and Appendix B to 40 CFR 61. This term may be more narrowly defined within a specific regulation.

(46) "Run" means the net period of time during which an emission sample is collected. Unless otherwise specified, a run may be either intermittent or continuous within the limits of good engineering practice.

(47) "Secondary emissions" means emissions which occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. Secondary emissions shall be specific, well defined, quantifiable, and shall impact the same general area as does the stationary source modification which causes the secondary emissions. Secondary emissions may include, but are not limited to emissions from an off-site support facility which would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include emissions which come directly from a mobile source, such as the emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

(48) "Serious nonattainment county" or "serious nonattainment area" means a county or portion of a county designated serious nonattainment in 401 KAR 51:010.

(49) "Severe nonattainment county" or "severe nonattainment area" means a county or portion of a county designated severe nonattainment in 401 KAR 51:010.

(50) "Shutdown" means the cessation of an operation.

(51) "Source" means one (1) or more affected facilities contained within a given contiguous property line. The property shall be considered contiguous if separated only by a public thoroughfare, stream, or other right of way.

(52) "Stack or chimney" means a flue, conduit, or duct arranged to conduct emissions to the atmosphere.

(53) "Standard" means an emission standard, a standard of performance, or an ambient air quality standard as promulgated under the regulations of the Division for Air Quality or the emission control requirements necessary to comply with 401 KAR Chapter 51, of the regulations of the Division for Air Quality.

(54) "Standard conditions:"

(a) For source measurements means twenty (20) degrees Celsius (sixty-eight (68) degrees Fahrenheit) and a pressure of 760 mm Hg (29.92 in. of Hg);

(b) For the purpose of air quality determinations means twenty-five (25) degrees Celsius and a reference pressure of 760 mm Hg.

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(56) "State implementation plan" means the most recently prepared plan or revision required by Section 110 of the Clean Air Act which has been approved by the U.S. EPA.

(57) "Total suspended particulate" means particulate matter as measured by the method described in Appendix B of 40 CFR 50, which has been incorporated by reference in 401 KAR 50:015.

(58) "Uncombined water" means water which can be separated from a compound by ordinary physical means and which is not bound to a compound by internal molecular forces.

(59) "Urban county" means a county which is a part of an urbanized area with a population of greater than 200,000

based upon the 1980 census. If a portion of a county is a part of an urbanized area, then the entire county shall be classified as urban with respect to the regulations of the Division for Air Quality.

(60) "Urbanized area" means an area defined as such by the U.S. Department of Commerce, Bureau of Census.

(61) "Volatile organic compound" or "VOC" means an organic compound which participates in atmospheric photochemical reactions. This includes an organic compound other than the following compounds: methane; ethane; carbon monoxide; carbon dioxide; carbonic acid; metallic carbides; ammonium carbonates; methylene chloride; 1,1,1-trichloroethane (methyl chloroform) trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12) chlorodifluoromethane (CFC-22); trifluoromethane (FC-23); trichlorotrifluoroethane (CFC-113); dichlorotetrafluoroethane (CFC-114); chloropentafluoroethane (CFC-115); dichlorotrifluoroethane (HCFC-123); tetrafluoroethane (HFC-134a); dichlorofluoroethane (HCFC-b); chlorodifluoroethane (HCFC-142b); 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124); pentafluoroethane (HFC-125); 1,1,2,2--tetrafluoroethane (HFC-134); 1,1,1-trifluoroethane (HFC-143a); 1,1-difluoroethane (HFC-152a); and perfluorocarbon compounds which fall into these classes:

(a) Cyclic, branched, or linear, completely fluorinated alkanes;

(b) Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;

(c) Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and

(d) Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine. These compounds have been determined to have negligible photochemical reactivity. For purposes of determining compliance with emission limits, VOCs shall be measured by test methods that have been approved by the cabinet. Approval by the cabinet shall not constitute or imply approval by the U.S. EPA. The cabinet will not approve a test method that has been disapproved for use by the U.S. EPA. If a method used also inadvertently measures compounds with negligible photochemical reactivity, an owner or operator may exclude these negligibly reactive compounds when determining compliance with an emissions standard.

Section 2. Abbreviations. The abbreviations used in the regulations of 401 KAR Chapter 63, shall have the following meanings:

AOAC - Association of Official Analytical Chemists
ANSI - American National Standards Institute
ASTM - American Society for Testing and Materials
BOD - Biochemical oxidant demand
BTU - British Thermal Unit
°C - Degree Celsius (centigrade)
Cal - calorie
cfm - cubic feet per minute
CFR - Code of Federal Regulations
CH_4 - methane
CO - Carbon monoxide
CO_2 - Carbon dioxide
COD - Chemical oxidant demand
dscf - dry cubic feet at standard conditions
dscm - dry cubic meter at standard conditions
°F - Degree Fahrenheit
ft - feet
g - gram
gal - gallon
gr - grain
hr - hour
HCl - Hydrochloric acid
Hg - mercury
HF - Hydrogen fluoride
H_2O - water
H_2S - Hydrogen sulfide
H_2SO_4 - Sulfuric acid
in - inch
J - joule
KAR - Kentucky Administrative Regulations
kg - kilogram
KRS - Kentucky Revised Statutes
l - liter
lb - pound
m - meter
m^3 - cubic meter
min - minute
mg - milligram
MJ - megajoules
MM - million
mm - millimeter
mo - month
Ng - nanograms
N_2 - Nitrogen
NO - Nitric oxide
NO_2 - Nitrogen dioxide
NO_x - Nitrogen oxides
oz - ounce
O_2 - oxygen
O_3 - ozone
ppb - parts per billion
ppm - parts per million
ppm (w/w) - parts per million (weight by weight)
mg - microgram
psia - pounds per square inch absolute
psig - pounds per square inch gauge
S - at standard conditions
sec - second
SIP - State implementation plan
SO_2 - Sulfur dioxide
sq - square
TAPPI - Technical Association of the Pulp and Paper Industry
TSP - Total suspended particulates
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U.S. EPA - United States Environmental Protection Agency
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APPROVED BY AGENCY: January 7, 1992
FILED WITH LRC: January 15, 1992 at noon

PUBLIC HEARING: A public hearing to receive comments on this proposed amendment will be conducted on February 28, 1992, at 10 a.m. (ET) in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact in writing, at least five (5) days prior to the hearing: Kenneth M. Hines, Manager, Program Planning and Administration Branch, Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Hisham M. Saaid

(1) Type and number of entities affected: This proposed regulation defines the terms used in 401 KAR Chapter 63. The effects of the regulation will depend upon the use of terms within a specific regulation. This regulation imposes no separate requirements. Therefore, effects are described in the RIA for the affected regulations.

(a) Direct and indirect costs or savings to those affected: There will be no additional costs or savings due to these amendments.

1. First year: There are no direct or indirect costs or savings in the first year.

2. Continuing costs or savings: There are no continuing costs or savings.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There are no reporting and paperwork requirements.

(2) Effects on the promulgating administrative body: There are none due to the amendments to this regulation. Any impact is due to the changes in the individual regulations.

(a) Direct and indirect costs or savings:

1. First year: There are no direct or indirect costs or savings in the first year.

2. Continuing costs or savings: There are no continuing costs or savings.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There are no reporting and paperwork requirements.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because these changes were required to eliminate deviations with U.S. EPA policy and to comply with the requirements of KRS Chapter 13A.

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

(a) Necessity of proposed regulation if in conflict: There is no conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no conflict.

(6) Any additional information or comments: This regulation provides the definitions and abbreviations by which all terms in the regulations of 401 KAR Chapter 63 are to be understood. It provides the new definition of volatile organic compounds (VOCs) and adds 5 classifications of nonattainment of national ambient air quality standards. The definition for VOC is being amended because the U.S. EPA, in the Federal Register of March 18, 1991 (56 FR 11390), has determined that additional organic compounds have negligible photochemical reactivity. In addition, the 5 classifications of nonattainment are being added to comply with the federal Clean Air Act as amended in 1990. The VOC definition is part of the changes being made to correct deviations from current U.S. EPA policy in SIP for ozone. All sources in Kentucky which emit VOCs will now use these definitions unless other definitions are specifically included in the individual chapter definition regulations or in the applicable regulation. Any impact from these amendments will be due to changes in specific regulations which use these terms. In addition to the amendments which address VOC SIP deviations, changes have also been made to this regulation to begin to address the requirements of KRS Chapter 13A which prohibit regulatory agencies from adopting a general definition regulation to define all the terms used in its administrative regulations. In response to the KRS Chapter 13A requirements, the division will promulgate definition regulations for all the chapters of the division's regulations. The division is currently proposing definition regulations for 401 KAR Chapters 51, 59, 61, and 63. Until a definition regulation is promulgated for each of the remaining chapters, 401 KAR 50:010 will continue to apply overall.

TIERING: Was tiering applied? No. Tiering is not applicable in these amendments since this regulation provides only the definitions and abbreviations for terms which are used in the other regulations for the Division for Air Quality.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Federal Register, March 18, 1991 (56 FR 11390), and Clean Air Act as amended November 15, 1990.

2. State compliance standards. 401 KAR 50:010, Section 1(21), (30), (31), (48), (49), and (61).

3. Minimum or uniform standards contained in the federal mandate. The U.S. EPA has determined that additional organic compounds have negligible photochemical reactivity. The proposed regulation excludes these compounds from the definition of volatile organic compounds (VOCs). In addition, the Clean Air Act as amended November 15, 1990, requires that ambient air quality nonattainment areas be classified under one of five categories.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. The proposed regulation is being amended to eliminate deviations from U.S. EPA policy.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The proposed amendment does not impose stricter standards, or additional or different responsibilities or requirements.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Office of General Counsel

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.

JERRY D. ANGLIN, Acting Commissioner
DON C. KELLY, P.E., Secretary

APPROVED BY AGENCY: December 23, 1991

FILED WITH LRC: December 23, 1991 at 1 p.m.

PUBLIC HEARING: A public comment hearing will be held on this administrative regulation on February 21, 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 Holmes Streets, Frankfort, Kentucky 40622. Any person who intends to attend this hearing must in writing by February 16, 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 February 16, 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.

EDUCATION AND HUMANITIES CABINET
Department of Education
State Board for Elementary and Secondary Education

701 KAR 1:001. Repeal of 702 KAR 1:060; 704 KAR 4:015; 705 KAR 3:020; 705 KAR 3:060; 705 KAR 4:205; 705 KAR 5:010.

RELATES TO: KRS 156.070

STATUTORY AUTHORITY: KRS 156.070

NECESSITY AND FUNCTION: Pursuant to KRS 13A.346 and 13A.347, the Interim Joint Committee on Education of the Legislative Research Commission has reviewed numerous education- related administrative regulations to identify any deficiencies listed in KRS 13A.030(2)(a). Some of the older administrative regulations of the State Board for Elementary and Secondary Education were found deficient, given the mandates of House Bill 940 of the 1990 Kentucky General Assembly. This regulation is needed to repeal certain regulations found deficient as a result of the quadrennial review that are no longer necessary.

Section 1. 702 KAR 1:060, Waiver and suspension of regulations, is hereby repealed.

Section 2. 704 KAR 4:015, Management of interscholastic athletics, is hereby repealed.

Section 3. 705 KAR 3:020, Special public high school; standards, is hereby repealed.

Section 4. 705 KAR 3:060, Remote high school, department of; standards, is hereby repealed.

Section 5. 705 KAR 4:205, Vocational certificate of completion, is hereby repealed.

Section 6. 705 KAR 5:010, Student enrollment quotas, local school districts, is hereby repealed.

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: January 10, 1992

FILED WITH LRC: January 10, 1992 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 24, 1992, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by February 19, 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 administra-

tive 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: Kevin M. Noland, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Kevin Noland

(1) Type and number of entities affected: 176 school districts.

(a) Direct and indirect costs or savings to those affected: No costs or savings identified.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body: 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: This repealer regulation repeals several administrative regulations which were found by LRC's Interim Joint Committee on Education to be deficient in its quadrennial review pursuant to KRS 13A.346 and 13A.347. The regulations proposed to be repealed are no longer necessary, and therefore repealing is preferred over amendment.

(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. This repealer regulation provides relief from administrative regulation restrictions for all school districts equally, and since imposing new duties or obligations on the affected entities is not involved with this repeal, tiering is not necessary.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Assistance and Intervention Services

702 KAR 3:201. Management Assistance Program procedures.

RELATES TO: KRS 158.780, 158.785

STATUTORY AUTHORITY: KRS 156.070, 158.780

NECESSITY AND FUNCTION: KRS 158.780 and 158.785 require the Commissioner of Education to identify to the State Board for Elementary and Secondary Education each year school districts in need of the resources of the Management Assistance Program. This regulation prescribes the operational procedures for such a program.

Section 1. The following criteria establish guidelines for the commissioner's recommendations to the state board concerning participation in the Management Assistance Program.

(1) The planning, maintenance and operation of the physical plants.

(a) Maintenance program. The district per pupil expenditure reported in the annual financial report under the 700 accounts shall be evaluated in comparison to statewide averages. Those districts with excessively high salary and contracted services costs or unusually low expenditures for maintenance (exclusive of salary and contracted service costs) shall be considered for assistance. These financial data, along with an examination of the condition of the physical plants and the current maintenance practices, shall be used to determine the need for management assistance services.

(b) Operation costs. The district per pupil and cost per square foot expenditure reported in the annual financial reports under the 600 accounts shall be examined in comparison to statewide averages. When total operating costs are excessively high or low, the commissioner shall consider any extenuating circumstances and determine the need for management assistance services.

(2) The maintenance and operation of the student transportation system.

(a) The total expenditure for transportation on a per pupil transported cost basis shall be calculated from reports filed with the department. Where these are excessively high, compared with similar types and sizes of school districts, the need for management assistance services shall be considered.

(b) The expenditures for fuel, tires and repairs, shall be compared to statewide averages. Where these are excessively low or high and a review of vehicle maintenance indicates a need for management assistance services, the need shall be considered by the commissioner.

(3) Personnel administration.

(a) The expenditures in each school district's annual financial report for administrative services (100 accounts) and instruction (200 accounts) shall be compared with expenditures in the same categories for similar type and size districts. Where administrative expenditures are excessively high or low compared with state averages, the commissioner shall consider recommending management assistance services.

(b) The expenditures for classroom instructional services (214, 215, and 216 accounts), as a percent of total expenditure per pupil for all budgeted expenses in the total above-the-line expenditures of the annual financial report, shall be compared to statewide averages. Where these are excessively low, the need for management assistance services shall be considered.

(4) Governance and executive leadership.

(a) If the Department of Education staff become aware of management practices of a local district which appear to be contrary to commonly accepted management practice, the Department of Education staff shall examine the local practices and discuss them with the local district staff. If the practices are deemed to be dysfunctional or detrimental to the efficient operation of the school district, a need for management services shall be reported by the Department of Education staff to the commissioner for consideration.

(b) When information raising concerns regarding governance or executive leadership comes to the attention of the commissioner and a determination is made by the management assistance staff that a need for assistance exists, a recommendation for assistance shall be made to the commissioner.

(5) Fiscal management.

(a) Any district having a reported financial deficit shall be included in the Management Assistance Program. In addition to recommending management assistance services, the commissioner may assume control of the school district's finances after the State Board for Elementary and Secondary Education has certified the violation as provided in KRS 160.550.

(b) Any district with an ending balance at the conclusion of a school year of less than three (3) percent of its total above-the-line expenditures (less accounts payable and

accounts receivable) shall be considered for management assistance services.

(c) Expenditures in the annual financial reports for instructional supply accounts (251, 252, 253, 255, 256, 257, 258, 263, 264, 265, 266, and 268 accounts) shall be compared with the total above-the-line budget expenditures. Where this comparison indicates expenditure for instructional supplies is low compared with statewide averages, the commissioner shall consider recommending management assistance services.

(6) Professional performance, staff development and evaluation.

(a) If a school district is declared to be educationally deficient, under the provisions of KRS 158.685, the commissioner may include the school district in his recommendation to the state board as eligible for the Management Assistance Program services.

(b) If the assessment program results determined under KRS 158.685 indicate that a district is failing to achieve established performance thresholds, the need for management assistance services may be considered.

(7) School/community relations.

(a) If a school district's percentage of attendance for the three (3) most recent years is significantly below state averages, the district shall be considered for management assistance services.

(b) If a school district's dropout rate for the most recent three (3) years is significantly above state averages, the district shall be considered for management assistance services.

Section 2. Prior to November 15th of each school year, the commissioner shall recommend to the state board a minimum of five (5) local school districts to be provided the services of the management assistance team. Prior to recommending a district for management assistance, specific areas of assistance shall be defined so that when the state board receives a recommendation to provide services to a district, it receives a summary of the assistance that will be provided. The Department of Education staff shall review the criteria listed in Section 1 of this regulation as they pertain to all school districts and recommend to the commissioner those most in need of the services of the Management Assistance Program. Each district offered participation by the commissioner shall file with the commissioner a letter indicating interest in signing a contract for services and developing a plan of improvement. A district determined by the commissioner as having a significant need for management assistance services but refusing the services may be reported to the state board as a district that refused the services.

Section 3. The Department of Education staff shall present those districts most in need of assistance and supporting information to the Educational Improvement Advisory Committee for its review and comments prior to recommendations being made to the commissioner.

Section 4. The state board shall enter into a contract with those districts that the state board has approved for management assistance services. Funds may be expended to assist with the plan development as soon as the local board has signed a contract for services with the state board. After a plan of action has been developed and approved by the local board, it shall be conveyed to the state board for its approval at the state board's next regularly scheduled meeting.

Section 5. The commissioner shall submit progress reports regarding each plan approved by the state board until the plan has been completed. If a school district board fails to make timely progress towards the adoption or implementation of a satisfactory plan, the Commissioner may recommend to the state board the termination of the Management Assistance Program services to the school district.

Section 6. When the plan of improvement has been completed, the Commissioner shall conduct an appropriate evaluation of the services of the Management Assistance Program and the improvements that have occurred as a result of the plan and its implementation. The evaluation shall be completed and submitted to the State Board within 120 days of the completion of the district improvement plan.

Section 7. 702 KAR 3:200, Management Assistance Program, is hereby repealed.

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: January 10, 1992

FILED WITH LRC: January 10, 1992 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 24, 1992, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by February 19, 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: Kevin M. Noland, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dr. H. M. Snodgrass

(1) Type and number of entities affected: 176 local school districts.

(a) Direct and indirect costs or savings to those affected: None

1. First year:

2. Continuing costs or savings:

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

(b) Reporting and paperwork requirements: No change from old regulation.

(2) Effects on the promulgating administrative body: No change.

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

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: No change.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. Selection criteria applied equally to all districts.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Assistance and Intervention Services

704 KAR 3:007. Kentucky Distinguished Educator Program criteria.

RELATES TO: KRS 158.782, 158.6455
STATUTORY AUTHORITY: KRS 156.070, 158.782
NECESSITY AND FUNCTION: KRS 158.782 requires the State Board for Elementary and Secondary Education to promulgate administrative regulations to set forth the criteria for the Kentucky Distinguished Educators Program. This regulation establishes the criteria for the program.

Section 1. The Commissioner of Education shall establish a process for the application, review and selection of the state's most outstanding and highly skilled certified educators to be designated as Kentucky distinguished educators and fulfill the purposes and requirements of the program in accordance with KRS 158.782(1), (2).

Section 2. The Commissioner of Education shall appoint an advisory committee or committees to assist the Department of Education in the review of candidates and selection of the state's most outstanding highly skilled certified educators to be designated as Kentucky distinguished educators. The advisory committee shall also assist the Department of Education in the selection of five (5) of the distinguished educators who shall receive special recognition in accordance with KRS 158.782(2)(b). The advisory committee or committees shall include but not be limited to representation from teachers, school administrators, business, parents, community, higher education, professional education associations, school boards, and the Department of Education.

Section 3. The application and selection process shall include the following:
(1) The application process shall be open to certified educators who meet the program criteria and are willing to fulfill the purposes and requirements of the program.
(2) The application and selection process shall allow for self-nomination and provide for a broad spectrum of instructional positions which include statewide representation.
(3) The Department of Education shall publicize the program criteria and procedures and make educators aware of the opportunity to apply to the Kentucky Distinguished Educators Program.
(4) Applications for participation in the Kentucky Distinguished Educators Program shall be submitted to the Commissioner of Education.
(5) The Commissioner of Education shall complete the identification and designation of Kentucky distinguished educators by May of each year.

Section 4. (1) Candidates for the Kentucky Distinguished Educators Program shall have the following experience and certification:
(a) A minimum of five (5) years of successful experience as a teacher or as an educational administrator.
(b) A Kentucky certification as an educator.
(c) Involvement in teaching or administration within the last three (3) years.
(2) Certified practicing and nonpracticing educators shall be eligible to participate in the Kentucky Distinguished Educators Program.
(3) Educators designated as Kentucky distinguished educators shall have demonstrated leadership and management knowledge and skills or demonstrated the capacity to acquire knowledge and skills in the following areas:
(a) Personnel practices, policies, statutes, regulations, and due process;
(b) Written and oral communications;
(c) Budget management and planning;
(d) Organization and planning;
(e) Data analysis and problem solving;
(f) Collaboration and team building;
(g) Working productively with colleagues and culturally diverse populations; and
(h) Initiating, supporting, and sustaining innovations.
(4) Educators designated as Kentucky distinguished educators shall have demonstrated curriculum and instructional knowledge and skills or demonstrated the capacity to acquire knowledge and skills in the following areas:
(a) Current educational practices;
(b) Curriculum development and alignment focused on the Kentucky curriculum;
(c) Multiple instructional methodologies; and
(d) Instructional technology.
(5) Candidates must be recognized as having the following personal characteristics:
(a) Integrity;
(b) Personally committed to the welfare of all children;
(c) Flexibility;
(d) Strong sense of purpose and goal orientation;
(e) Sense of humor; and
(f) Sound judgment.

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: January 10, 1992
FILED WITH LRC: January 10, 1992 at 4 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 24, 1992, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by February 19, 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: Kevin M. Noland, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dr. H. M. Snodgrass
(1) Type and number of entities affected: 176 school districts.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: Program application process.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: Approximately $300,000 for training and support of 100 Kentucky distinguished educators.
1. First year:
2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None
TIERING: Was tiering applied? No. Program criteria was applied equally to all candidates.

WORKERS' COMPENSATION BOARD
Department of Workers' Claims

803 KAR 25:061. Repeal of 803 KAR 25:060.

RELATES TO: KRS Chapter 342
STATUTORY AUTHORITY: KRS 13A.260(1)
NECESSITY AND FUNCTION: 803 KAR 25:060 has been nullified by an amendment to KRS 342.230 which eliminates the use of hearing officers and authorizes the Workers' Compensation Board to employ not more than fifteen (15) administrative law judges.

Section 1. 803 KAR 25:060, Hearing officers, is hereby repealed.

JUDGE ARMAND ANGELUCCI, Chairman
APPROVED BY AGENCY: January 8, 1992
FILED WITH LRC: January 10, 1992 at 11 a.m.
PUBLIC HEARING: A public hearing will be held at the Farnham Dudgeon Civic Center, Capital Plaza Complex, Conference Rooms ABC, 405 Mero Street, Frankfort, Kentucky 40601, 10 a.m. on February 24, 1992. Individuals interested in attending this hearing shall notify this agency in writing by February 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. 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: Valerie L. Salven, General Counsel, Department of Workers' Claims, Perimeter Park West - Building C, 1270 Louisville Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Valerie L. Salven
(1) Type and number of entities affected: None, since purpose is repeal of an obsolete regulation.
(a) Direct and indirect costs or savings to those affected:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements:
(2) Effects on the promulgating administrative body: 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: None; purpose is to repeal obsolete regulation.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: This regulation repeals 803 KAR 25:060, which has been nullified by an amendment to KRS 342.230.
TIERING: Was tiering applied? No. The purpose of this regulation is to repeal another regulation that is obsolete.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction
Office of State Fire Marshal

815 KAR 10:045. Public service station aboveground motor fuel tanks.

RELATES TO: KRS Chapter 227, 815 KAR 10:040
STATUTORY AUTHORITY: KRS 227.300
NECESSITY AND FUNCTION: The Commissioner of the Department of Housing, Buildings and Construction is authorized to establish minimum regulations relating to fire safety standards based on good engineering practices and principles as embodied in recognized standards of fire prevention and protection and to supplement the Kentucky Building Code with fire safety regulations designed to operate in conjunction with the code. This regulation is needed to upgrade the standards relating to the installation of aboveground motor fuel tanks at public service stations to the newest National Fire Protection Association (NFiPA) pamphlet on the subject. This regulation shall be part of the Kentucky Fire Prevention Code/Standards of Safety.

Section 1. Fire Safety Standards. Tentative Interim Amendment Log No. 312R to national Fire Protection Association Pamphlet 30A, 1990 edition is hereby incorporated by reference except that the Tentative Interim Amendment shall not apply to aboveground storage tanks at public service stations which contain kerosene for use as home heating oil. Copies of this publication and all National Fire Protection Association Pamphlets are available from the National Fire Protection Association, 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269-9101. This amendment is available for public inspection and copying, subject to copyright law, 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.

CHARLES A. COTTON, Commissioner
EDWARD J. HOLMES, Secretary
APPROVED BY AGENCY: January 13, 1992
FILED WITH LRC: January 15, 1992 at 10 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 25, 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 February 20, 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: All public service stations who choose to install aboveground petroleum storage tanks will be affected.

(a) Direct and indirect costs or savings to those affected: Only indirect savings to those affected in the event the location will accept aboveground tanks because underground tanks are very expensive.

1. First year: Savings would be two-fold; less land would be required to install tanks and less piping would be used for the dispensers.

2. Continuing costs or savings: There would be less property tax if less land is required to install tanks.

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

(b) Reporting and paperwork requirements: Reporting and paperwork requirements would not be affected.

(2) Effects on the promulgating administrative body: There will be no effects on the promulgating agency.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: There are no anticipated effects on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The alternative would be to use existing codes which are insufficient to protect against spills, etc. from aboveground storage tanks at service stations.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: Proposed NFiPA Pamphlet 30A is overlapping, however, the code is directed towards motor fuels, rather than tanks themselves. Kerosene is also regulated in that code.

(a) Necessity of proposed regulation if in conflict: Historically, home heating fuel tanks have not constituted a large fire hazard.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: We believe the adoption of the TIA does harmonize all problems.

(6) Any additional information or comments:

TIERING: Was tiering applied? Yes. Petroleum storage tanks have more stringent standards than home heating fuel such as kerosene sold at many small convenience stores which are also service stations.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of the January 3 and 6, 1992 Meeting

The January meeting of the Administrative Regulation Review Subcommittee was held on Friday, January 3, 1992 at 2 p.m. in Room 327 of the Capitol and on Monday, January 6, 1992 at 2 p.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 December 6 and 9, 1991 meeting were approved.

Present were:

Members: Representative Tom Kerr, Chairman; Senators Gene Huff, Pat McCuiston, and Bill Quinlan; Representatives Woody Allen, Jim Bruce and James Yates.

Guests: Richard Casey, Teresa Rutledge, KHEAA; Lucille Orlando, Robert L. Delarn, Larry C. Barker, Michael J. Van Leuven, Julius L. Berthold, Dan Hayden, Robert H. Buntin, Ronn Padgett, Harold Loy, Department for Military Affairs; George Schauberger, Greg T. Lemons, David C. Short, William C. Berger II, Gautam Trivedi, Emergency Response Commission; Rodney Raby, State Fire Marshal's Office; Richard L. Ross, Board of Pharmacy; Mark Eric Horman, Board of Registration for Landscape Architects; Jack Wilson, Bob Ware, Connie Ashcraft, Tom VanArsdal, Terry P. Anderson, Division of Water; Jack Damron, Lori Poole, Corrections Cabinet; Sandra G. Pullen, Transportation Cabinet; Kevin Noland, Lynette Uhl, Department of Education; Paul B. Cook. Lawrence G. Howard, Jr., Western Kentucky University; Raymond E. Wallace, Connie S. Whitehouse, Registry of Election Finance; Kembra Taylor, Guy Schoolfield, Labor Cabinet; Michael Lankford, Kentucky State Racing Commission; Judith G. Walden, Housing, Buildings and Construction; Nathan Goldman, Board of Nursing; Edward Crews, Danna Droz, Barbara Coleman, Marcia A. Burklow, Robert Calhoun, Anita Moore, Ked Fitzpatrick, Gary Bevill, Janice Kline, Dennis Boyd, Ralph Von Derau, Jeanne Southworth, Eric Friedlander, Gary Hammonds, Cabinet for Human Resources; Harry G. Dickerson, Commision for Handicapped Children; Jim Judy, Dandridge F. Walton, Marie Alagia Cull, David H. Vance, Kentucky Association of Health Care Facilities; Joe Dennison, John R. Fathbruckner, Medical Center at Bowling Green; Kathy Gannoe, Bluegrass LTC Ombudsman Program; Stan Hammons; Donald Ralph, Eastern State Hospital;Karen Jones, Protection and Advocacy Division; Charles Davis, Lexington Fire Department; Susan Cherry, Bill Summers, John Grise, Greenview Hospital; Jim Williams, Kentucky Paramedic Association; Sherman C. Hockenbury, Yellow Cab Ambulance Service; Richard Bartlett, Kentucky Ambulance Providers; Tony Modica, J. Frederick Rial, Elizabeth Mattison, Douglas Robinson, Fayette County LEPC; Billy G. Rice, Mike Withrow, Bourbon County LEPC; Ray Dailey, WESTVACO; Mike Helton, Kentucky Petroleum Council; Gordon J. Bart, Texas Gas Transmission.

LRC Staff: Joe Hood, Greg Karambellas, Tom Troth, Patrice Carroll, Susan Wunderlich, Donna Pierce, Peggy Jones, Susan Eastman, Lee Huckleberry (Speaker Blandford's Office).

Administrative regulations previously found deficient:

State Racing Commission

810 KAR 1:003 (Licensing.) (Found Deficient by ARRS, August 14, 1990; Found Deficient by IJC on BOP, August 17, 1990) Although this regulation was not objected to by the Subcommittee at this meeting, the prior finding of deficiency was noted by the Subcommittee as still standing. (See Subcommittee minutes of August 14, 1990)

810 KAR 1:006 (Racing associations. (Found Deficient by ARRS, August 14, 1990; Found Deficient by IJC on BOP, August 17, 1990) Although this regulation was not objected to by the Subcommittee at this meeting, the prior finding of deficiency was noted by the Subcommittee as still standing. (See Subcommittee minutes of August 14, 1990)

The Subcommittee determined that the following administrative regulations do not comply with KRS Chapter 13A:

State Racing Commission

810 KAR 1:002 (Racing commission.) The Subcommittee questioned the agency's authority to conduct a reasonable search of the person and property of licensed persons on association grounds on a whim without a search warrant. It was pointed out that although KRS Chapter 230 gives the Racing Commission plenary power to conduct racing within the Commonwealth, they cannot do that in violation of state and federal constitutional safeguards. The Subcommittee approved a motion that this regulation exceeded statutory authority and was therefore found deficient.

810 KAR 1:013 (Entries, subscriptions and declarations.) Because Section 4(2) connects the offtrack stable to the applicable security provisions of 810 KAR 1:006, the Subcommittee approved a motion that this regulation also be found deficient because of exceeding statutory authority.

810 KAR 1:019 (Disciplinary measures.) The Subcommittee questioned the total discretion given to the commission and to the stewards in disciplinary measures. Because of a lack of standards to be used by the Commission and the stewards in disciplinary measures, the Subcommittee approved a motion that this regulation exceeded statutory authority and was therefore found deficient.

810 KAR 1:020 (Hearings, reviews and appeals.) The Subcommittee pointed out that Section 2(2) and 3(6), concerning use of the Kentucky Rules of Civil Procedure, appeared to conflict with each other. The Subcommittee then questioned various provisions of this regulation which they believe overstep the Commissions' authority relating to appeals from Commission orders to the court system. The Subcommittee believed the Commission has required in this regulation procedures which are the province of the court system. Section 4, dealing with appeal from Commission order or ruling, was specifically discussed as an example of this overreaching authority. The Subcommittee approved a motion that this regulation exceeded statutory authority and was therefore found deficient.

The Subcommittee determined that the following administrative regulations, as amended, complied with KRS Chapter 13A:

Department for Military Affairs: Division of Disaster and Emergency Services

106 KAR 1:091 (Kentucky emergency response commission fee account grant requirements for local emergency planning committees.) J. Frederick Rial, Fayette County LEPC;

Board of Examiners and Registration of Landscape Architects.

201 KAR 10:080 (Continuing education.) Agency personnel agreed to amendments suggested in the initial review of this administrative regulation. These amendments related to the drafting requirements of KRS 13A.222(4)(b) (relating to the expression of duties, obligations or prohibitions). Additional corrections, relating to typographical, format and grammatical errors, had been made by the Regulations Compiler under KRS 13A.040(9), for publication in the Administrative Register.

Corrections Cabinet: Office of the Secretary

501 KAR 6:020 (Corrections policies and procedures.) CPP 25-01-01, page 2,B was rewritten to clarify that the total

gratuity should not exceed $75.

501 KAR 6:030 (Kentucky State Reformatory.) Statutory references in several policies incorporated by reference were added. KSR 05-00-02 was amended for clarification. A question was raised concerning the possible pardon of a terminally ill inmate who was still considered dangerous. Jack Damron, representing the agency, stated that recommendations for pardon by the warden are made on a case-by-case basis. The recommendation must be approved by the Parole Board, and the Parole Board would certainly consider the psychological evaluation of each prisoner.

501 KAR 6:070 (Kentucky Correctional Institution for Women.) KCIW 18-02-01 and 25-03-01 were amended to add statutory citation.

501 KAR 6:160 (Correctional industries.) Several reference policies were amended to include statutory references. CI 04-04-02 was amended to change the warranty of 6 months to 180 days, to comply with other policies.

Education and Humanities Cabinet: Department of Education: Office of Education for Exceptional Children Exceptional and handicapped Programs

707 KAR 1:040 (Tuition and support programs for deaf-blind children.) This regulation was amended to cite federal regulations; the NECESSITY AND FUNCTIONS section was amended to delete the words "rules and" and to describe the state responsibilities established by federal regulations; Section 1(3) was amended to conform to the drafting requirements of KRS 13A.222; Section 1 was amended to add a new subsection (4) to clarify the term "other professional personnel"; Section 6(3) was amended to conform to the drafting requirements of KRS 13A.222

Public Protection and Regulation Cabinet: Registry of Election Finance: Practice and procedure.

801 KAR 2:010 (Processing complaints; hearings.) This regulation was amended as follows: in the RELATES TO, the statutory reference was amended to "KRS 121.140"; In Section 7(2)(a), delete the words "or the appropriate Commonwealth's attorney", delete the word "knowing" in both places it appears, and retain the word "willful" where it had been removed .

Department of Housing, Buildings and Construction: Mobile Homes and Recreational Vehicles

815 KAR 25:010 (Mobile homes.) This regulation was amended to conform to the drafting and terminology requirements of KRS Chapter 13A. Several members of the Subcommittee questioned various portions of this regulation. Chairman Kerr questioned the agency concerning the brokers license in Section 8(11). He asked whether a brokers license was actually exceeding the statute and creating a license other than a dealers license. Judith Walden, representing the agency, stated that this was a tiering of the licensing requirements, and that there was a dealers license and a dealer/broker. Chairman Kerr asked if this brokers license would be required for realtors, used car dealers, and auctioneers. Ms. Walden stated that if they sold three or more mobile homes in any 12 month period, they would be required to have a dealers license. Representative Bruce then asked if any person sold three mobile homes, would that person have to have a dealers license; and if so, would that person be in violation of the law if he did not have a license. Ms. Walden stated that if the mobile homes were not being offered for sale as real estate, the person selling the mobile homes would have to have a dealers license. Chairman Kerr questioned the lack of definitions in the regulation, and asked what determined if the mobile home was real estate. Ms. Walden stated that a mobile home attached to the land was considered real estate, and that they were not experiencing any problems with mobile homes being considered real estate. Representative Allen questioned the overreaching regulation of the citizens of the Commonwealth, and stated that it was absurd to have all of this red tape for a person to either purchase or sell a mobile home. After further discussion, the Subcommittee approved a motion by Representative Allen asking LRC to request that the appropriate jurisdictional committee look into the provisions concerning the selling of mobile homes and licensure of mobile home dealers.

Cabinet for Human Resources: Department for Health Services: Health Services and Facilities

902 KAR 20:117 (Health care ground transportation services.) At its December 1990 meeting, the Subcommittee considered objections 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 the January 1991 meeting.

At this meeting, the Subcommittee considered amendments developed by Subcommittee staff and agency personnel, that were based upon the meetings held by the agency and representatives of regulated entities. A number of representatives of regulated entities and Subcommittee members questioned the amendment to Section 5(5). Paragraph (c) of this amendment would have permitted ambulance service personnel to transport a patient to a hospital, other than the hospital chosen by the patient or his doctor, if they determined that "this is required by the medical condition of the patient". Representative Bruce stated he would prefer that a patient's choice of hospital be mandatory. Questions were raised as to the source of this amendment. It was made clear that the amendment derived from the meetings held by the agency and regulated entities, and that some alternative to a patient's choice of hospital might be required in order to protect ambulance services from liability. It was explained that there could be cases in which another hospital would have to be chosen in order to save the patient's life, especially if it was impossible to reach the chosen hospital because of the condition of the patient. After discussion, it was agreed that a hospital, other than the one chosen by the patient or his doctor, could be chosen if it was determined necessary in order to save the patient's life.

The amendment to Section 5(5) was amended to provide that a patient could be transferred to a hospital, other than the one he or his doctor chose, if it was necessary to save his life.

This administrative regulation was amended as follows: (1) the title of the administrative regulation was amended to insert "Emergency", in order to make it clear that is emergency transportation services; (2) the STATUTORY AUTHORITY was amended to delete the statutory references and to insert the statute, KRS 216B.042, that granted the agency regulatory authority over the subject matter; various amendments to clarify language were made; (3) Section 4(2)(a) was amended to make it clear that records were to be maintained for a period that would run from the date on which service was rendered; (4) to specify the age of majority as 18 years of age; to clarify the cross-reference to standards established in 902 KAR 20:008; (5) to delete references to inoculation for hepatitis, because the federal regulation cited by agency personnel had not completed the regulatory process and, when completed, would not appear to mandate such inocula-

tion, and because the agency was not prepared to mandate such inoculation; (6) to provide the proper citation for "Federal Specifications for Ambulances" and to incorporate it by reference; (7) to amend Section 5(5) to provide specific requirements relating to the choice of hospital to which a patient could be transported; to clarify that the medical service ambulance service run report forms were required; and, to specify the content of such forms; and, (8) Section 8(2)(a) was amended to correct an inaccurate citation of the types of ropes permitted.

Agency personnel and regulated entities agreed to disagree on the personnel requirements relating to ambulance services, and not to amend relevent sections. Chairman Kerr stated that statutes did not clarify either the jurisdictions of the Board of Medical Licensure, the Cabinet, the Nursing Board, boards regulating paramedics and emergency medical technicians, with regard to staffing. He added that staffing questions repeatedly were raised at Subcommittee meetings, and that the Subcommittee could not make a determination. The Subcommittee approved a motion that LRC be requested to refer the issues of staffing and jurisdiction to the appropriate standing committees for determination of whether legislation was required. Agency personnel stated that the agency and various boards intended to meet to resolve these issues. It was pointed out to them that they would have sufficient time to make recommendations to legislators during the current regular session, but that the issues raised were too serious to ignore.

The Subcommittee determined that the following regulations complied with KRS Chapter 13A:

Kentucky Higher Education Assistance Authority: Kentucky Educational Savings Plan Trust

11 KAR 12:001 (Repeal of regulations.) In response to a question by Representative Bruce, agency personnel stated that the agency was repealing several administrative regulations promulgated by the Finance Cabinet, because an Executive Order reorganizing state administrative body functions had transferred authority to the Kentucky Higher Education Assistance Authority that had previously rested with the Finance Cabinet. Agency personnel explained that the repeal of these administrative regulations was delayed until Subcommittee staff and agency personnel determined which administrative body was required to repeal them under the provisions of KRS Chapter 13A.

Department for Military Affairs: Division of Disaster and Emergency Services

106 KAR 1:081 (Kentucky emergency response commission fee system requirements.)

106 KAR 1:101 (Kentucky emergency response commission fee account grant requirements for state agencies.)

106 KAR 1:111 (Kentucky emergency response commission fee account grant review committee.)

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

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

Board of Pharmacy

201 KAR 2:010 (Schools approved by the board.) In response to a question by Representative Bruce, agency personnel explained the necessity for approved schools.

Natural Resources and Environmental Protection Cabinet: Department for Environmental Protection: Division of Water: Water Quality

401 KAR 5:031 (Surface water standards.)

Transportation Cabinet: Department of Vehicle Regulation: Division of Motor Carriers

601 KAR 1:180 (Repealer.)

Western Kentucky University: Board of Regents.

770 KAR 1:010 (. Acquisition and disbursement of funds; accounting system - records and annual report.)

770 KAR 1:020 (Delegation of financial management responsibility.)

770 KAR 1:030 (Annual audit.)

770 KAR 1:040 (Purchase - inventories - sales of surplus property procedures.)

770 KAR 1:050 (Issuance of bonds.)

770 KAR 1:060 (Fund for excellence.)

Labor Cabinet: Department of Workplace Standards: Occupational Safety and Health

803 KAR 2:307 (Adoption of 29 CFR Part 1910.101-.120.)

803 KAR 2:320 (Adoption of 29 CFR Part 1910.1000--1910.1500.)

803 KAR 2:403 (Adoption of 29 CFR Part 1926.50--1926.59.)

803 KAR 2:423 (Adoption of 29 CFR Part 1926.1050--.1060.)

State Racing Commission: Thoroughbred Racing Rules

810 KAR 1:001 (Definitions.)
810 KAR 1:004 (Stewards.)
810 KAR 1:005 (Racing officials.)
810 KAR 1:007 (Owners.)
810 KAR 1:008 (Trainers.)
810 KAR 1:009 (. Jockeys and apprentices.)
810 KAR 1:010 (Authorized agents.)
810 KAR 1:012 (Horses.)
810 KAR 1:014 (Weights.)
810 KAR 1:015 (Claiming races.)
810 KAR 1:016 (Running of the race.)
810 KAR 1:017 (Objections and complaints.)
810 KAR 1:018 (Medication; testing procedures.)
810 KAR 1:021 (Backside Improvement Commission.)
810 KAR 1:050 (Steeplechase racing.)

Cabinet for Human Resources: Department for Health Services: Maternal and Child Health

902 KAR 4:080 (Disabled children's program.)

Controlled Substances

902 KAR 55:040 (Exempt over the counter preparations.)
902 KAR 55:045 (Exempt prescription preparations.)

Department for Social Insurance: Food Stamp Program

904 KAR 3:010 (Definitions.)
904 KAR 3:035 (Certification process.)

Department for Medicaid Services: Medicaid Services

907 KAR 1:037 (Hospital furnished nursing facility services.)
907 KAR 1:160 (Home and community based services.)
907 KAR 1:190 (Payments for alternative birth center services.)
907 KAR 1:545 (Incorporation by reference of the nursing facility services manual.)

Department for Mental Health and Mental Retardation: Substance Abuse

908 KAR 1:010 (Definitions for Title 908 Chapter 1:020 to 1:040.)

Institutional Care

908 KAR 3:020 (Care and treatment of inmates of penal institutions.)
908 KAR 3:050 (Per diem rate pursuant to the "Patient Liability Act of 1978".)
908 KAR 3:100 (Policies and procedures of Eastern State Hospital.)
908 KAR 3:110 (Policies and procedures of Central State Hospital.)
908 KAR 3:120 (Policies and procedures of Western State Hospital.)
908 KAR 3:180 (Policies and procedures of Oakwood.)

The following regulations were deferred upon agreement by the promulgating agency and the Subcommittee:

Crime Victims Compensation Board: Claims and Awards
107 KAR 1:025 (Attorneys fees prohibited.)
107 KAR 1:050 (Prorating awards.)

Board of Claims: Practice and Procedure
108 KAR 1:030 (Filing claims, original signature of claimant required.)

Department of Agriculture: Livestock Sanitation
302 KAR 20:230 (Fee basis schedule.)

Corrections Cabinet: Office of the Secretary
501 KAR 6:150 (Eastern Kentucky Correctional Complex.)

State Racing Commission
810 KAR 1:011 (Pari-mutuel wagering.) Representative Yates pointed out that the regulation prohibited minors from pari-mutuel wagering. He then questioned the lack of a penalty for minors participating in pari-mutuel wagering. The agency responded that this situation had never been a problem. The Subcommittee and agency agreed to defer this regulation for further consideration.

Cabinet for Human Resources: Office of Inspector General: Long-Term Care

Dandridge F. Walton and Marie Alagia Cull, Kentucky Association of Health Care Facilities (KAHCF); Karen Jones, Protection and Advocacy Division, and Kathy Gannoe, Bluegrass LTC Ombudsman Program, appeared before the Subcommittee. The following objections to these administrative regulations were raised by KAHCF: (1)(a) 900 KAR 2:050, Section 2, exceeded federal requirements, established in 42 CFR 483.12, by requiring that facilities' readmission policies with regard to Medicaid patients also apply to private pay and Medicare patients; (b) federal law contains no provisions governing the readmission of Medicare and private pay residents; (c) federal law requires readmission after the expiration of the bed-hold period only of Medicaid recipients; (d) Section 2(7)(a)3. exceeds federal requirements by applying the standard for transfer and discharge to readmission. (2)(a) Section 2 contradicts KRS 216.557 by requiring the issuance of a Type B citation without requiring a direct or immediate relationship of a violation to the health, safety or security of a resident, in addition to a violation of federal or state law or administrative regulation; (b) facility appeal rights are violated by 900 KAR 2:040, Section 7; (c) Section 2 violates KRS 216.557(2) by establishing a $200 fine for each day a facility fails to comply with Cabinet findings, because the statute requires a grace period for compliance and requires the administrative body to exercise its discretion in assessing a fine within a range of $100 to $500 rather than permitting a uniform fine to be assessed in all cases.

Ms. Jones and Ms. Gannoe stated that these administrative regulations complied with federal law because: (1) federal law required the same procedures regardless of source of payment, therefore, requiring these procedures with regard to Medicare and private pay patients as well as Medicaid patients; (2) the requirements are necessary in order to provide patients protection from unilateral transfers or discharge by facilities; (3) the Cabinet had exercised the discretion granted it by KRS Chapter 216 to determine the specific fine that would be levied. Agency personnel reiterated item (3) of the Jones and Gannoe statement.

Members of the Subcommittee stated that it was unclear whether the administrative regulation exceeded federal requirements, and whether state statutes permitted the assessment of a uniform fine or required an assessment in each case. Members raised additional questions concerning the grace period and whether a fine could be assessed for each day of noncompliance. At the request of the Subcommittee, agency personnel and representatives of regulated entities agreed that this administrative regulation should be deferred until Subcommittee staff could research federal regulatory requirements and KRS Chapter 216.

900 KAR 2:050 (Transfer and discharge rights.)
900 KAR 2:060 (Hearings concerning transfer and discharge rights.)

Department for Health Services: Maternal and Child Health
902 KAR 4:010 (Lay-midwifery.)

Emergency Medical Technicians
902 KAR 13:020 (Applicant's requirements; priority for training.) At its December 1991 meeting, this administrative regulation was deferred to permit agency personnel and Subcommittee staff to draft amendments relating to: (1) the drafting requirements of KRS 13A.222; and (2) to requirements in the administrative regulation governing the moral character of applicants. Agency personnel had proposed to delete the requirement that an applicant be of good moral character, and to amend the administrative regulation in a month to include standards relating to the determination of moral character that would conform to court decisions on the authority of administrative bodies to determine moral character. Agency personnel had proposed to work with Subcommittee staff and to use administrative regulations promulgated in Texas as a basis for this amendment. Representative Allen objected to the deletion of any reference to good moral character in this administrative regulation. Chairman Kerr suggested that the agency defer this administrative regulation, and stated that this would ensure that a good moral character requirement remained in the administrative regulation until Subcommittee staff and agency personnel developed an appropriate amendment which would be presented at the February 1992 meeting. The Subcommittee and the agency agreed to defer.

The Subcommittee had no objections to emergency regulations which had been filed.

OTHER BUSINESS:

Representative Bruce requested that the administrative regulation governing underground petroleum storage tanks be placed upon the February 1992 agenda. The Subcommittee agreed.

The Subcommittee adjourned at 4 p.m. until February 3, 1992 at 1 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.

SENATE AND HOUSE STANDING COMMITTEE ON AGRICULTURE AND NATURAL RESOURCES

The Senate Committee on Agriculture and Natural Resources and the House Committee on Natural Resources and Environment met jointly December 17-18, 1991, and submits this report:

The committee determined that Department of Fish and Wildlife Resources administrative regulation 301 KAR 2:220 complies with KRS Chapter 13A.

The committee deferred administrative regulations 405 KAR 8:030, 405 KAR 8:040, 405 KAR 16:180, and 405 KAR 18:180 upon the request of the Department for Surface Mining Reclamation and Enforcement.

The committee determined that Department for Surface Mining Reclamation and Enforcement administrative regulations 405 KAR 16:200, 405 KAR 18:200, 405 KAR 20:010, and 405 KAR 7:015 comply with KRS Chapter 13A.

The meeting adjourned December 18, 1991, at 11:10 a.m.

HOUSE COMMITTEE ON ELECTIONS AND CONSTITUTIONAL AMENDMENTS
Meeting of January 16, 1992

The House Committee on Elections and Constitutional Amendments met on Thursday, January 16, 1992, and reconsidered 801 KAR 2:010 which had previously been found deficient upon quadrennial review by the Task Force on Elections and Constitutional Amendments. The committee approved the regulation as amended, thereby removing its prior finding of deficiency.

SENATE AND HOUSE STATE GOVERNMENT COMMITTEES
Meeting of January 16, 1992

The House and Senate Committees on State Government each met this date and submit this report.

The Committees determined that the following regulation of the Finance and Administration Cabinet complies with KRS Chapter 13A:

200 KAR 12:020 (Unemployment insurance payments)

HOUSE COMMITTEE ON BUSINESS ORGANIZATIONS AND PROFESSIONS
Meeting of January 21, 1992

The House Committee on Business Organizations and Professions met on Tuesday, January 21, 1992, and considered administrative regulations referred by LRC.

The committee approved as presented:

1. 201 KAR 2:010 - Ky. Board of Pharmacy.
2. 201 KAR 10:080 - Bd. of Exam. & Reg. of Landscape Architects.
3. 810 KAR 1:001 - Ky. State Racing Commission.
   810 KAR 1:004 - Ky. State Racing Commission.
   810 KAR 1:005 - Ky. State Racing Commission.
   810 KAR 1:007 - Ky. State Racing Commission.
   810 KAR 1:008 - Ky. State Racing Commission.
   810 KAR 1:009 - Ky. State Racing Commission.
   810 KAR 1:010 - Ky. State Racing Commission.
   810 KAR 1:012 - Ky. State Racing Commission.
   810 KAR 1:014 - Ky. State Racing Commission.
   810 KAR 1:015 - Ky. State Racing Commission.
   810 KAR 1:016 - Ky. State Racing Commission.
   810 KAR 1:017 - Ky. State Racing Commission.
   810 KAR 1:018 - Ky. State Racing Commission.
   810 KAR 1:021 - Ky. State Racing Commission.
   810 KAR 1:050 - Ky. State Racing Commission.

The committee took no action on the following:

1. 810 KAR 1:002 - Ky. State Racing Commission.
   810 KAR 1:003 - Ky. State Racing Commission.
   810 KAR 1:006 - Ky. State Racing Commission.
   810 KAR 1:013 - Ky. State Racing Commission.
   810 KAR 1:019 - Ky. State Racing Commission.
   810 KAR 1:020 - Ky. State Racing Commission.

The Committee adjourned at 12:30 p.m.

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates H2

KRS Index H14

Subject Index H25

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.)

Regulation	17 Ky.R Page No.	Effective Date
601 KAR 1:190	3600	(See 18 Ky.R.)
704 KAR 3:035		
Amended	3254	(See 18 Ky.R.)
780 KAR 2:130		
Amended	3260	(See 18 Ky.R.)
805 KAR 4:085		
Amended	3270	(See 18 Ky.R.)
805 KAR 4:100		
Amended	3272	(See 18 Ky.R.)
805 KAR 4:110		
Amended	3274	(See 18 Ky.R.)
807 KAR 5:014	3072	
Withdrawn		9-13-91
900 KAR 4:010	3342	(See 18 Ky.R.)
902 KAR 10:030		
Amended	3048	(See 18 Ky.R.)
902 KAR 20:290		
Amended	3538	8-21-91
902 KAR 55:075	3606	(See 18 Ky.R.)
905 KAR 1:180		
Amended	3558	8-22-91
905 KAR 1:320	3608	(See 18 Ky.R.)
905 KAR 1:330	3612	8-22-91
905 KAR 5:060	3075	
Amended	3470	(See 18 Ky.R.)
905 KAR 5:070	3618	8-22-91

VOLUME 18

Emergency Regulation	18 Ky.R Page No.	Effective Date
101 KAR 1:325E	256	6-21-91
Replaced	82	9-6-91
101 KAR 2:035E	4	6-14-91
Died		10-7-91
105 KAR 1:215E	979	8-21-91
Replaced	1326	11-8-91
109 KAR 13:010E	1288	10-4-91
Replaced	2199	1-10-92
200 KAR 5:330E	980	8-30-91
Replaced	1894	1-10-92
301 KAR 1:085E	2520	1-3-92
301 KAR 2:044E	619	8-9-91
Replaced	1329	10-22-91
301 KAR 2:220E	1288	10-15-91
Replaced	1381	12-17-91
405 KAR 7:001E	2108	11-27-91
405 KAR 7:021E	2112	11-27-91
405 KAR 8:001E	2112	11-27-91
405 KAR 8:010E	1798	11-1-91
405 KAR 10:001E	2119	11-27-91
405 KAR 12:001E	2122	11-27-91
405 KAR 16:001E	2124	11-27-91
405 KAR 18:001E	2130	11-27-91

Emergency Regulation	18 Ky.R Page No.	Effective Date
405 KAR 20:001E	2136	11-27-91
405 KAR 24:001E	2140	11-27-91
415 KAR 1:040E	7	6-13-91
Replaced	715	9-25-91
500 KAR 8:010E	9	5-31-91
Withdrawn		7-1-91
Resubmitted	257	7-1-91
Replaced	1333	11-8-91
500 KAR 8:020E	258	7-1-91
Replaced	1334	11-8-91
500 KAR 8:030E	259	7-1-91
Replaced	1132	11-8-91
501 KAR 6:020E	983	8-21-91
Replaced	795	11-8-91
Resubmitted	1813	11-13-91
501 KAR 6:150E	1814	10-16-91
601 KAR 12:060E	621	7-26-91
Replaced	1007	10-1-91
701 KAR 5:090E	10	5-29-91
Replaced	217	9-6-91
702 KAR 1:001E	259	7-11-91
Replaced	569	10-6-91
702 KAR 3:220E	1293	9-18-91
Replaced	476	11-8-91

Emergency Regulation	18 Ky.R Page No.	Effective Date
704 KAR 3:006E	260	7-11-91
Replaced	1340	11-8-91
704 KAR 20:580E	263	6-17-91
Replaced	75	8-2-91
806 KAR 17:066E	2144	12-6-91
900 KAR 2:050E	1816	10-16-91
900 KAR 2:060E	1818	10-16-91
902 KAR 20:006E	985	8-22-91
Replaced	1347	1-10-92
902 KAR 22:010E	2185	12-9-91
902 KAR 22:030E	2186	12-9-91
903 KAR 5:270E	265	6-17-91
Replaced	608	9-6-91
904 KAR 2:006E	622	7-19-91
Replaced	1047	10-6-91
904 KAR 2:015E	1294	9-24-91
Replaced	881	10-16-91
Resubmitted	2188	12-4-91
904 KAR 2:016E	1298	9-24-91
Replaced	1245	11-25-91
904 KAR 2:110E	1308	9-24-91
Replaced	1595	1-10-92
904 KAR 2:116E	2192	11-21-91
904 KAR 2:360E	1310	9-24-91
Replaced	1891	11-25-91
904 KAR 3:010E	1819	11-7-91
904 KAR 3:020E	11	6-5-91
Replaced	202	8-21-91
904 KAR 3:025E	15	6-5-91
Replaced	246	8-21-91
904 KAR 3:035E	1822	11-7-91
905 KAR 2:080E	1313	10-8-91
Replaced	1734	1-10-92
905 KAR 8:150E	628	7-23-91
Replaced	593	10-6-91
907 KAR 1:004E	629	7-23-91
Replaced	507	10-6-91
907 KAR 1:010E	265	7-1-91
Replaced	519	10-6-91
907 KAR 1:011E	640	7-23-91
Replaced	520	10-6-91
907 KAR 1:012E	645	7-24-91
Replaced	525	10-6-91
907 KAR 1:013E	646	7-24-91
Replaced	911	10-16-91
907 KAR 1:021E	267	7-1-91
Replaced	594	10-6-91
907 KAR 1:022E	650	7-19-91
Replaced	526	10-16-91
907 KAR 1:025E	654	7-19-91
Replaced	1142	10-16-91
907 KAR 1:027E	268	7-1-91
Replaced	538	10-6-91
907 KAR 1:040E	269	7-1-91
Replaced	541	10-6-91
907 KAR 1:044E	661	7-29-91
Replaced	915	10-16-91
907 KAR 1:045E	662	7-29-91
Replaced	916	10-16-91
907 KAR 1:140E	1826	11-7-91
907 KAR 1:150E	1828	11-7-91
907 KAR 1:340E	664	7-23-91
Replaced	547	10-6-91
907 KAR 1:480E	270	7-1-91
Replaced	595	10-6-91
907 KAR 1:485E	271	7-1-91
Replaced	596	10-6-91
907 KAR 1:490E	271	7-1-91
Replaced	598	10-6-91
907 KAR 1:495E	272	7-1-91
Replaced	599	10-6-91
907 KAR 1:505E	665	7-23-91
Replaced	600	10-6-91
907 KAR 1:510E	666	7-23-91
Replaced	601	10-6-91
907 KAR 1:515E	666	7-23-91
Replaced	1053	10-6-91
907 KAR 1:520E	667	7-23-91
Replaced	603	10-6-91
907 KAR 1:525E	668	7-23-91
Replaced	1054	10-6-91
907 KAR 1:530E	669	7-23-91
Replaced	606	10-6-91
907 KAR 1:535E	670	7-29-91
Replaced	966	10-16-91
907 KAR 1:540E	1318	9-24-91
Replaced	1970	1-10-92
908 KAR 1:300E	1830	10-16-91
Replaced	1782	1-10-92
908 KAR 1:310E	1831	10-22-91

Regulation	18 Ky.R Page No.	Effective Date
11 KAR 4:040		
Amended	320	
Amended	1056	11-8-91
11 KAR 8:030		
As Amended	274	7-8-91
Amended	1152	11-14-91
11 KAR 12:001	2069	
30 KAR 1:040		
As Amended	276	8-2-91
30 KAR 1:050		
As Amended	276	8-2-91
31 KAR 4:070	555	
As Amended	1320	
45 KAR 1:020		
Repealed	2197	1-10-92
45 KAR 1:030	1692	
As Amended	2195	1-10-92
45 KAR 1:040	1693	
As Amended	2196	1-10-92
45 KAR 1:050	1695	
As Amended	2197	1-10-92
101 KAR 1:325		
Amended	82	9-6-91
101 KAR 2:035		
Amended	83	
Withdrawn		10-7-91
101 KAR 2:045		
Amended	1155	12-8-91
105 KAR 1:070		
Amended	722	11-8-91
105 KAR 1:110		
Repealed	932	11-8-91
105 KAR 1:120	920	
As Amended	1320	11-8-91
105 KAR 1:130	921	
As Amended	1321	11-8-91
105 KAR 1:140	922	
As Amended	1321	11-8-91
105 KAR 1:150	924	11-8-91
105 KAR 1:160	925	
As Amended	1322	11-8-91
105 KAR 1:170	927	
As Amended	1323	11-8-91
105 KAR 1:180	928	11-8-91
105 KAR 1:190	929	11-8-91
105 KAR 1:200	931	
As Amended	1324	11-8-91
105 KAR 1:210	932	11-8-91
105 KAR 1:215	934	
As Amended	1326	11-8-91
105 KAR 1:220	936	11-8-91

Regulation	18 Ky.R Page No.	Effective Date
105 KAR 1:230	939	11-8-91
105 KAR 1:240	940	11-8-91
106 KAR 1:080		
Amended	54	
Withdrawn		8-27-91
106 KAR 1:081	1697	
Amended	2310	
106 KAR 1:090		
Amended	68	
Withdrawn		8-27-91
106 KAR 1:091	1712	
Amended	2325	
As Amended	2522	
106 KAR 1:100		
Amended	73	
Withdrawn		8-27-91
106 KAR 1:101	1717	
106 KAR 1:111	1719	
106 KAR 1:120		
Amended	73	
Withdrawn		8-27-91
106 KAR 1:121	1720	
Amended	2329	
106 KAR 1:131	1721	
Amended	2330	
107 KAR 1:025		
Amended	1910	
107 KAR 1:050		
Amended	1910	
108 KAR 1:030	2070	
109 KAR 10:010		
Recodified from 200 KAR 4:005		7-8-91
Amended	723	
As Amended	1326	11-8-91
109 KAR 11:010		
Recodified from 200 KAR 8:010		7-8-91
Amended	725	12-8-91
109 KAR 11:020		
Recodified from 200 KAR 8:020		7-8-91
Amended	727	12-8-91
109 KAR 11:030		
Recodified from 200 KAR 8:030		7-8-91
Amended	728	12-8-91
109 KAR 12:010		
Recodified from 200 KAR 11:010		7-8-91
109 KAR 12:020		
Recodified from 200 KAR 11:020		7-8-91
Amended	729	
As Amended	1328	11-8-91
109 KAR 12:030		
Recodified from 200 KAR 11:030		7-8-91
Amended	730	
As Amended	1328	11-8-91
109 KAR 12:040		
Recodified from 200 KAR 11:040		7-8-91
Amended	731	
As Amended	1329	11-8-91
109 KAR 12:050		
Recodified from 200 KAR 11:050		7-8-91
Amended	732	11-8-91
109 KAR 13:010	1723	
As Amended	2199	1-10-92
200 KAR 3:010		
Amended	325	9-11-91
200 KAR 3:045		
Amended	1352	
As Amended	2199	1-10-92
200 KAR 4:005		
Recodified as 109 KAR 10:010		7-8-91
200 KAR 5:050		
Amended	1352	
As Amended	2200	1-10-92
200 KAR 5:075		
Repealed	1724	1-10-92
200 KAR 5:076	1724	1-10-92
200 KAR 5:301		
Amended	1354	1-10-92
200 KAR 5:300		
Repealed	1725	1-10-92
200 KAR 5:303		
Repealed	1725	1-10-92
200 KAR 5:304		
Amended	1355	1-10-92
200 KAR 5:305		
Amended	1356	1-10-92
200 KAR 5:306		
Amended	1357	
As Amended	2201	1-10-92
200 KAR 5:307		
Amended	1359	1-10-92
200 KAR 5:308		
Repealed	1725	1-10-92
200 KAR 5:309		
Amended	1362	1-10-92
200 KAR 5:310		
Amended	1363	1-10-92
200 KAR 5:311		
Amended	1364	1-10-92
200 KAR 5:312		
Amended	1365	1-10-92
200 KAR 5:313		
Amended	1366	1-10-92
200 KAR 5:314		
Repealed	1725	1-10-92
200 KAR 5:315		
Amended	1367	1-10-92
200 KAR 5:316		
Repealed	1725	1-10-92
200 KAR 5:317		
Amended	1369	1-10-92
200 KAR 5:330	1255	
Amended	1894	1-10-92
200 KAR 6:010		
Repealed	1725	1-10-92
200 KAR 6:011	1725	1-10-92
200 KAR 6:015		
Amended	1370	1-10-92
200 KAR 6:040		
Amended	1371	1-10-92
200 KAR 7:010		
Amended	1375	1-10-92
200 KAR 8:010		
Recodified as 109 KAR 11:010		7-8-91
200 KAR 8:020		
Recodified as 109 KAR 11:020		7-8-91
200 KAR 8:030		
Recodified as 109 KAR 11:030		7-8-91
200 KAR 11:010		
Recodified as 109 KAR 12:010		7-8-91
200 KAR 11:020		
Recodified as 109 KAR 12:020		7-8-91
200 KAR 11:030		
Recodified as 109 KAR 12:030		7-8-91
200 KAR 11:040		
Recodified as 109 KAR 12:040		7-8-91
200 KAR 11:050		
Recodified as 109 KAR 12:050		7-8-91
200 KAR 12:020		
Amended	1378	1-10-92
200 KAR 13:010		
Repealed	1725	1-10-92
200 KAR 14:010		
As Amended	277	7-29-91
200 KAR 14:080		
As Amended	278	7-29-91

Regulation	18 Ky.R Page No.	Effective Date
200 KAR 14:090		
As Amended	279	7-29-91
200 KAR 17:020		
As Amended	671	8-22-91
200 KAR 17:030		
As Amended	674	8-22-91
200 KAR 17:040		
As Amended	677	8-22-91
200 KAR 17:050		
As Amended	679	8-22-91
201 KAR 2:010		
Amended	1159	
Died*		11-7-91
Amended	1911	
201 KAR 2:061	2449	
201 KAR 2:105		
Amended	2348	
201 KAR 2:167	2734	
201 KAR 9:031		
Amended	88	
As Amended	991	9-24-91
201 KAR 9:041		
Amended	89	8-30-91
201 KAR 9:175		
Amended	327	
As Amended	992	9-24-91
201 KAR 9:300	210	
As Amended	996	10-11-91
201 KAR 9:305	211	
As Amended	996	9-24-91
201 KAR 10:080	1726	
As Amended	2524	
201 KAR 11:230		
Amended	2592	
201 KAR 18:131	2450	
201 KAR 20:056		
Amended	331	
As Amended	997	9-24-91
201 KAR 22:020		
Amended	334	9-24-91
201 KAR 22:040		
Amended	335	9-24-91
201 KAR 22:053		
Amended	1379	1-10-92
201 KAR 22:070		
Amended	336	9-24-91
201 KAR 22:101		
Amended	338	9-24-91
201 KAR 22:110		
Amended	339	9-24-91
201 KAR 22:135		
Amended	340	9-24-91
201 KAR 23:070		
Amended	733	
As Amended	1838	11-22-91
201 KAR 30:100	940	11-22-91
201 KAR 30:110	945	11-22-91
201 KAR 30:120	946	
As Amended	2203	11-22-91
201 KAR 30:130	947	11-22-91
301 KAR 1:015		
Amended	735	10-22-91
301 KAR 1:075		
Amended	736	10-22-91
301 KAR 1:085		
Amended	74	7-31-91
Amended	1160	11-26-91
Amended	2350	
301 KAR 1:200		
Amended	738	10-22-91
301 KAR 2:044		
Amended	740	
As Amended	1329	10-22-91
301 KAR 2:047		
Amended	2593	
301 KAR 2:111		
Amended	309	
As Amended	682	8-28-91
301 KAR 2:140		
Amended	1161	11-26-91
301 KAR 2:170		
As Amended	18	6-26-91
301 KAR 2:190		
Repealed	1331	10-22-91
301 KAR 2:195	948	
As Amended	1331	10-22-91
301 KAR 2:220		
Amended	1381	12-17-92
301 KAR 2:250		
Amended	2597	
301 KAR 3:021		
Amended	90	8-28-91
301 KAR 3:080		
Repealed	619	8-9-91
301 KAR 10:010	212	
Amended	704	9-25-91
302 KAR 20:230	2070	
302 KAR 45:010		
Amended	743	
As Amended	1840	11-26-91
400 KAR 1:070	556	
Withdrawn		9-3-91
401 KAR 4:220		
As Amended	22	6-26-91
401 KAR 5:031		
Amended	1388	
Amended	2331	
401 KAR 6:310		
As Amended	34	5-22-91
401 KAR 8:010		
Amended	1165	
As Amended	1841	11-26-91
401 KAR 8:020		
Amended	1170	
As Amended	1845	11-26-91
401 KAR 8:070		
Amended	1175	
As Amended	1849	11-26-91
401 KAR 8:150		
Amended	1180	
As Amended	1853	11-26-91
401 KAR 8:200		
Amended	1186	
As Amended	1857	11-26-91
401 KAR 31:010		
Amended	92	9-25-91
401 KAR 31:030		
Amended	103	9-25-91
401 KAR 31:040		
Amended	106	9-25-91
401 KAR 31:060		
Amended	118	
Amended	706	9-25-91
401 KAR 31:110		
Amended	122	
Amended	708	
As Amended	999	9-25-91
401 KAR 32:010		
Amended	125	
Amended	710	
As Amended	1001	9-25-91
401 KAR 32:100		
Amended	127	9-25-91
401 KAR 34:230		
Amended	132	
Amended	712	9-25-91

Regulation	18 Ky.R Page No.	Effective Date
401 KAR 35:200		
Amended	136	
As Amended	1003	9-25-91
401 KAR 35:220		
Amended	139	9-25-91
401 KAR 35:240		
Amended	143	9-25-91
401 KAR 37:100		
Amended	145	9-25-91
401 KAR 48:050		
Amended	147	9-25-91
401 KAR 50:010		
Amended	744	
Died*		10-15-91
Amended	2599	
401 KAR 50:012		
Amended	749	
Died*		10-15-91
Amended	2604	
401 KAR 50:046	952	
Died*		10-15-91
401 KAR 50:047	2734	
401 KAR 51:001	2737	
401 KAR 51:017		
Amended	750	
Died*		10-15-91
Amended	2605	
401 KAR 59:001	2741	
401 KAR 59:185		
Amended	2616	
401 KAR 59:190		
Amended	2619	
401 KAR 59:210		
Amended	2622	
401 KAR 59:212		
Amended	2625	
401 KAR 59:214		
Amended	763	
Died*		10-15-91
Amended	2629	
401 KAR 59:225		
Amended	767	
Died*		10-15-91
Amended	2632	
401 KAR 59:230		
Amended	771	
Died*		10-15-91
Amended	2635	
401 KAR 59:240		
Amended	774	
Died*		10-15-91
Amended	2638	
401 KAR 59:315	2744	
401 KAR 61:001	2746	
401 KAR 61:050		
Amended	2640	
401 KAR 61:090		
Amended	2643	
401 KAR 61:095		
Amended	2646	
401 KAR 61:100		
Amended	2650	
401 KAR 61:105		
Amended	2652	
401 KAR 61:110		
Amended	2655	
401 KAR 61:120		
Amended	2658	
401 KAR 61:122		
Amended	2661	
401 KAR 61:124		
Amended	777	
Died*		10-15-91
Amended	2664	
401 KAR 61:125		
Amended	2667	
401 KAR 61:130		
Amended	2670	
401 KAR 61:132		
Amended	780	
Died*		10-15-91
Amended	2672	
401 KAR 61:137		
Amended	784	
Died*		10-15-91
Amended	2676	
401 KAR 61:150		
Amended	787	
Died*		10-15-91
Amended	2678	
401 KAR 61:155		
Amended	2680	
401 KAR 61:160		
Amended	790	
Died*		10-15-91
Amended	2682	
401 KAR 61:175		
Amended	792	
Died*		10-15-91
Amended	2684	
401 KAR 63:001	2750	
401 KAR 63:025		
Amended	2686	
405 KAR 7:001	2453	
405 KAR 7:015		
Amended	341	12-17-91
405 KAR 7:020		
Amended	343	
Amended	1060	
Repealed	2112	11-27-91
405 KAR 7:021	2458	
405 KAR 7:030		
Amended	353	11-26-91
405 KAR 7:035	560	
Amended	1069	
As Amended	1865	11-26-91
405 KAR 7:080		
Amended	356	
As Amended	2204	11-26-91
405 KAR 8:001	2460	
405 KAR 8:010		
Amended	360	
Amended	1072	
Withdrawn		10-30-91
Amended	1912	
Amended	2542	
405 KAR 8:020		
Amended	375	11-26-91
405 KAR 8:030		
Amended	379	
Amended	1087	
As Amended	2207	
405 KAR 8:040		
Amended	394	
Amended	1100	
As Amended	2220	
405 KAR 10:001	2468	
405 KAR 10:050		
Amended	409	
Withdrawn		8-15-91
405 KAR 10:200		
Amended	411	
As Amended	1868	11-26-91

Regulation	18 Ky.R Page No.	Effective Date
405 KAR 12:001	2472	
405 KAR 16:001	2475	
405 KAR 16:180		
Amended	416	
Amended	1114	
As Amended	2234	
405 KAR 16:190		
Amended	420	
As Amended	1872	11-26-91
405 KAR 16:200		
Amended	424	
Amended	1117	
As Amended	2237	12-17-91
405 KAR 16:210		
Amended	431	
As Amended	1875	
As Amended	2243	11-26-91
405 KAR 18:001	2482	
405 KAR 18:180		
Amended	434	
Amended	1123	
As Amended	2245	
405 KAR 18:190		
Amended	438	
As Amended	1877	11-26-91
405 KAR 18:200		
Amended	442	
Amended	1125	
As Amended	2248	12-17-91
405 KAR 18:220		
Amended	449	
As Amended	1880	
As Amended	2254	11-26-91
405 KAR 20:001	2490	
405 KAR 20:010		
Amended	452	12-17-91
405 KAR 24:001	2495	
415 KAR 1:010		
Amended	311	9-25-91
415 KAR 1:020		
Amended	312	
As Amended	1005	9-25-91
415 KAR 1:030		
Amended	313	9-25-91
415 KAR 1:040	214	
Amended	715	9-25-91
500 KAR 8:010		
Amended	148	
Withdrawn		7-1-91
Amended	454	
Amended	1131	
As Amended	1333	11-8-91
500 KAR 8:020	564	
Amended	1132	
As Amended	1334	11-8-91
500 KAR 8:030	565	
Amended	1132	11-8-91
501 KAR 6:020		
Amended	150	9-6-91
Amended	795	11-8-91
Amended	1927	
Amended	2352	
501 KAR 6:030		
Amended	455	10-6-91
Amended	1929	
Amended	2688	
501 KAR 6:040		
Amended	797	11-8-91
501 KAR 6:050		
Amended	152	9-6-91
Amended	1403	1-10-92
501 KAR 6:060		
Amended	1194	12-8-91
501 KAR 6:070		
Amended	153	9-6-91
Amended	457	
As Amended	1006	10-6-91
Amended	1931	
501 KAR 6:080		
Amended	154	9-6-91
501 KAR 6:090		
Amended	459	10-6-91
Amended	1196	12-8-91
501 KAR 6:130		
Amended	798	11-8-91
Amended	1404	1-10-92
501 KAR 6:140		
Amended	155	9-6-91
Amended	800	11-8-91
Amended	1197	12-8-91
501 KAR 6:150		
Amended	1405	1-10-92
Amended	1933	
501 KAR 6:160		
Amended	1935	
Amended	2690	
601 KAR 1:029		
Amended	2354	
Withdrawn		12-18-91
Amended	2691	
601 KAR 1:030		
Amended	2355	
Withdrawn		12-18-91
Amended	2692	
601 KAR 1:031	2499	
Withdrawn		12-18-91
Resubmitted	2753	
601 KAR 1:040		
Amended	2359	
Withdrawn		12-18-91
Amended	2695	
601 KAR 1:045		
Amended	2362	
Withdrawn		12-18-91
Amended	2697	
601 KAR 1:116	1258	
Amended	1897	1-10-92
601 KAR 1:140		
Amended	2363	
Withdrawn		12-18-91
Amended	2698	
601 KAR 1:180	2072	
601 KAR 2:010		
Amended	2365	
Withdrawn		12-18-91
Amended	2700	
601 KAR 9:135		
Amended	2367	
601 KAR 12:060	567	
As Amended	1007	10-1-91
601 KAR 40:010	955	11-8-91
Amended	2701	
601 KAR 40:020	956	11-8-91
Amended	2702	
603 KAR 5:066		
Amended	2370	
603 KAR 5:070		
Amended	460	
As Amended	1008	
As Amended	1335	10-1-91
Amended	2372	
603 KAR 5:071		
Amended	464	10-1-91
603 KAR 5:250		
As Amended	280	7-2-91

Regulation	18 Ky.R Page No.	Effective Date
605 KAR 1:010		
Amended	466	10-1-91
605 KAR 1:030		
Amended	467	10-1-91
605 KAR 1:050		
Amended	469	10-1-91
605 KAR 1:090		
Amended	470	10-1-91
605 KAR 1:130		
Amended	471	10-1-91
605 KAR 1:160		
Amended	474	10-1-91
605 KAR 1:190		
As Amended	1338	11-8-91
701 KAR 1:001	2754	
701 KAR 5:020		
Amended	1199	
As Amended	1882	12-8-91
701 KAR 5:050		
Amended	2704	
701 KAR 5:090	217	9-6-91
701 KAR 5:100	219	
As Amended	685	9-6-91
701 KAR 7:010		
Repealed	568	10-6-91
701 KAR 7:011	568	10-6-91
702 KAR 1:001	569	10-6-91
702 KAR 1:010		
Repealed	259	7-11-91
702 KAR 3:201	2755	
702 KAR 3:220		
Amended	476	11-8-91
702 KAR 3:250	220	
As Amended	686	9-6-91
702 KAR 4:050		
Amended	1936	
Withdrawn		11-21-91
Amended	2377	
702 KAR 4:110		
Repealed	259	7-11-91
702 KAR 4:120		
Repealed	259	7-11-91
702 KAR 4:130		
Repealed	259	7-11-91
702 KAR 5:030		
Amended	477	11-8-91
702 KAR 5:080		
Amended	157	
Withdrawn		7-24-91
Amended	478	
Amended	1133	11-8-91
702 KAR 5:140		
Repealed	570	10-6-91
702 KAR 5:141	570	10-6-91
702 KAR 5:150		
Amended	481	10-6-91
702 KAR 7:065		
Amended	1200	12-8-91
704 KAR 3:005		
Repealed	260	7-11-91
704 KAR 3:006	571	
Amended	1136	
As Amended	1340	11-8-91
Amended	2705	
704 KAR 3:007	2757	
704 KAR 3:010		
Repealed	574	10-6-91
704 KAR 3:012	574	10-6-91
704 KAR 3:025		
Repealed	574	10-6-91
704 KAR 3:030		
Repealed	574	10-6-91
704 KAR 3:035		
As Amended	45	7-5-91
704 KAR 3:410		
Amended	160	
As Amended	687	9-6-91
704 KAR 4:020		
Amended	1202	
As Amended	2256	1-10-92
704 KAR 7:060		
Amended	2707	
704 KAR 7:090		
Amended	482	
As Amended	1011	10-6-91
704 KAR 15:090		
Repealed	574	10-6-91
704 KAR 15:091	574	10-6-91
704 KAR 20:450		
Repealed	263	6-17-91
704 KAR 20:580		
Amended	75	8-2-91
704 KAR 20:590	221	9-6-91
704 KAR 20:600	223	9-6-91
705 KAR 3:011	575	10-6-91
705 KAR 3:050		
Repealed	575	10-6-91
705 KAR 3:090		
Repealed	575	10-6-91
705 KAR 5:050		
Repealed	575	10-6-91
707 KAR 1:040		
Amended	1939	
As Amended	2526	
707 KAR 1:054		
Amended	486	
Amended	1140	11-8-91
707 KAR 1:150	228	
Amended	718	
As Amended	1014	10-6-91
740 KAR 1:010		
Amended	2380	
740 KAR 1:020		
Amended	2381	
740 KAR 1:030		
Amended	2382	
740 KAR 1:040		
Amended	2384	
740 KAR 1:050		
Amended	2385	
740 KAR 1:060		
Amended	2386	
740 KAR 1:080		
Amended	2387	
740 KAR 1:090		
Amended	2388	
740 KAR 1:100		
Amended	2389	
770 KAR 1:010	2072	
770 KAR 1:020	2073	
770 KAR 1:030	2074	
770 KAR 1:040	2075	
770 KAR 1:050	2076	
770 KAR 1:060	2076	
780 KAR 2:130		
As Amended	47	7-5-91
780 KAR 3:020		
Amended	1407	
Withdrawn		12-3-91
783 KAR 1:030	232	
Amended	721	10-6-91
784 KAR 1:010	576	
As Amended	1017	10-6-91
784 KAR 1:020	578	
As Amended	1019	10-6-91

Regulation	18 Ky.R Page No.	Effective Date
801 KAR 2:010		
Amended	1940	
As Amended	2527	
803 KAR 1:070		
Amended	1204	12-8-91
803 KAR 2:015		
Amended	165	
As Amended	691	9-6-91
803 KAR 2:307		
Amended	1944	
803 KAR 2:318		
Amended	183	
803 KAR 2:320		
Amended	1946	
803 KAR 2:403		
Amended	184	9-6-91
Amended	1950	
803 KAR 2:423		
Amended	1952	
803 KAR 25:011		
Amended	2708	
803 KAR 25:061	2758	
804 KAR 1:100		
Amended	186	8-30-91
805 KAR 1:020		
Amended	187	
As Amended	1020	9-25-91
805 KAR 1:050		
Amended	189	9-25-91
805 KAR 1:120	233	
As Amended	1021	9-25-91
805 KAR 1:130	234	
As Amended	1022	9-25-91
805 KAR 1:140	236	
As Amended	1023	9-25-91
805 KAR 4:010		
Amended	77	7-31-91
805 KAR 4:085		
As Amended	49	
805 KAR 4:100		
As Amended	49	
805 KAR 4:110		
As Amended	50	
806 KAR 3:150	239	
As Amended	700	9-6-91
806 KAR 3:160	958	11-8-91
806 KAR 3:170	959	11-8-91
806 KAR 4:010		
Amended	801	11-8-91
806 KAR 7:100	964	
Withdrawn		9-23-91
806 KAR 9:220		
Amended	803	11-8-91
806 KAR 17:066		
Amended	2390	
806 KAR 19:030		
Amended	1208	12-8-91
807 KAR 5:001		
Amended	191	
As Amended	1025	9-24-91
807 KAR 5:005	241	
Withdrawn		8-12-91
807 KAR 5:006		
Amended	1953	
Amended	2554	
807 KAR 5:023	1259	
Amended	1897	1-10-92
807 KAR 5:066		
Amended	1968	
808 KAR 10:010		
Amended	199	
As Amended	701	9-6-91
808 KAR 10:220	Amended	200
Withdrawn		8-20-91
808 KAR 10:260	244	
As Amended	702	9-6-91
808 KAR 10:270	245	
As Amended	702	9-6-91
810 KAR 1:001		
Amended	1977	
810 KAR 1:002		
Amended	1980	
810 KAR 1:003		
Amended	1408	
Withdrawn		11-19-91
Amended	1982	
810 KAR 1:004		
Amended	1986	
810 KAR 1:005		
Amended	1989	
810 KAR 1:006		
Amended	1991	
810 KAR 1:007		
Amended	1995	
810 KAR 1:008		
Amended	1997	
810 KAR 1:009		
Amended	1999	
810 KAR 1:010		
Amended	2001	
810 KAR 1:011		
Amended	2003	
810 KAR 1:012		
Amended	1413	
Withdrawn		11-19-91
Amended	2005	
810 KAR 1:013		
Amended	2007	
810 KAR 1:014		
Amended	2010	
810 KAR 1:015		
Amended	2012	
810 KAR 1:016		
Amended	2013	
810 KAR 1:017		
Amended	2015	
810 KAR 1:018		
Amended	2017	
810 KAR 1:019		
Amended	2019	
810 KAR 1:020		
Amended	2020	
810 KAR 1:021		
Amended	2024	
810 KAR 1:023	2500	
810 KAR 1:050		
Amended	2024	
815 KAR 4:010		
Amended	2432	
815 KAR 7:010		
Amended	1209	12-8-91
815 KAR 7:025		
Amended	1218	12-8-91
Amended	2433	
815 KAR 7:070		
Amended	1415	
As Amended	2258	1-10-92
815 KAR 7:080		
Amended	1226	
As Amended	1883	12-8-91
815 KAR 10:020		
Repealed		8-22-90
815 KAR 10:045	2758	

Regulation	18 Ky.R Page No.	Effective Date
815 KAR 15:020		
Amended	488	
As Amended	1033	9-24-91
815 KAR 20:020		
Amended	1228	
As Amended	1884	12-8-91
Amended	2717	
815 KAR 20:030		
As Amended	283	7-30-91
815 KAR 20:050		
Amended	1231	
As Amended	1887	12-8-91
815 KAR 20:060		
Amended	2720	
815 KAR 20:090		
Amended	2722	
815 KAR 20:130		
Amended	2725	
815 KAR 25:010		
As Amended	284	7-30-91
Amended	1418	
Amended	2337	
As Amended	2529	
815 KAR 25:020		
As Amended	290	7-30-91
815 KAR 30:060		
Amended	493	
As Amended	1038	
As Amended	1342	10-8-91
815 KAR 46:010		
Amended	497	
As Amended	1041	9-24-91
900 KAR 1:006		
Repealed	1263	11-25-91
900 KAR 1:007	1263	11-25-91
900 KAR 1:011		
Recodified to 906 KAR 1:090		8-30-91
900 KAR 1:040		
Amended	1425	1-10-92
900 KAR 1:060		
Amended	1426	
As Amended	2260	1-10-92
900 KAR 2:050	1729	
Amended	2343	
900 KAR 2:060	1731	
Amended	2345	
900 KAR 4:010		
Amended	78	
As Amended	1043	10-6-91
902 KAR 4:010		
Amended	1428	
902 KAR 4:070		
Amended	2025	
902 KAR 4:080		
Amended	2026	
902 KAR 4:090		
Amended	1430	
As Amended	2263	1-10-92
902 KAR 8:030		
Amended	2728	
902 KAR 10:010		
Amended	1431	
As Amended	2264	1-10-92
902 KAR 10:030		
As Amended	52	
902 KAR 10:110		
Amended	1433	
As Amended	2265	1-10-92
902 KAR 10:140	579	
As Amended	1888	1-10-92
902 KAR 13:010		
Amended	1435	
As Amended	2266	1-10-92
902 KAR 13:020		
Amended	1436	
902 KAR 13:040		
Amended	1437	1-10-92
902 KAR 13:070		
Amended	1438	
As Amended	2267	1-10-92
902 KAR 13:080		
Amended	499	10-16-91
As Amended	1345	
902 KAR 13:090		
Amended	1439	
As Amended	2268	1-10-92
902 KAR 13:100		
Repealed	1732	1-10-92
902 KAR 13:101	1732	1-10-92
902 KAR 13:110		
Amended	1440	
As Amended	2268	1-10-92
902 KAR 13:130	583	10-16-91
902 KAR 20:006		
Amended	806	
Amended	1347	1-10-92
902 KAR 20:016		
Amended	2027	
Amended	2565	
902 KAR 20:018		
Amended	811	10-16-91
902 KAR 20:036		
Amended	815	10-16-91
902 KAR 20:041		
Amended	820	10-16-91
902 KAR 20:066		
Amended	1233	11-25-91
902 KAR 20:072		
Amended	1236	11-25-91
902 KAR 20:106		
Amended	824	10-16-91
902 KAR 20:111		
Amended	827	10-16-91
902 KAR 20:117	1264	
Amended	1900	
As Amended	2535	
902 KAR 20:160		
Amended	828	10-16-91
902 KAR 20:200		
Amended	1443	1-10-92
902 KAR 20:220		
Amended	833	10-16-91
902 KAR 20:230		
Amended	839	10-16-91
902 KAR 20:240		
Amended	852	10-16-91
902 KAR 20:250		
Amended	862	10-16-91
902 KAR 20:260		
Amended	866	10-16-91
902 KAR 20:270		
Amended	1238	11-25-91
902 KAR 20:340	1733	
Died*		12-6-91
902 KAR 22:010	2501	
902 KAR 22:030	2502	
902 KAR 45:006	587	10-6-91
902 KAR 45:080		
Amended	869	10-16-91
902 KAR 45:100		
Amended	875	10-16-91
902 KAR 45:130		
Amended	881	10-16-91
902 KAR 45:140		
Amended	1445	1-10-92

Regulation	18 Ky.R Page No.	Effective Date
902 KAR 47:050		
Amended	1446	1-10-92
902 KAR 47:060		
Amended	1449	1-10-92
902 KAR 47:070		
Amended	1451	1-10-92
902 KAR 50:010		
Amended	1453	1-10-92
902 KAR 50:030		
Amended	1456	1-10-92
902 KAR 50:050		
Amended	1463	1-10-92
902 KAR 50:070		
Amended	1465	1-10-92
902 KAR 50:090		
Amended	1466	1-10-92
902 KAR 50:100		
Amended	1468	1-10-92
902 KAR 50:110		
Amended	1469	1-10-92
902 KAR 55:040		
Amended	1471	
902 KAR 55:045		
Amended	1472	
902 KAR 55:060		
Amended	1244	
As Amended	1890	11-25-91
902 KAR 55:075		
As Amended	703	8-21-91
902 KAR 100:005		
Amended	1473	1-10-92
902 KAR 100:010		
Amended	1474	1-10-92
902 KAR 100:012		
Amended	1484	1-10-92
902 KAR 100:015		
Amended	1485	1-10-92
902 KAR 100:022		
Amended	1487	1-10-92
902 KAR 100:025		
Amended	1496	1-10-92
902 KAR 100:030		
Amended	1506	1-10-92
902 KAR 100:035		
Amended	1508	1-10-92
902 KAR 100:045		
Amended	1510	1-10-92
902 KAR 100:052		
Amended	1513	1-10-92
902 KAR 100:058		
Amended	1515	1-10-92
902 KAR 100:060		
Amended	1522	1-10-92
902 KAR 100:065		
Amended	1523	1-10-92
902 KAR 100:070		
Amended	1525	1-10-92
902 KAR 100:080		
Amended	1536	1-10-92
902 KAR 100:085		
Amended	1537	1-10-92
902 KAR 100:090		
Amended	1539	1-10-92
902 KAR 100:105		
Amended	1542	1-10-92
902 KAR 100:110		
Amended	1544	1-10-92
902 KAR 100:115		
Amended	1546	1-10-92
902 KAR 100:120		
Amended	1550	1-10-92
902 KAR 100:125		
Amended	1554	1-10-92
902 KAR 100:130		
Amended	1557	1-10-92
902 KAR 100:136		
Amended	1559	1-10-92
902 KAR 100:137		
Amended	1563	1-10-92
902 KAR 100:140		
Amended	1569	1-10-92
902 KAR 100:145		
Amended	1570	1-10-92
902 KAR 100:150		
Amended	1572	1-10-92
902 KAR 100:155		
Amended	1574	1-10-92
902 KAR 100:160		
Amended	1577	1-10-92
902 KAR 100:165		
Amended	1578	1-10-92
902 KAR 100:170		
Amended	1581	1-10-92
902 KAR 105:010		
Amended	1586	1-10-92
902 KAR 105:020		
Amended	1588	1-10-92
902 KAR 105:030		
Amended	1590	1-10-92
902 KAR 105:040		
Amended	1591	1-10-92
902 KAR 105:060		
Amended	1593	1-10-92
902 KAR 105:070		
Amended	1594	1-10-92
903 KAR 5:270		
Amended	201	
Reprinted	608	9-6-91
903 KAR 5:390	592	10-6-91
904 KAR 2:006		
Amended	500	
As Amended	1047	10-6-91
904 KAR 2:015		
Amended	881	10-16-91
Amended	2441	
904 KAR 2:016		
As Amended	297	7-17-91
Amended	1245	11-25-91
904 KAR 2:110		
Amended	1595	1-10-92
904 KAR 2:116		
Amended	2039	
904 KAR 2:360	1272	
As Amended	1891	11-25-91
904 KAR 3:010		
Amended	886	10-16-91
Amended	2043	
904 KAR 3:020		
Amended	202	8-21-91
904 KAR 3:025	246	8-21-91
Amended	2446	
904 KAR 3:030		
Amended	891	10-16-91
904 KAR 3:035		
Amended	893	10-16-91
Amended	2047	
904 KAR 3:045		
Amended	897	10-16-91
904 KAR 3:050		
Amended	900	10-16-91
904 KAR 3:060		
Amended	902	10-16-91
904 KAR 3:070		
Amended	906	10-16-91
905 KAR 1:010		
Amended	1598	1-10-92

Regulation	18 Ky.R Page No.	Effective Date
905 KAR 1:150		
Amended	1601	1-10-92
905 KAR 1:170		
Amended	1602	1-10-92
905 KAR 1:210		
Amended	1603	1-10-92
905 KAR 1:320		
Amended	316	8-21-91
905 KAR 2:080	1734	1-10-92
905 KAR 3:030		
Amended	1609	1-10-92
905 KAR 5:060		
As Amended	52	
905 KAR 7:060		
Amended	1611	1-10-92
905 KAR 7:090		
Repealed	1740	1-10-92
905 KAR 7:091	1740	1-10-92
905 KAR 7:100		
Amended	1612	1-10-92
905 KAR 8:010		
Repealed	2291	1-10-92
905 KAR 8:020		
Repealed	2278	1-10-92
905 KAR 8:030		
Repealed	2281	1-10-92
905 KAR 8:040		
Repealed	2291	1-10-92
905 KAR 8:050		
Repealed	2291	1-10-92
905 KAR 8:060		
Repealed	2291	1-10-92
905 KAR 8:080		
Repealed	2291	1-10-92
905 KAR 8:090		
Amended	2051	
Amended	2574	
905 KAR 8:110		
Repealed	2278	1-10-92
905 KAR 8:120		
Repealed	2278	1-10-92
905 KAR 8:130		
Repealed	2278	1-10-92
905 KAR 8:150	593	10-6-91
905 KAR 8:160	1740	
As Amended	2271	1-10-92
905 KAR 8:170	1745	
As Amended	2275	1-10-92
905 KAR 8:180	1748	
As Amended	2278	1-10-92
905 KAR 8:190	1752	
As Amended	2281	1-10-92
905 KAR 8:200	1758	
As Amended	2286	1-10-92
905 KAR 8:210	2077	
Amended	2577	
905 KAR 8:220	1763	
As Amended	2291	1-10-92
906 KAR 1:010		
Amended	1613	1-10-92
906 KAR 1:020		
Repealed	1782	1-10-92
906 KAR 1:021	1782	1-10-92
906 KAR 1:030		
Amended	1615	1-10-92
906 KAR 1:090		
Recodified from 900 KAR 1:011		8-30-91
Amended	1616	1-10-92
906 KAR 1:100	2083	
Amended	2581	
907 KAR 1:002		
Amended	1618	1-10-92
907 KAR 1:004		
Amended	507	10-6-91
907 KAR 1:007		
Amended	1620	1-10-92
907 KAR 1:010		
Amended	519	10-6-91
907 KAR 1:011		
Amended	520	10-6-91
907 KAR 1:012		
Amended	525	10-6-91
907 KAR 1:013		
Amended	911	10-16-91
907 KAR 1:017		
As Amended	306	7-17-91
907 KAR 1:020		
Repealed	267	7-1-91
907 KAR 1:021	594	10-6-91
907 KAR 1:022		
Amended	526	10-16-91
907 KAR 1:025		
Amended	531	
Amended	1142	10-16-91
907 KAR 1:027		
Amended	538	10-6-91
907 KAR 1:031		
Amended	539	10-6-91
907 KAR 1:032		
Amended	1621	1-10-92
907 KAR 1:033		
Amended	1622	1-10-92
907 KAR 1:035		
Amended	1623	1-10-92
907 KAR 1:037		
Amended	1624	
Amended	2346	
907 KAR 1:038		
Amended	1625	1-10-92
907 KAR 1:040		
Amended	541	10-6-91
Amended	2729	
907 KAR 1:044		
Amended	915	10-16-91
907 KAR 1:045		
Amended	207	
Withdrawn		7-29-91
Amended	916	10-16-91
907 KAR 1:048		
Amended	1626	1-10-92
907 KAR 1:049		
Amended	1627	1-10-92
907 KAR 1:055		
Amended	543	10-6-91
907 KAR 1:061		
Amended	544	
Amended	1148	10-16-91
907 KAR 1:074		
Amended	1628	1-10-92
907 KAR 1:075		
Amended	1629	1-10-92
907 KAR 1:084		
Amended	1632	1-10-92
907 KAR 1:100		
Amended	1633	1-10-92
907 KAR 1:110		
Amended	1634	1-10-92
907 KAR 1:120		
Amended	1635	1-10 92
907 KAR 1:130		
Amended	1637	1-10-92
907 KAR 1:140		
Amended	2056	
Amended	2583	

Regulation	18 Ky.R Page No.	Effective Date
907 KAR 1:150		
Amended	2058	
Amended	2584	
907 KAR 1:160		
Amended	1640	
907 KAR 1:180		
Amended	1642	1-10-92
907 KAR 1:190		
Amended	1643	
Amended	2346	
907 KAR 1:200		
Amended	1644	1-10-92
907 KAR 1:220		
Amended	1644	1-10-92
907 KAR 1:260		
Amended	1646	1-10-92
907 KAR 1:270		
Amended	1647	1-10-92
907 KAR 1:300		
Amended	1649	1-10-92
907 KAR 1:320		
Amended	1650	1-10-92
907 KAR 1:340		
Amended	547	10-6-91
907 KAR 1:376		
Amended	2730	
907 KAR 1:410		
Amended	208	8-21-91
Amended	2731	
907 KAR 1:432		
Amended	2732	
907 KAR 1:480	595	10-6-91
907 KAR 1:485	596	10-6-91
907 KAR 1:490	598	10-6-91
907 KAR 1:495	599	10-6-91
907 KAR 1:505	600	10-6-91
907 KAR 1:510	601	10-6-91
907 KAR 1:515	602	
As Amended	1053	10-6-91
907 KAR 1:520	603	10-6-91
907 KAR 1:525	604	
As Amended	1054	10-6-91
907 KAR 1:530	606	10-6-91
907 KAR 1:535	966	10-16-91
907 KAR 1:540	1275	
Amended	1907	1-10-92
907 KAR 1:545	2085	
908 KAR 1:010		
Amended	2060	
908 KAR 1:020		
Amended	1652	1-10-92
908 KAR 1:030		
Amended	1654	1-10-92
908 KAR 1:040		
Amended	1655	1-10-92
908 KAR 1:050		
Amended	1656	1-10-92
908 KAR 1:060		
Amended	1658	1-10-92
908 KAR 1:080		
Amended	1660	1-10-92
908 KAR 1:090		
Amended	1661	1-10-92
908 KAR 1:100		
Amended	1663	1-10-92
908 KAR 1:110		
Amended	1664	1-10-92
908 KAR 1:120		
Amended	1665	1-10-92
908 KAR 1:130		
Amended	1666	1-10-92
908 KAR 1:140		
Amended	1667	1-10-92

Regulation	18 Ky.R Page No.	Effective Date
908 KAR 1:150		
Amended	1668	1-10-92
908 KAR 1:160		
Amended	1671	1-10-92
908 KAR 1:170		
Amended	1672	1-10-92
908 KAR 1:180		
Amended	1673	1-10-92
908 KAR 1:190		
Amended	1674	1-10-92
908 KAR 1:200		
Amended	1676	1-10-92
908 KAR 1:220		
Amended	1678	1-10-92
908 KAR 1:230		
Amended	1679	1-10-92
908 KAR 1:240		
Amended	1682	1-10-92
908 KAR 1:250		
Amended	1684	1-10-92
908 KAR 1:260		
Amended	1684	1-10-92
908 KAR 1:300	1782	1-10-92
908 KAR 1:310	2086	
Amended	2586	
908 KAR 3:010		
Amended	1685	1-10-92
908 KAR 3:020		
Amended	2062	
908 KAR 3:030		
Amended	1689	1-10-92
908 KAR 3:050		
Amended	2063	
908 KAR 3:060		
Amended	1690	1-10-92
908 KAR 3:080		
Amended	548	10-6-91
908 KAR 3:090		
Amended	549	10-6-91
908 KAR 3:100		
Amended	550	10-6-91
Amended	2064	
908 KAR 3:110		
Amended	551	10-6-91
Amended	2065	
908 KAR 3:120		
Amended	552	10-6-91
Amended	2066	
908 KAR 3:160		
Amended	553	10-6-91
908 KAR 3:180		
Amended	554	10-6-91
Amended	2067	

*Statement of Consideration not Filed within 15 Days Following Hearing, Regulation Dies (KRS 13A.280(2))

KRS SECTION	REGULATION		KRS SECTION	REGULATION	
Chapter 13A	906 KAR	1:021		200 KAR	6:040
15.070	500 KAR	8:010		200 KAR	7:010
16.245	105 KAR	1:070	Chapter 61	200 KAR	6:011
	105 KAR	1:150	61.510-61.705	105 KAR	1:140
16.505-16.652	105 KAR	1:140		105 KAR	1:160
	105 KAR	1:160		105 KAR	1:170
	105 KAR	1:170		105 KAR	1:180
	105 KAR	1:180		105 KAR	1:190
	105 KAR	1:190		105 KAR	1:200
	105 KAR	1:200		105 KAR	1:210
	105 KAR	1:210		105 KAR	1:215
	105 KAR	1:215		105 KAR	1:240
	105 KAR	1:240	61.552	105 KAR	1:150
16.596	105 KAR	1:220	61.555	105 KAR	1:070
17.210	815 KAR	46:010	61.592	105 KAR	1:130
18A.030	101 KAR	2:035	61.610	105 KAR	1:220
	101 KAR	2:045	61.637	105 KAR	1:230
18A.075	101 KAR	1:325	Chapter 64	109 KAR	12:020
18A.0751	101 KAR	1:325		109 KAR	12:030
18A.110	101 KAR	2:035		109 KAR	12:040
	101 KAR	2:045		109 KAR	12:050
18A.111	101 KAR	1:325	64.810	45 KAR	1:030
18A.120	101 KAR	2:045		45 KAR	1:040
18A.165	101 KAR	2:035		45 KAR	1:050
24A.190-24A.193	109 KAR	11:010	65.900-65.925	109 KAR	13:010
29A.180	109 KAR	11:020	78.510-78.852	105 KAR	1:140
39.800-39.990	106 KAR	1:081		105 KAR	1:160
	106 KAR	1:091		105 KAR	1:170
	106 KAR	1:101		105 KAR	1:180
	106 KAR	1:111		105 KAR	1:190
	106 KAR	1:121		105 KAR	1:200
	106 KAR	1:131		105 KAR	1:210
42.035	200 KAR	3:045		105 KAR	1:215
42.037	200 KAR	3:045		105 KAR	1:240
42.450-42.495	109 KAR	10:010	78.530-78.532	105 KAR	1:120
43.070	45 KAR	1:030	78.535	105 KAR	1:120
	45 KAR	1:040	78.545	105 KAR	1:070
	45 KAR	1:050		105 KAR	1:130
43.075	45 KAR	1:030		105 KAR	1:150
	45 KAR	1:040		105 KAR	1:220
	45 KAR	1:050	117.305	31 KAR	4:070
44.080	108 KAR	1:030	118.425	31 KAR	4:070
44.086	108 KAR	1:030	Chapter 121	801 KAR	2:010
44.090	108 KAR	1:030	136.392	815 KAR	46:010
Chapter 45	200 KAR	6:040	146.550	301 KAR	10:010
Chapter 45A	200 KAR	5:050	146.555	301 KAR	10:010
	200 KAR	5:076	146.560	301 KAR	10:010
	200 KAR	5:301	146.565	301 KAR	10:010
	200 KAR	5:304	146.570	301 KAR	10:010
	200 KAR	5:307	150.010	301 KAR	1:085
	200 KAR	5:310		301 KAR	2:044
	200 KAR	5:311		301 KAR	2:047
	200 KAR	5:312		301 KAR	2:140
	200 KAR	5:313		301 KAR	2:220
	200 KAR	5:315		301 KAR	2:250
	200 KAR	5:317	150.015	301 KAR	1:015
	200 KAR	5:330		301 KAR	1:075
	200 KAR	6:011		301 KAR	1:200
	200 KAR	7:010		301 KAR	2:044
45A.045	200 KAR	6:015		301 KAR	2:195
45A.080	200 KAR	5:306		301 KAR	2:220
45A.095	200 KAR	5:309		301 KAR	10:010
45A.190	200 KAR	5:305	150.025	301 KAR	1:015
45A.195	200 KAR	5:305		301 KAR	1:075
Chapter 47A	908 KAR	1:020		301 KAR	1:085
	908 KAR	1:160		301 KAR	1:200
Chapter 56	200 KAR	3:010		301 KAR	2:044

KRS SECTION	REGULATION
	301 KAR 2:047
	301 KAR 2:140
	301 KAR 2:195
	301 KAR 2:220
	301 KAR 2:250
	301 KAR 3:021
	301 KAR 10:010
150.092	301 KAR 2:047
	301 KAR 2:140
	301 KAR 2:250
150.110	301 KAR 1:085
150.170	301 KAR 1:075
	301 KAR 1:085
	301 KAR 1:200
	301 KAR 2:044
	301 KAR 2:047
	301 KAR 2:140
	301 KAR 2:220
	301 KAR 2:250
150.175	301 KAR 1:075
	301 KAR 1:085
	301 KAR 2:047
	301 KAR 2:140
	301 KAR 2:220
	301 KAR 2:250
	301 KAR 3:021
150.180	301 KAR 1:085
	301 KAR 2:047
	301 KAR 2:195
	301 KAR 2:250
150.183	301 KAR 2:195
150.190	301 KAR 1:085
150.225	301 KAR 3:021
150.235	301 KAR 1:075
	301 KAR 2:220
150.237	301 KAR 3:021
150.240	301 KAR 2:220
	301 KAR 3:021
150.250	301 KAR 10:010
150.280	301 KAR 3:021
150.290	301 KAR 2:195
	301 KAR 3:021
150.300	301 KAR 2:044
	301 KAR 2:047
	301 KAR 2:250
150.305	301 KAR 2:044
	301 KAR 2:140
	301 KAR 2:195
	301 KAR 2:220
	301 KAR 2:250
150.320	301 KAR 2:044
	301 KAR 2:140
	301 KAR 2:195
150.330	301 KAR 2:044
	301 KAR 2:140
	301 KAR 2:195
	301 KAR 2:220
150.340	301 KAR 2:044
	301 KAR 2:047
	301 KAR 2:220
	301 KAR 2:250
150.360	301 KAR 1:075
	301 KAR 2:044
	301 KAR 2:047
	301 KAR 2:140
	301 KAR 2:195
	301 KAR 2:220

KRS SECTION	REGULATION
	301 KAR 2:250
150.365	301 KAR 2:140
	301 KAR 2:250
150.370	301 KAR 2:047
	301 KAR 2:250
150.390	301 KAR 2:140
	301 KAR 2:250
150.399	301 KAR 2:047
	301 KAR 2:250
150.400	301 KAR 2:047
	301 KAR 2:250
150.410	301 KAR 2:047
	301 KAR 2:250
150.415	301 KAR 2:047
	301 KAR 2:250
150.416	301 KAR 2:047
	301 KAR 2:250
150.417	301 KAR 2:047
	301 KAR 2:250
150.440	301 KAR 1:075
150.445	301 KAR 1:075
150.470	301 KAR 1:075
	301 KAR 1:200
150.510	301 KAR 1:085
150.520	301 KAR 1:085
150.525	301 KAR 1:085
	301 KAR 3:021
150.600	301 KAR 2:220
150.603	301 KAR 2:044
	301 KAR 2:220
150.620	301 KAR 1:015
	301 KAR 10:010
150.625	301 KAR 1:015
150.630	301 KAR 2:220
150.660	301 KAR 3:021
150.990	301 KAR 1:015
	301 KAR 1:075
	301 KAR 1:085
	301 KAR 1:200
	301 KAR 2:047
	301 KAR 2:140
	301 KAR 2:220
	301 KAR 2:250
	301 KAR 3:021
151B.135	780 KAR 3:020
	784 KAR 1:020
151B.140	784 KAR 1:010
	784 KAR 1:020
156.016	101 KAR 2:035
156.031	702 KAR 5:080
	704 KAR 7:090
	705 KAR 3:011
156.033	705 KAR 3:011
156.035	704 KAR 7:090
156.070	701 KAR 1:001
	701 KAR 5:020
	702 KAR 7:065
156.132	701 KAR 5:050
156.160	702 KAR 3:250
	702 KAR 4:050
	702 KAR 5:030
	702 KAR 5:080
	704 KAR 3:410
	704 KAR 4:020
	707 KAR 1:150
156.210	701 KAR 5:050
156.495	704 KAR 7:060

KRS SECTION	REGULATION
156.611	704 KAR 15:091
157.200	707 KAR 1:054
157.220	707 KAR 1:054
157.224	707 KAR 1:054
157.226	702 KAR 3:250
	702 KAR 5:150
	707 KAR 1:150
157.230	707 KAR 1:054
157.3175	702 KAR 3:250
	702 KAR 5:150
	704 KAR 3:410
157.360	704 KAR 3:012
157.370	702 KAR 5:141
157.420	702 KAR 1:001
157.622	702 KAR 1:001
158.6453	704 KAR 3:006
158.6455	704 KAR 3:007
158.650-158.710	704 KAR 3:006
158.780	702 KAR 3:201
158.782	704 KAR 3:007
158.785	702 KAR 3:201
158.805	701 KAR 7:011
160.330	702 KAR 3:220
160.345	701 KAR 5:100
161.028	704 KAR 20:590
	704 KAR 20:600
161.030	704 KAR 20:590
	704 KAR 20:600
161.048	704 KAR 20:590
	704 KAR 20:600
161.049	704 KAR 20:590
	704 KAR 20:600
161.770	701 KAR 5:090
161.790	701 KAR 5:090
162.010	702 KAR 4:050
162.060	702 KAR 4:050
164.410	770 KAR 1:060
164.740	11 KAR 4:040
164.744	11 KAR 8:030
164.748	11 KAR 4:040
164.753	11 KAR 8:030
164.768	704 KAR 15:091
164A.300-164A.380	11 KAR 12:001
164A.410	740 KAR 1:030
	740 KAR 1:040
	740 KAR 1:090
164A.560	740 KAR 1:010
	770 KAR 1:010
	770 KAR 1:020
164A.565	740 KAR 1:010
	770 KAR 1:010
	770 KAR 1:020
164A.570	740 KAR 1:020
	770 KAR 1:030
164A.575	740 KAR 1:030
	770 KAR 1:020
	770 KAR 1:040
164A.580	740 KAR 1:050
164A.585	740 KAR 1:060
164A.590	740 KAR 1:060
164A.595	740 KAR 1:060
164A.600	740 KAR 1:060
164A.605	740 KAR 1:100
	770 KAR 1:050
164A.610	740 KAR 1:080
164A.620	740 KAR 1:090
	770 KAR 1:020
165A.450	783 KAR 1:030
167.210	707 KAR 1:040
167.220	707 KAR 1:040
174.450	601 KAR 40:010
	601 KAR 40:020
Chapter 186	601 KAR 2:010
	601 KAR 9:135
186.070	605 KAR 1:160
186.565	500 KAR 8:010
189.221	603 KAR 5:071
189.222	603 KAR 5:066
	603 KAR 5:070
	603 KAR 5:071
189.265	603 KAR 5:071
189.540	702 KAR 5:030
	702 KAR 5:080
Chapter 189A	908 KAR 1:310
189A.050	109 KAR 11:030
189A.103	500 KAR 8:010
	500 KAR 8:030
189A.300	500 KAR 8:020
189A.400-189A.460	601 KAR 12:060
190.010	605 KAR 1:050
190.010-190.080	605 KAR 1:030
190.010-190.990	605 KAR 1:160
190.030	605 KAR 1:050
190.035	605 KAR 1:050
190.040	605 KAR 1:090
190.058	605 KAR 1:010
	605 KAR 1:130
190.062	605 KAR 1:130
194.025	906 KAR 1:090
194.030	900 KAR 2:050
	900 KAR 2:060
	906 KAR 1:010
	906 KAR 1:090
194.040	906 KAR 1:090
194.050	902 KAR 105:060
	904 KAR 2:110
	904 KAR 2:116
	904 KAR 3:010
	904 KAR 3:020
	904 KAR 3:025
	904 KAR 3:030
	904 KAR 3:035
	904 KAR 3:045
	904 KAR 3:050
	904 KAR 3:060
	904 KAR 3:070
	906 KAR 1:020
	906 KAR 1:090
Chapter 196	501 KAR 6:020
	501 KAR 6:030
	501 KAR 6:040
	501 KAR 6:050
	501 KAR 6:060
	501 KAR 6:070
	501 KAR 6:080
	501 KAR 6:090
	501 KAR 6:130
	501 KAR 6:140
	501 KAR 6:150
	501 KAR 6:160
Chapter 197	501 KAR 6:020
	501 KAR 6:030
	501 KAR 6:040
770 KAR 1:060	
783 KAR 1:030	
707 KAR 1:040	
707 KAR 1:040	
601 KAR 40:010	
601 KAR 40:020	
601 KAR 2:010	
601 KAR 9:135	
605 KAR 1:160	
500 KAR 8:010	
603 KAR 5:071	
603 KAR 5:066	
603 KAR 5:070	
603 KAR 5:071	
603 KAR 5:071	
702 KAR 5:030	
702 KAR 5:080	
908 KAR 1:310	
109 KAR 11:030	
500 KAR 8:010	
500 KAR 8:030	
500 KAR 8:020	
601 KAR 12:060	
605 KAR 1:050	
605 KAR 1:030	
605 KAR 1:160	
605 KAR 1:050	
605 KAR 1:050	
605 KAR 1:090	
605 KAR 1:010	
605 KAR 1:130	
605 KAR 1:130	
906 KAR 1:090	
900 KAR 2:050	
900 KAR 2:060	
906 KAR 1:010	
906 KAR 1:090	
906 KAR 1:090	
902 KAR 105:060	
904 KAR 2:110	
904 KAR 2:116	
904 KAR 3:010	
904 KAR 3:020	
904 KAR 3:025	
904 KAR 3:030	
904 KAR 3:035	
904 KAR 3:045	
904 KAR 3:050	
904 KAR 3:060	
904 KAR 3:070	
906 KAR 1:020	
906 KAR 1:090	
501 KAR 6:020	
501 KAR 6:030	
501 KAR 6:040	
501 KAR 6:050	
501 KAR 6:060	
501 KAR 6:070	
501 KAR 6:080	
501 KAR 6:090	
501 KAR 6:130	
501 KAR 6:140	
501 KAR 6:150	
501 KAR 6:160	
501 KAR 6:020	
501 KAR 6:030	
501 KAR 6:040	

KRS SECTION	REGULATION
	501 KAR 6:050
	501 KAR 6:060
	501 KAR 6:070
	501 KAR 6:080
	501 KAR 6:090
	501 KAR 6:130
	501 KAR 6:140
	501 KAR 6:150
	501 KAR 6:160
Chapter 198B	815 KAR 7:010
	815 KAR 7:025
	815 KAR 7:080
	815 KAR 20:060
198B.040	815 KAR 7:070
198B.050	815 KAR 7:070
198B.090	815 KAR 7:070
198B.400-198B.540	815 KAR 4:010
199.420	905 KAR 3:030
199.470	905 KAR 1:010
199.471	905 KAR 1:010
199.472	905 KAR 1:010
199.473	905 KAR 1:010
199.480	905 KAR 1:010
199.520	905 KAR 1:010
199.572	905 KAR 1:010
199.645	905 KAR 1:210
199.892-199.896	905 KAR 2:080
200.460	902 KAR 4:080
200.460-200.490	902 KAR 4:070
Chapter 202A	905 KAR 7:100
	908 KAR 3:010
	908 KAR 3:080
	908 KAR 3:090
	908 KAR 3:100
	908 KAR 3:110
	908 KAR 3:120
	908 KAR 3:160
	908 KAR 3:180
202A.181	908 KAR 3:030
202A.201	908 KAR 3:020
Chapter 202B	908 KAR 3:010
	908 KAR 3:080
	908 KAR 3:090
	908 KAR 3:100
	908 KAR 3:110
	908 KAR 3:120
	908 KAR 3:160
	908 KAR 3:180
205.010	904 KAR 2:006
205.175	907 KAR 1:075
205.200	904 KAR 2:006
	904 KAR 2:016
205.201	905 KAR 8:160
	905 KAR 8:170
	905 KAR 8:180
	905 KAR 8:190
	905 KAR 8:200
	905 KAR 8:210
	905 KAR 8:220
205.203	905 KAR 8:160
	905 KAR 8:170
	905 KAR 8:190
	905 KAR 8:220
205.204	905 KAR 3:030
205.210	904 KAR 2:016
205.231	907 KAR 1:075
205.237	907 KAR 1:075
205.245	904 KAR 2:015
205.455-205.465	905 KAR 8:160
	905 KAR 8:170
	905 KAR 8:180
	905 KAR 8:190
	905 KAR 8:220
205.510-205.990	907 KAR 1:220
205.520	907 KAR 1:002
	907 KAR 1:004
	907 KAR 1:007
	907 KAR 1:010
	907 KAR 1:011
	907 KAR 1:012
	907 KAR 1:013
	907 KAR 1:022
	907 KAR 1:025
	907 KAR 1:027
	907 KAR 1:032
	907 KAR 1:033
	907 KAR 1:035
	907 KAR 1:037
	907 KAR 1:040
	907 KAR 1:044
	907 KAR 1:045
	907 KAR 1:048
	907 KAR 1:049
	907 KAR 1:055
	907 KAR 1:061
	907 KAR 1:074
	907 KAR 1:084
	907 KAR 1:100
	907 KAR 1:110
	907 KAR 1:120
	907 KAR 1:130
	907 KAR 1:140
	907 KAR 1:150
	907 KAR 1:160
	907 KAR 1:180
	907 KAR 1:190
	907 KAR 1:200
	907 KAR 1:260
	907 KAR 1:270
	907 KAR 1:300
	907 KAR 1:320
	907 KAR 1:340
	907 KAR 1:376
	907 KAR 1:410
	907 KAR 1:432
	907 KAR 1:480
	907 KAR 1:485
	907 KAR 1:490
	907 KAR 1:495
	907 KAR 1:505
	907 KAR 1:510
	907 KAR 1:515
	907 KAR 1:520
	907 KAR 1:525
	907 KAR 1:530
	907 KAR 1:535
	907 KAR 1:540
	907 KAR 1:545
205.560	907 KAR 1:021
	907 KAR 1:074
	907 KAR 1:120
	907 KAR 1:130
205.575	907 KAR 1:013
205.900-205.920	905 KAR 8:090

KRS SECTION	REGULATION
209.030	905 KAR 3:030
	905 KAR 8:210
Chapter 210	908 KAR 3:080
	908 KAR 3:090
	908 KAR 3:100
	908 KAR 3:110
	908 KAR 3:120
	908 KAR 3:160
	908 KAR 3:180
210.270	907 KAR 1:075
210.290	900 KAR 1:040
210.610-210.680	908 KAR 1:150
	908 KAR 1:160
	908 KAR 1:170
	908 KAR 1:180
	908 KAR 1:190
	908 KAR 1:200
	908 KAR 1:220
	908 KAR 1:230
	908 KAR 1:240
	908 KAR 1:250
	908 KAR 1:260
210.700-210.760	905 KAR 7:091
	908 KAR 3:050
	908 KAR 3:060
210.990	908 KAR 1:150
	908 KAR 1:160
	908 KAR 1:170
	908 KAR 1:180
	908 KAR 1:190
	908 KAR 1:200
	908 KAR 1:220
	908 KAR 1:230
	908 KAR 1:240
	908 KAR 1:250
211.090	902 KAR 4:010
211.170	902 KAR 8:030
211.180	902 KAR 4:010
	902 KAR 47:060
	902 KAR 47:070
211.350-211.380	902 KAR 10:110
	902 KAR 10:140
211.842-211.852	902 KAR 100:005
	902 KAR 100:010
	902 KAR 100:012
	902 KAR 100:015
	902 KAR 100:022
	902 KAR 100:025
	902 KAR 100:030
	902 KAR 100:035
	902 KAR 100:045
	902 KAR 100:052
	902 KAR 100:058
	902 KAR 100:060
	902 KAR 100:070
	902 KAR 100:080
	902 KAR 100:085
	902 KAR 100:090
	902 KAR 100:105
	902 KAR 100:110
	902 KAR 100:115
	902 KAR 100:120
	902 KAR 100:125
	902 KAR 100:130
	902 KAR 100:136
	902 KAR 100:137
	902 KAR 100:140
	902 KAR 100:145
	902 KAR 100:150
	902 KAR 100:155
	902 KAR 100:160
	902 KAR 100:165
	902 KAR 100:170
211.844-211.852	902 KAR 100:065
211.870	902 KAR 105:010
	902 KAR 105:020
	902 KAR 105:030
	902 KAR 105:040
	902 KAR 105:070
211.890	902 KAR 105:010
	902 KAR 105:020
	902 KAR 105:030
	902 KAR 105:040
	902 KAR 105:060
	902 KAR 105:070
211.900	902 KAR 4:090
211.901-211.905	902 KAR 45:050
211.905	902 KAR 4:090
211.960-211.968	902 KAR 13:010
	902 KAR 13:020
	902 KAR 13:040
	902 KAR 13:070
	902 KAR 13:080
	902 KAR 13:090
	902 KAR 13:110
	902 KAR 13:130
211.964	902 KAR 13:101
211.990	902 KAR 10:110
	902 KAR 10:140
	902 KAR 13:010
	902 KAR 13:020
	902 KAR 13:040
	902 KAR 13:070
	902 KAR 13:080
	902 KAR 13:090
	902 KAR 13:110
	902 KAR 13:130
	902 KAR 100:005
	902 KAR 100:010
	902 KAR 100:012
	902 KAR 100:015
	902 KAR 100:022
	902 KAR 100:025
	902 KAR 100:030
	902 KAR 100:035
	902 KAR 100:045
	902 KAR 100:052
	902 KAR 100:058
	902 KAR 100:060
	902 KAR 100:065
	902 KAR 100:070
	902 KAR 100:080
	902 KAR 100:085
	902 KAR 100:090
	902 KAR 100:105
	902 KAR 100:110
	902 KAR 100:115
	902 KAR 100:120
	902 KAR 100:125
	902 KAR 100:130
	902 KAR 100:136
	902 KAR 100:137
	902 KAR 100:140
	902 KAR 100:145

KRS SECTION	REGULATION
	902 KAR 100:150
	902 KAR 100:155
	902 KAR 100:160
	902 KAR 100:165
	902 KAR 100:170
211.993	902 KAR 105:010
	902 KAR 105:020
	902 KAR 105:030
	902 KAR 105:040
	902 KAR 105:070
211.994	902 KAR 4:090
	902 KAR 47:050
212.170	902 KAR 8:030
212.870	902 KAR 8:030
213.141	905 KAR 1:170
215.520-215.600	902 KAR 20:200
216.535	905 KAR 8:210
216.540-216.543	905 KAR 8:210
216.860	906 KAR 1:100
216.865	906 KAR 1:100
216B.900-216.925	902 KAR 22:010
	902 KAR 22:030
216B.010-216B.130	902 KAR 20:006
	902 KAR 20:016
	902 KAR 20:036
	902 KAR 20:066
	902 KAR 20:117
	902 KAR 20:340
216B.010-216B.131	902 KAR 20:018
	902 KAR 20:041
	902 KAR 20:072
	902 KAR 20:106
	902 KAR 20:111
	902 KAR 20:160
	902 KAR 20:200
	902 KAR 20:220
	902 KAR 20:230
	902 KAR 20:240
	902 KAR 20:250
	902 KAR 20:260
	902 KAR 20:270
216B.107	902 KAR 20:016
216B.300-216B.320	905 KAR 8:150
216B.990	902 KAR 20:006
	902 KAR 20:016
	902 KAR 20:018
	902 KAR 20:036
	902 KAR 20:041
	902 KAR 20:066
	902 KAR 20:072
	902 KAR 20:106
	902 KAR 20:111
	902 KAR 20:117
	902 KAR 20:160
	902 KAR 20:200
	902 KAR 20:220
	902 KAR 20:230
	902 KAR 20:240
	902 KAR 20:250
	902 KAR 20:260
	902 KAR 20:270
	902 KAR 20:340
	905 KAR 8:150
217.005-217.215	902 KAR 45:006
	902 KAR 45:080
	902 KAR 45:130
	902 KAR 50:090

KRS SECTION	REGULATION
217.005-217.285	902 KAR 45:140
217.025	902 KAR 50:010
217.801	902 KAR 45:050
217.808-217.812	902 KAR 45:100
217.990	902 KAR 45:050
	902 KAR 45:100
217.992	902 KAR 45:006
	902 KAR 45:080
	902 KAR 45:130
	902 KAR 45:140
	902 KAR 50:090
217C.010	902 KAR 50:050
	902 KAR 50:070
217C.010-217C.990	902 KAR 50:010
	902 KAR 50:030
	902 KAR 50:090
	902 KAR 50:100
	902 KAR 50:110
217C.040	902 KAR 50:070
217C.070	902 KAR 50:050
Chapter 218A	902 KAR 55:040
	902 KAR 55:045
	902 KAR 55:060
222.011-222.310	908 KAR 1:010
222.210-222.310	908 KAR 1:020
	908 KAR 1:030
	908 KAR 1:040
	908 KAR 1:050
	908 KAR 1:060
	908 KAR 1:080
	908 KAR 1:090
	908 KAR 1:100
	908 KAR 1:110
	908 KAR 1:120
	908 KAR 1:130
	908 KAR 1:140
222.460-222.475	908 KAR 1:300
222.990	908 KAR 1:010
	908 KAR 1:030
	908 KAR 1:040
	908 KAR 1:050
	908 KAR 1:060
	908 KAR 1:080
	908 KAR 1:090
	908 KAR 1:100
	908 KAR 1:110
	908 KAR 1:120
	908 KAR 1:130
	908 KAR 1:140
Chapter 223	401 KAR 8:010
	401 KAR 8:020
Chapter 224	401 KAR 5:031
	401 KAR 8:010
	401 KAR 8:020
	401 KAR 8:070
	401 KAR 8:150
	401 KAR 8:200
	401 KAR 50:012
224.005-224.110	401 KAR 48:050
224.033	401 KAR 31:060
	401 KAR 32:100
	401 KAR 34:230
	401 KAR 35:200
	401 KAR 35:220
	401 KAR 35:240
	401 KAR 37:100
224.060	401 KAR 34:230

KRS SECTION	REGULATION
224.071	401 KAR 37:100
	401 KAR 32:010
	401 KAR 34:230
	401 KAR 37:100
224.810	415 KAR 1:040
224.814	815 KAR 30:060
224.814-224.825	415 KAR 1:040
224.820	815 KAR 30:060
224.830-224.877	401 KAR 31:010
	401 KAR 31:030
	401 KAR 31:040
	401 KAR 31:060
	401 KAR 31:110
	401 KAR 32:010
	401 KAR 32:100
	401 KAR 34:230
	401 KAR 35:200
	401 KAR 35:220
	401 KAR 35:240
	401 KAR 37:100
	401 KAR 48:050
224.994	401 KAR 31:010
	401 KAR 31:030
	401 KAR 31:040
	401 KAR 31:060
	401 KAR 31:110
	401 KAR 32:010
	401 KAR 32:100
	401 KAR 34:230
	401 KAR 35:200
	401 KAR 35:220
	401 KAR 35:240
	401 KAR 37:100
	401 KAR 48:050
224.20-010	401 KAR 50:010
	401 KAR 50:047
	401 KAR 51:001
	401 KAR 59:001
	401 KAR 59:185
	401 KAR 59:190
	401 KAR 59:210
	401 KAR 59:212
	401 KAR 59:214
	401 KAR 59:225
	401 KAR 59:230
	401 KAR 59:240
	401 KAR 59:315
	401 KAR 61:001
	401 KAR 61:050
	401 KAR 61:090
	401 KAR 61:095
	401 KAR 61:100
	401 KAR 61:105
	401 KAR 61:110
	401 KAR 61:120
	401 KAR 61:122
	401 KAR 61:124
	401 KAR 61:125
	401 KAR 61:130
	401 KAR 61:132
	401 KAR 61:137
	401 KAR 61:150
	401 KAR 61:155
	401 KAR 61:160
	401 KAR 61:175
	401 KAR 63:001
	401 KAR 63:025

KRS SECTION	REGULATION
224.20-110	401 KAR 50:010
	401 KAR 50:047
	401 KAR 51:001
	401 KAR 59:001
	401 KAR 59:185
	401 KAR 59:190
	401 KAR 59:210
	401 KAR 59:212
	401 KAR 59:214
	401 KAR 59:225
	401 KAR 59:230
	401 KAR 59:240
	401 KAR 59:315
	401 KAR 61:001
	401 KAR 61:050
	401 KAR 61:090
	401 KAR 61:095
	401 KAR 61:100
	401 KAR 61:105
	401 KAR 61:110
	401 KAR 61:120
	401 KAR 61:122
	401 KAR 61:124
	401 KAR 61:125
	401 KAR 61:130
	401 KAR 61:132
	401 KAR 61:137
	401 KAR 61:150
	401 KAR 61:155
	401 KAR 61:160
	401 KAR 61:175
	401 KAR 63:001
	401 KAR 63:025
224.20-120	401 KAR 50:010
	401 KAR 50:047
	401 KAR 51:001
	401 KAR 59:001
	401 KAR 59:185
	401 KAR 59:190
	401 KAR 59:210
	401 KAR 59:212
	401 KAR 59:214
	401 KAR 59:225
	401 KAR 59:230
	401 KAR 59:240
	401 KAR 59:315
	401 KAR 61:001
	401 KAR 61:050
	401 KAR 61:090
	401 KAR 61:095
	401 KAR 61:100
	401 KAR 61:105
	401 KAR 61:110
	401 KAR 61:120
	401 KAR 61:122
	401 KAR 61:124
	401 KAR 61:125
	401 KAR 61:130
	401 KAR 61:132
	401 KAR 61:137
	401 KAR 61:150
	401 KAR 61:155
	401 KAR 61:160
	401 KAR 61:175
	401 KAR 63:001
	401 KAR 63:025
Chapter 227	815 KAR 10:045

KRS SECTION	REGULATION
227.550-227.660	815 KAR 25:010
227.990	815 KAR 25:010
230.210-230.360	810 KAR 1:001
	810 KAR 1:002
	810 KAR 1:003
	810 KAR 1:004
	810 KAR 1:005
	810 KAR 1:006
	810 KAR 1:007
	810 KAR 1:008
	810 KAR 1:009
	810 KAR 1:010
	810 KAR 1:011
	810 KAR 1:012
	810 KAR 1:013
	810 KAR 1:014
	810 KAR 1:015
	810 KAR 1:016
	810 KAR 1:017
	810 KAR 1:018
	810 KAR 1:019
	810 KAR 1:020
230.218	810 KAR 1:021
230.361	810 KAR 1:050
230.374	810 KAR 1:023
Chapter 236	815 KAR 15:020
244.130	804 KAR 1:100
246.650	302 KAR 45:010
246.660	302 KAR 45:010
Chapter 257	302 KAR 20:230
Chapter 278	807 KAR 5:001
	807 KAR 5:005
	807 KAR 5:006
	807 KAR 5:023
	807 KAR 5:066
Chapter 281	601 KAR 1:029
	601 KAR 1:030
	601 KAR 1:031
	601 KAR 1:040
	601 KAR 1:045
	601 KAR 1:116
	601 KAR 1:140
	601 KAR 1:180
	601 KAR 2:010
281.735	603 KAR 5:071
Chapter 292	808 KAR 10:010
	808 KAR 10:220
	808 KAR 10:260
	808 KAR 10:270
292.310	808 KAR 10:260
292.330	808 KAR 10:010
	808 KAR 10:260
292.340-292.390	808 KAR 10:220
	808 KAR 10:270
292.400	808 KAR 10:270
292.410	808 KAR 10:220
Chapter 304	405 KAR 10:200
304.2-110	806 KAR 3:150
304.3-200	806 KAR 3:160
304.3-240	806 KAR 3:160
	806 KAR 3:170
304.4-010	806 KAR 4:010
304.5-120	806 KAR 3:160
304.9-295	806 KAR 9:220
304.12-020	806 KAR 17:066
304.14-500-304.14-550	806 KAR 17:066
304.17-305	806 KAR 17:066

KRS SECTION	REGULATION
304.17-318	806 KAR 17:066
304.18-036	806 KAR 17:066
304.18-095	806 KAR 17:066
304.18-110	806 KAR 17:066
304.19-090	806 KAR 19:030
304.32-157	806 KAR 17:066
304.32-165	806 KAR 17:066
304.32-270	806 KAR 17:066
304.33-140	806 KAR 3:160
304.38-193	806 KAR 17:066
304.38-196	806 KAR 17:066
304.38-200	806 KAR 17:066
311.241-311.247	902 KAR 20:016
	902 KAR 20:250
311.530-311.620	201 KAR 9:031
	201 KAR 9:041
	201 KAR 9:175
311.622-311.644	902 KAR 20:340
311.900	201 KAR 9:300
311.900-311.928	201 KAR 9:305
311.970-311.978	902 KAR 20:340
311.990	201 KAR 9:031
	201 KAR 9:041
	201 KAR 9:175
	902 KAR 20:016
	902 KAR 20:250
	902 KAR 20:340
314.011	201 KAR 20:056
314.042	201 KAR 20:056
314.161	201 KAR 20:056
Chapter 315	201 KAR 2:105
	201 KAR 2:167
315.050	201 KAR 2:010
315.131	201 KAR 2:061
Chapter 318	815 KAR 20:020
	815 KAR 20:050
	815 KAR 20:060
	815 KAR 20:090
	815 KAR 20:130
322.180	201 KAR 18:131
322.190	201 KAR 18:131
322.200	201 KAR 18:131
322.210	201 KAR 18:131
322.220	201 KAR 18:131
322.250	201 KAR 18:131
322.320	201 KAR 18:131
323A.210	201 KAR 10:080
Chapter 324	201 KAR 11:230
324A.010	201 KAR 30:100
324A.015	201 KAR 30:110
	201 KAR 30:120
	201 KAR 30:130
324A.020	201 KAR 30:100
	201 KAR 30:110
	201 KAR 30:120
	201 KAR 30:130
324A.030	201 KAR 30:100
	201 KAR 30:110
	201 KAR 30:120
	201 KAR 30:130
324A.035	201 KAR 30:100
	201 KAR 30:110
	201 KAR 30:120
	201 KAR 30:130
324A.040	201 KAR 30:100
	201 KAR 30:110
	201 KAR 30:120

KRS SECTION	REGULATION
324A.045	201 KAR 30:130
	201 KAR 30:100
	201 KAR 30:110
	201 KAR 30:120
	201 KAR 30:130
324A.050	201 KAR 30:100
	201 KAR 30:110
	201 KAR 30:120
	201 KAR 30:130
324A.070	201 KAR 30:100
	201 KAR 30:110
	201 KAR 30:120
	201 KAR 30:130
324A.075	201 KAR 30:100
	201 KAR 30:110
	201 KAR 30:120
	201 KAR 30:130
327.040	201 KAR 22:053
	201 KAR 22:101
	201 KAR 22:110
	201 KAR 22:135
327.050	201 KAR 22:020
	201 KAR 22:040
	201 KAR 22:135
327.060	201 KAR 22:070
327.070	201 KAR 22:053
335.080	201 KAR 23:070
335.090	201 KAR 23:070
335.100	201 KAR 23:070
337.275	803 KAR 1:070
337.285	803 KAR 1:070
Chapter 338	803 KAR 2:015
	803 KAR 2:307
	803 KAR 2:318
	803 KAR 2:320
	803 KAR 2:403
	803 KAR 2:423
Chapter 340	906 KAR 1:030
Chapter 341	200 KAR 12:020
341.370	903 KAR 5:390
341.380	903 KAR 5:270
Chapter 342	803 KAR 25:011
	803 KAR 25:061
346.040	107 KAR 1:025
346.110	107 KAR 1:025
346.185	107 KAR 1:050
Chapter 350	405 KAR 7:001
	405 KAR 7:015
	405 KAR 7:021
	405 KAR 8:001
	405 KAR 10:001
	405 KAR 12:001
	405 KAR 16:001
	405 KAR 18:001
	405 KAR 20:001
	405 KAR 24:001
350.010	405 KAR 7:030
	405 KAR 7:035
350.020	405 KAR 8:010
	405 KAR 10:050
	405 KAR 10:200
	405 KAR 16:180
	405 KAR 16:190
	405 KAR 18:180
	405 KAR 18:190
350.028	405 KAR 7:030
	405 KAR 7:035
350.055	405 KAR 10:200
350.057	405 KAR 16:180
	405 KAR 18:180
	405 KAR 8:010
	405 KAR 7:030
	405 KAR 8:020
	405 KAR 20:010
350.060	405 KAR 7:030
	405 KAR 7:035
	405 KAR 8:010
	405 KAR 8:030
	405 KAR 8:040
	405 KAR 10:050
	405 KAR 10:200
350.062	405 KAR 10:200
350.064	405 KAR 10:050
	405 KAR 10:200
350.068	405 KAR 10:200
350.070	405 KAR 8:010
350.085	405 KAR 8:010
	405 KAR 10:200
350.090	405 KAR 8:010
350.093	405 KAR 10:050
	405 KAR 10:200
	405 KAR 16:190
	405 KAR 16:200
	405 KAR 16:210
	405 KAR 18:190
	405 KAR 18:200
	405 KAR 18:220
350.095	405 KAR 10:050
	405 KAR 10:200
	405 KAR 16:200
	405 KAR 16:210
	405 KAR 18:200
	405 KAR 18:220
350.100	405 KAR 10:200
	405 KAR 16:190
	405 KAR 16:200
	405 KAR 16:210
	405 KAR 18:190
	405 KAR 18:200
	405 KAR 18:220
350.110	405 KAR 10:050
350.113	405 KAR 10:200
350.130	405 KAR 8:010
	405 KAR 10:050
	405 KAR 10:200
350.135	405 KAR 8:010
	405 KAR 10:200
350.151	405 KAR 7:030
	405 KAR 7:035
	405 KAR 8:040
	405 KAR 10:050
	405 KAR 10:200
	405 KAR 18:180
	405 KAR 18:190
	405 KAR 18:200
	405 KAR 18:220
350.260	405 KAR 10:200
350.405	405 KAR 16:180
	405 KAR 16:190
	405 KAR 16:200
	405 KAR 16:210
	405 KAR 18:180
	405 KAR 18:190
	405 KAR 18:200

KRS SECTION	REGULATION
350.410	405 KAR 16:190
	405 KAR 16:200
	405 KAR 16:210
	405 KAR 18:190
	405 KAR 18:200
	405 KAR 18:220
350.420	405 KAR 16:200
	405 KAR 18:200
350.435	405 KAR 16:180
	405 KAR 16:200
	405 KAR 18:180
	405 KAR 18:200
350.450	405 KAR 8:010
	405 KAR 16:190
	405 KAR 16:210
	405 KAR 18:190
	405 KAR 18:220
350.465	405 KAR 7:030
	405 KAR 7:035
	405 KAR 7:080
	405 KAR 8:010
	405 KAR 8:030
	405 KAR 10:050
	405 KAR 10:200
	405 KAR 16:180
	405 KAR 16:190
	405 KAR 16:200
	405 KAR 16:210
	405 KAR 18:180
	405 KAR 18:190
	405 KAR 18:200
	405 KAR 18:220
	405 KAR 20:010
350.610	405 KAR 8:020
350.700	405 KAR 10:200
350.705	405 KAR 10:200
350.710	405 KAR 10:200
350.715	405 KAR 10:200
350.720	405 KAR 10:200
350.725	405 KAR 10:200
350.730	405 KAR 10:200
350.735	405 KAR 10:200
350.740	405 KAR 10:200
350.745	405 KAR 10:200
350.750	405 KAR 10:200
350.755	405 KAR 10:200
350.990	405 KAR 10:200
353.520	805 KAR 1:020
	805 KAR 1:120
	805 KAR 1:130
	805 KAR 1:140
353.590	805 KAR 1:050
Chapter 439	501 KAR 6:020
	501 KAR 6:030
	501 KAR 6:040
	501 KAR 6:050
	501 KAR 6:060
	501 KAR 6:070
	501 KAR 6:080
	501 KAR 6:090
	501 KAR 6:130
	501 KAR 6:140
	501 KAR 6:150
	501 KAR 6:160
600.020	905 KAR 1:150
605.080-605.110	905 KAR 7:060
	905 KAR 7:100
605.150	905 KAR 7:060
	905 KAR 7:100
615.030	905 KAR 1:010
620.030-620.040	905 KAR 1:150
620.180	905 KAR 1:150
1986 GA, HB 398	900 KAR 1:007
1990 GA, HJR 124	704 KAR 4:020
7 CFR 271	904 KAR 3:010
7 CFR 272	904 KAR 3:050
7 CFR 273	904 KAR 3:010
	904 KAR 3:020
	904 KAR 3:025
	904 KAR 3:030
	904 KAR 3:035
	904 KAR 3:050
	904 KAR 3:060
	904 KAR 3:070
7 CFR 274	904 KAR 3:045
7 CFR 657	405 KAR 7:001
	405 KAR 7:021
	405 KAR 8:001
	405 KAR 10:001
	405 KAR 16:001
	405 KAR 18:001
	405 KAR 20:001
8 CFR	904 KAR 2:110
20 CFR 416	904 KAR 2:015
21 CFR 113B	902 KAR 50:010
21 CFR 131,133,135,166	902 KAR 50:070
23 CFR 658	603 KAR 5:070
	603 KAR 5:071
27 CFR 55	405 KAR 8:010
29 CFR 1910	803 KAR 2:307
	803 KAR 2:318
	807 KAR 2:320
30 CFR	405 KAR 7:001
	405 KAR 7:021
	405 KAR 7:030
	405 KAR 7:035
	405 KAR 7:080
	405 KAR 8:001
	405 KAR 8:010
	405 KAR 8:020
	405 KAR 8:030
	405 KAR 8:040
	405 KAR 10:001
	405 KAR 10:200
	405 KAR 12:001
	405 KAR 16:001
	405 KAR 16:180
	405 KAR 16:190
	405 KAR 16:200
	405 KAR 16:210
	405 KAR 18:001
	405 KAR 18:180
	405 KAR 18:190
	405 KAR 18:200
	405 KAR 18:220
	405 KAR 20:001
	405 KAR 20:010
	405 KAR 24:001
34 CFR	904 KAR 2:110
40 CFR 51,52,60,61,81	401 KAR 51:017
40 CFR 81.318	401 KAR 51:017
	401 KAR 59:214
	401 KAR 59:225
	401 KAR 59:230

KRS SECTION	REGULATION
	401 KAR 59:240
	401 KAR 61:124
	401 KAR 61:132
	401 KAR 61:137
	401 KAR 61:150
	401 KAR 61:160
	401 KAR 61:175
40 CFR 136	405 KAR 10:001
40 CFR 141	401 KAR 8:010
	401 KAR 8:020
	401 KAR 8:070
	401 KAR 8:150
	401 KAR 8:200
40 CFR 142	401 KAR 8:020
	401 KAR 8:070
	401 KAR 8:150
40 CFR 143	401 KAR 8:070
40 CFR 261	401 KAR 31:060
	401 KAR 31:110
	401 KAR 37:100
45 CFR	904 KAR 2:006
	904 KAR 2:016
	904 KAR 2:360
	905 KAR 1:150
	905 KAR 2:080
	905 KAR 8:220
45 CFR 46.101-46.409	900 KAR 1:060
45 CFR 400	904 KAR 2:110
49 CFR Part 192	807 KAR 5:006
49 CFR 199	807 KAR 5:023
50 CFR	301 KAR 2:195
5 USC	905 KAR 8:220
12 USC 3331-3351	201 KAR 30:100
	201 KAR 30:110
	201 KAR 30:120
	201 KAR 30:130
16 USC	405 KAR 8:010
30 USC	405 KAR 7:001
	405 KAR 7:021
	405 KAR 7:030
	405 KAR 7:035
	405 KAR 7:080
	405 KAR 8:001
	405 KAR 8:010
	405 KAR 8:020
	405 KAR 8:030
	405 KAR 8:040
	405 KAR 10:001
	405 KAR 10:200
	405 KAR 12:001
	405 KAR 16:001
	405 KAR 16:180
	405 KAR 16:190
	405 KAR 16:200
	405 KAR 16:210
	405 KAR 18:001
	405 KAR 18:180
	405 KAR 18:190
	405 KAR 18:200
	405 KAR 18:220
	405 KAR 20:001
	405 KAR 20:010
	405 KAR 24:001
31 USC 7501-7507	45 KAR 1:050
42 USC	905 KAR 1:150
	905 KAR 8:160
	905 KAR 8:170
	905 KAR 8:180
	905 KAR 8:190
	905 KAR 8:200
	905 KAR 8:210
	905 KAR 8:220
42 USC 4321	401 KAR 51:017
42 USC 7401	401 KAR 51:017
42 USC 8621	904 KAR 2:116
42 USC 11001-11050	106 KAR 1:081
	106 KAR 1:091
42 USC 11432	704 KAR 7:090
49 USC 1674	807 KAR 5:023

SUBJECT INDEX

ADULT, TECHNICAL EDUCATION
Certified, Equivalent Personnel
Compensation plan; 780 KAR 3:020

AGRICULTURE
Ginseng
General provisions; 302 KAR 45:010
Livestock Sanitation
Fee basis schedule; 302 KAR 20:230

AIR QUALITY
Existing Source Standards
Automobile, truck surface coating; 401 KAR 61:090
Can surface coating; 401 KAR 61:125
Coil surface coating; 401 KAR 61:130
Definitions; 401 KAR 61:001
Dry cleaning systems; 401 KAR 61:160
Fabric, vinyl, and wurface coating; 401 KAR 61:120
Flat wood paneling; 401 KAR 61:124
Graphic arts, rotogravure, flexography; 401 KAR 61:122
Large appliance coating; 401 KAR 61:110
Magnet wire insulation; 401 KAR 61:100
Metal furniture coating; 401 KAR 61:105
Metal parts coating operations; 401 KAR 61:132
Perchloroethylene dry cleaning; 401 KAR 61:160
Petroleum liquid storage vessels; 401 KAR 61:050
Petroleum refinery leaks; 401 KAR 61:137
Pharmaceutical product operations; 401 KAR 61:150
Pneumatic rubber tire; 401 KAR 61:155
Solvent metal cleaning equipment; 401 KAR 61:095
Synthetic organic chemical, polymer manufacturing equipment; 401 KAR 61:175
General Procedures
Capture efficiency tests; 401 KAR 50:047
Definitions, abbreviations; 401 KAR 50:010
General application; 401 KAR 50:012
New Source Requirements; Nonattainment Areas
Definitions; 401 KAR 51:001
Significant deterioration; 401 KAR 51:017
New Source Standards
Definitions; 401 KAR 59:001
Dry cleaning systems; 401 KAR 59:240
Fabric, vinyl, paper coating; 401 KAR 59:210
Graphic arts, rotogravure, flexography; 401 KAR 59:212
Magnet wire operations; 401 KAR 59:190
Metal parts coating operations; 401 KAR 59:225
Miscellaneous parts coating; 401 KAR 59:225
Paneling coating operations; 401 KAR 59:214
Perchloroethylene dry cleaning; 401 KAR 59:240
Pharmaceutical product operations; 401 KAR 59:230
Solvent metal cleaning equipment; 401 KAR 59:185
Specific new sources; 401 KAR 59:315
Synthesized pharmaceutical product; 401 KAR 59:230
Performance, General Standards
Asphalt paving operations; 401 KAR 63:025
Definitions; 401 KAR 63:001

ALCOHOLIC BEVERAGE CONTROL
Advertising Distilled Spirits, Wine
General advertising practices; 804 KAR 1:100

AUDITOR OF PUBLIC ACCOUNTS
Sheriff's tax settlements audits; 45 KAR 1:030
County fee officials audits; 45 KAR 1:040
Fiscal courts audits; 45 KAR 1:050

BREATH ANALYSIS OPERATORS
Certification; 500 KAR 8:010 & E
Chemical analysis tests; 500 KAR 8:030 & E
Instruments; 500 KAR 8:010 & E

BUILDING CODE
(See Housing, Buildings and Construction)

CLAIMS BOARD
Claims filing, original signature; 108 KAR 1:030

COLLEGES, UNIVERSITIES
(See Individual University or Higher Education Assistance Authority)

CONTROLLED SUBSTANCES
(See Health Services)

CORRECTIONS
Facility Standards
Bell County Forestry Camp; 501 KAR 6:140
Cabinet manuals; 501 KAR 6:080
Cabinet policies; 501 KAR 6:020 & E
Correctional industries; 501 KAR 6:160
Correctional Institute for Women; 501 KAR 6:070
Eastern Kentucky Correctional Complex; 501 KAR 6:150 & E
Frankfort Career Development; 501 KAR 6:090
Kentucky State Penitentiary; 501 KAR 6:040
Kentucky State Reformatory; 501 KAR 6:030
Luckett Complex; 501 KAR 6:050
Northpoint Training Center; 501 KAR 6:060
Western Kentucky Correctional Complex; 501 KAR 6:130

CRIME VICTIMS COMPENSATION BOARD
Attorneys fees prohibited; 107 KAR 1:025
Prorating awards; 107 KAR 1:050

DISASTER, EMERGENCY SERVICES
(See Military Affairs)

DISTRICT SUPPORT SERVICES (EDUCATION)
Facilities Management
Building sites; 702 KAR 4:050
General Administration
School facilities manual; 702 KAR 1:001 & E
Pupil Transportation
Bus driver qualifications; 702 KAR 5:080
Preschool children; 702 KAR 5:150
Repealer; 702 KAR 5:141
Superintendent responsibilities; 702 KAR 5:030
School District Finance
Management assistance program; 702 KAR 3:201
Preschool grant allocation; 702 KAR 3:250
School fees waiver; 702 KAR 3:220 & E
Terms, Attendance, Operation
High school interscholastic athletics, agent; 702 KAR 7:065

EDUCATION AND HUMANITIES CABINET
Chief State School Officer's Office
Hearing officer; 701 KAR 5:020
School-based decision making; 701 KAR 5:100
Summary hearing procedure; 701 KAR 5:050
Teacher disciplinary hearing; 701 KAR 5:090 & E

District Support Services
Facilities management; 702 KAR Chapter 4
General administration; 702 KAR Chapter 1
Pupil transportation; 702 KAR Chapter 5
School district finance; 702 KAR Chapter 3
Terms, attendance, operation; 702 KAR Chapter 7
Educational Innovation Incentive Committee
Repealer; 701 KAR 7:011
Exceptional children; 707 KAR Chapter 1
Learning Programs Development
Education professional standards; 704 KAR Chapter 20
Health, P.E. programs; 704 KAR Chapter 4
Instructional services; 704 KAR Chapter 3
Student services; 704 KAR Chapter 7
Teacher education; 704 KAR Chapter 15
Planning
Repealer; 701 KAR 1:001
Special Instructional Services
Facilities, equipment; 705 KAR Chapter 3

ELECTIONS BOARD
Forms, Procedures
Recanvass; 31 KAR 4:070

ELECTION FINANCE
(See Registry of Election Finance)

EMERGENCY MEDICAL TECHNICIANS
(See Health Services)

EMPLOYEES, STATE
(See also Personnel)
Personnel Rules
Board; 101 KAR Chapter 1
Classified; 101 KAR Chapter 2
Retirement; 105 KAR Chapter 1

EMPLOYMENT SERVICES
Unemployment Insurance
Maximum weekly benefit rate; 903 KAR 5:270
Workforce reduction; 903 KAR 5:390

ENGINEERS, LAND SURVEYORS
Disciplinary, grievance procedure; 201 KAR 18:131

ENVIRONMENTAL PROTECTION
(See Natural Resources & Environmental Protection)

EXCEPTIONAL CHILDREN PROGRAMS
Deaf-blind; tuition, support; 707 KAR 1:040
Disabled children preschool; 707 KAR 1:150
Emotional-behavioral disability; 707 KAR 1:054

FAMILY HEALTH CARE PROVIDERS BOARD
(See Human Resources)

FINANCE, ADMINISTRATION CABINET
Buildings and Grounds
Mansions monthly meal charges; 200 KAR 3:045
Vehicle parking, traffic control; 200 KAR 3:010
Engineering
Securities substitution for retainage; 200 KAR 7:010
Personnel
Unemployment insurance payments; 200 KAR 12:020
Property
Flood plain management; 200 KAR 6:040
Real property inventories; 200 KAR 6:015
Repealer; 200 KAR 6:011
Purchasing
Competitive sealed bidding; 200 KAR 5:306
Competitively negotiated contracts; 200 KAR 5:307
Conditions for bidding; 200 KAR 5:313
Contract modifications; 200 KAR 5:311
Contract termination; 200 KAR 5:312
Cost principles; 200 KAR 5:317
Minimum recycled content; 200 KAR 5:330 & E
Multiple contracts; 200 KAR 5:310
Noncompetitive negotiations; 200 KAR 5:309
Performance bonds, forms, payments; 200 KAR 5:305
Political subdivision central purchasing; 200 KAR 5:050
Purchasing authority delegation; 200 KAR 5:301
Small, small minority business set asides; 200 KAR 5:076
Source list application; 200 KAR 5:304

FINANCIAL INSTITUTIONS
Securities
Application, registration; 808 KAR 10:010
CBOE; 808 KAR 10:270
NASDAQ/NMS exemption; 808 KAR 10:220
Public security adviser; 808 KAR 10:260

FISH AND WILDLIFE RESOURCES
Fish
Angling, seasons, limits; 301 KAR 1:200
Boats, outboard motors; 301 KAR 1:015
Gigging, grabbling, snagging, tickling, noodling; 301 KAR 1:075
Mussel shell harvesting; 301 KAR 1:085
Game
Migratory bird hunting; 301 KAR 2:220 & E
Migratory wildlife; 301 KAR 2:044 & E
Raptor propagation, falconry; 301 KAR 2:195
Seasons, limits, small game; 301 KAR 2:250
Specified areas; 301 KAR 2:047
Wild turkey seasons; 301 KAR 2:140
Heritage Land Conservation Fund
Board; 301 KAR 10:010
Hunting, Fishing
License fees; 301 KAR 3:021

FOOD, COSMETICS
(See Health Services)

HANDICAPPED CHILDREN COMMISSION
Handicapped children's services; 902 KAR 4:070
Disabled children's program; 902 KAR 4:080

HAZARDOUS SUBSTANCES
(See Health Services)

HEALTH SERVICES
Controlled Substances
Distribution without licenses; 902 KAR 55:060
Over-the-counter exemptions; 902 KAR 55:040
Prescription preparation exempt; 902 KAR 55:045
EMTs
Applicants training; 902 KAR 13:020
Authorized procedures; 902 KAR 13:080
Definitions; 902 KAR 13:010
Disciplinary actions; 902 KAR 13:090
EMT-first responder; 902 KAR 13:110
Exemptions; 902 KAR 13:040
Instructors, trainers; 902 KAR 13:070
Peripheral I.V. infusion; 902 KAR 13:130
Repealer; 902 KAR 13:101

Food, Cosmetics
Bed and breakfast; 902 KAR 45:006
Inspector's manual; 902 KAR 45:130
Retail food programs; 902 KAR 45:140
Salvage; 902 KAR 45:080
Vending machines; 902 KAR 45:100
Hazardous Substances
Flammable fabrics; 902 KAR 47:070
Lead-containing products ban; 902 KAR 47:050
Toy, children's products safety; 902 KAR 47:060
Health Services and Facilities
Ambulatory care clinics; 902 KAR 20:072
Ambulatory surgical center; 902 KAR 20:106
Certificate of need process; 902 KAR 20:006
Chemical dependency treatment; 902 KAR 20:160
Comprehensive physical rehabilitation hospital; 902 KAR 20:230; 902 KAR 20:240
Day health care; 902 KAR 20:066
Dual licensure hospitals; 902 KAR 20:220
Family care homes; 902 KAR 20:041
Ground transportation services; 902 KAR 20:117
Hospitals; 902 KAR 20:016
Life-prolonging treatment, withholding, withdrawal; 902 KAR 20:340
Medical detoxification services; 902 KAR 20:111
Mobile health services; 902 KAR 20:270
Personal care homes; 902 KAR 20:036
Renal dialysis facilities; 902 KAR 20:018
Special health clinics; 902 KAR 20:260
Specialized medical technology; 902 KAR 20:250
Tuberculosis testing, long-term care; 902 KAR 20:200
Local Health Departments
Merit system; 902 KAR 8:030
Maternal and Child Health
Lay-midwifery; 902 KAR 4:010
Lead poisoning prevention; 902 KAR 4:090
Milk and Milk Products
Definitions; 902 KAR 50:010
Farm manufacturing; 902 KAR 50:030
Grade A milk sanitation; 902 KAR 50:100
Grade A milk standards; 902 KAR 50:110
Manufacturing plants; 902 KAR 50:050
Milk adulteration; 902 KAR 50:090
Standards of identity; 902 KAR 50:070
Radiation Operators Certification
Curricula; 902 KAR 105:030
Definitions; 902 KAR 105:010
General requirements; 902 KAR 105:020
Medical, osteopathic, chiropractic supervision; 902 KAR 105:040
Podiatrist supervision; 902 KAR 105:060
Violations, enforcements; 902 KAR 105:070
Radiology
Air, water concentrations; 902 KAR 100:025
Broad license limits; 902 KAR 100:090
Broad scope licenses; 902 KAR 100:052
Cabinet systems; 902 KAR 100:145
Definitions; 902 KAR 100:010
Dental; 902 KAR 100:130
Employees notices, reports, instructions; 902 KAR 100:165
Exempt concentrations; 902 KAR 100:085
Exempt quantities; 902 KAR 100:080
Exemptions; 902 KAR 100:045
Fee schedule; 902 KAR 100:012
General applicability; 902 KAR 100:005
General requirements; 902 KAR 100:015
Land disposal licensure; 902 KAR 100:022
Leak testing; 902 KAR 100:060
Particle accelerator; 902 KAR 100:155
Plan review; 902 KAR 100:160
Posting, disposal requirements; 902 KAR 100:030
Proceedings; 902 KAR 100:170
Radiography general diagnostic; 902 KAR 100:120
Receiving material, special form test; 902 KAR 100:035
Reciprocal recognition; 902 KAR 100:065
Specific licenses; 902 KAR 100:058
Therapeutic system above 1 MeV; 902 KAR 100:137
Therapeutic system below 1 MeV; 902 KAR 100:136
Transportation; 902 KAR 100:070
Veterinarians; 902 KAR 100:140
X-rays, diagnostic; 902 KAR 100:115
X-rays, fluoroscopic; 902 KAR 100:125
X-rays, general; 902 KAR 100:105
X-ray, microscopic analytic; 902 KAR 100:150
X-ray registration; 902 KAR 100:110
Sanitation
On-site sewage disposal, standard; 902 KAR 10:140
Permits, on-site sewage disposal; 902 KAR 10:110
Public restrooms; 902 KAR 10:010

HERITAGE LAND CONSERVATION FUND
(See Fish and Wildlife)

HIGHER EDUCATION ASSISTANCE AUTHORITY
Authority
Institution participation requirements; 11 KAR 4:040
Educational Savings Plan Trust
Repealer; 11 KAR 12:001
Teacher Scholarship/Loan Program
Teacher scholarships; 11 KAR 8:030

HIGHWAYS
Traffic
Bus dimension limits; 603 KAR 5:071
Truck weight limits; 603 KAR 5:066
Vehicle dimension limits; 603 KAR 5:070

HOSPITALS
(See Health Services)

HOUSING, BUILDINGS & CONSTRUCTION
Boilers, Pressure Vessels
Administrative procedures; 815 KAR 15:020
Elevator Safety
Elevators, dumbwaiters, escalators, moving walks; 815 KAR 4:010
Hazardous Materials
Underground petroleum storage tank contractors; 815 KAR 30:060
Kentucky Building Code
Administration, enforcement; 815 KAR 7:010
Code; 815 KAR 7:025
Inspectors; 815 KAR 7:070
Sprinkler contractors; 815 KAR 7:080
Mobile Homes, Recreation Vehicles
Mobile homes; 815 KAR 25:010
Plumbing
House sewers, storm water piping; 815 KAR 20:130
Installation permits; 815 KAR 20:050
Material quality, weight; 815 KAR 20:060
Parts or materials list; 815 KAR 20:020
Soil, waste, vent systems; 815 KAR 20:090
Standards of Safety
Public service station aboveground tanks; 815 KAR 10:045
Volunteer Fire Department Aid Fund
Aid; 815 KAR 46:010

HUMAN RESOURCES
Administration
Guardianship responsibilities; 900 KAR 1:040
Human subject protection; 900 KAR 1:060
Repealer; 900 KAR 1:007
Employment Services
Unemployment insurance; 903 KAR Chapter 5
Family Health Care Providers
Board; 902 KAR 22:010 & E
Midlevel practitioner; 902 KAR 22:030 & E
Handicapped children commission; 902 KAR Chapter 4
Health Services
Controlled substances; 902 KAR Chapter 55
EMTs; 902 KAR Chapter 13
Food, cosmetics; 902 KAR Chapter 45
Hazardous substances; 902 KAR Chapter 47
Health services, facilities; 902 KAR Chapter 20
Local health departments; 902 KAR Chapter 8
Maternal, child health; 902 KAR Chapter 4
Milk and milk products; 902 KAR Chapter 50
Radiation operators; 902 KAR Chapter 105
Radiology; 902 KAR Chapter 100
Sanitation; 902 KAR Chapter 10
Inspector General
Employment agency hearings; 906 KAR 1:030
Nurse aide, abuse registry, hearing procedure; 906 KAR 1:100
Policies, procedures; 906 KAR 1:010
Postaudit appeal; 906 KAR 1:090
Repealer; 906 KAR 1:021
Long-term care; 900 KAR Chapter 2
Medicaid services; 907 KAR Chapter 1
Mental Health, Mental Retardation
Institutional care; 908 KAR Chapter 3
Substance abuse; 908 KAR Chapter 1
Social Insurance
Food Stamp Program; 904 KAR Chapter 3
Public assistance; 904 KAR Chapter 2
Social Services
Aging services; 905 KAR Chapter 8
Block grants; 905 KAR Chapter 3
Child welfare; 905 KAR Chapter 1
Children residential service; 905 KAR Chapter 7
Day care; 905 KAR Chapter 2

INSPECTOR GENERAL (HUMAN RESOURCES)
(See Human Resources)

INSURANCE
Agents, Consultants, Solicitors, Adjusters
Agent continuing education; 806 KAR 9:220
Authorization of Insurers
Annual audited financial reports; 806 KAR 3:170
Hazardous financial condition insurer standards; 806 KAR 3:150
Life reinsurance agreements; 806 KAR 3:160
Credit Life Insurance, Health Insurance
Refunds, unearned premium; 806 KAR 19:030
Fees and Taxes
Department fees; 806 KAR 4:010
Health Insurance Contracts
Medicare supplement; 806 KAR 17:066 & E
Investments
Medium grade, lower grade obligations; 806 KAR 7:100

JUSTICE
Breath analysis operators; 500 KAR Chapter 8

LABOR
Occupational safety, health; 803 KAR Chapter 2
Workplace standards, wages and hours; 803 KAR Chapter 1

LAND SURVEYORS
(See Engineers, Land Surveyors)

LANDSCAPE ARCHITECTS
Continuing education; 201 KAR 10:080

LEARNING PROGRAMS DEVELOPMENT
Education Professional Standards Board
Alternative Training Program
Middle, secondary teachers; 704 KAR 20:590
Teacher certification; 704 KAR 20:600
Health, P.E. Programs
Comprehensive school health; 704 KAR 4:020
Instructional Services
Annual performance reports; 704 KAR 3:006 & E
Distinguished educator program; 704 KAR 3:007
Preschool education, 4-year olds; 704 KAR 3:410
Repealer; 704 KAR 3:012
Student Services
Homeless children education; 704 KAR 7:090
Missing school children program; 704 KAR 7:060
Teacher Education
Repealer; 704 KAR 15:091

LITERACY COMMISSION
Adult program fund; 784 KAR 1:010
Adult program plan; 784 KAR 1:020

LIVESTOCK SANITATIONS
Fee basis schedule; 302 KAR 20:230

LOCAL GOVERNMENT
Accounts
Driving under the influence service fee; 109 KAR 11:030
Reimbursements
Law enforcement officers; 109 KAR 11:020
Local courts; 109 KAR 11:010
Advancements to Sheriffs
Application form; 109 KAR 12:020
Initial advancement; 109 KAR 12:030
Refunding procedure; 109 KAR 12:050
Subsequent advancements; 109 KAR 12:040
Policy and Management
Economic assistance fund grants; 109 KAR 10:010
Uniform Financial Information Report
Report; 109 KAR 13:010 & E

LONG-TERM CARE
Hearings; 900 KAR 2:060
Transfer, discharge rights; 900 KAR 2:050

MATERNAL AND CHILD HEALTH
(See Health Services)

MEDICAID SERVICES
AIS/MR; 907 KAR 1:140 & E
AIS/MR payments; 907 KAR 1:150 & E
Alternative birth centers; 907 KAR 1:180; 907 KAR 1:190
Benefit coordination; 907 KAR 1:260
Claims processing; 907 KAR 1:074
Definitions; 907 KAR 1:002
Dental; 907 KAR 1:027 & E
Drug payments; 907 KAR 1:021 & E

Family planning; 907 KAR 1:048; 907 KAR 1:049
Federally-qualified health center; 907 KAR 1:055
Health insuring organization; 907 KAR 1:120; 907 KAR 1:130
Hearing, vision services; 907 KAR 1:038
HICAP; 907 KAR 1:540 & E
Home, community based services; 907 KAR 1:160; 907 KAR 1:432
Home health; 907 KAR 1:031
Hospice; 907 KAR 1:340
Hospital inpatient services; 907 KAR 1:013 & E
Hospital services manual; 907 KAR 1:376
Inpatient hospitals; 907 KAR 1:012
KenPAC; 907 KAR 1:320
Medical assistance; 907 KAR 1:007
Medical assistance out-of-state; 907 KAR 1:084
Medical transportation; 907 KAR 1:061
Medically needy; 907 KAR 1:004
Mental health centers; 907 KAR 1:044 & E; 907 KAR 1:045 & E
Mentally retarded, hearing, appeal; 907 KAR 1:075
Mentally retarded services; 907 KAR 1:022; 907 KAR 1:025
Nurse anesthetists; 907 KAR 1:200
Nurse-midwife; 907 KAR 1:100
Nursing facility services, hospital-furnished; 907 KAR 1:037
Nursing facility services manual; 907 KAR 1:545
Overpayment recoupment; 907 KAR 1:110
Payment withholding; 907 KAR 1:300
Pediatric facility dual license; 907 KAR 1:032; 907 KAR 1:033
Physician services; 907 KAR 1:010 & E
Podiatry services; 907 KAR 1:270
Prepaid health plan; 907 KAR 1:120; 907 KAR 1:130
Primary care centers; 907 KAR 1:055
Provider participation, appeals; 907 KAR 1:220
Psychiatric residential treatment; 907 KAR 1:505 & E; 907 KAR 1:510 & E
Screening services; 907 KAR 1:035
Targeted case management services:
Chronic mental illness, adult; 907 KAR 1:515 & E; 907 KAR 1:520 & E
Severely emotionally disturbed children; 907 KAR 1:525 & E; 907 KAR 1:530 & E
Tax assessment:
Dentists; 907 KAR 1:485 & E
Mental health centers; 907 KAR 1:535 & E
Optometrists; 907 KAR 1:490 & E
Pharmacies; 907 KAR 1:495 & E
Physicians; 907 KAR 1:480 & E
Technical eligibility; 907 KAR 1:011
Vision care; 907 KAR 1:040 & E
Vision services manual; 907 KAR 1:410

MEDICAL LICENSURE BOARD
Athletic trainer certification; 201 KAR 9:305
Examinations; 201 KAR 9:031
Fee schedule; 201 KAR 9:041
Interpretation of KRS 311.900; 201 KAR 9:300
Physician assistants; 201 KAR 9:175

MENTAL HEALTH, MENTAL RETARDATION SERVICES
Institutional Care
Central State; 908 KAR 3:110
Central State ICF-MR; 908 KAR 3:090
Convalescent patient status; 908 KAR 3:030
Correctional Psychiatric Center; 908 KAR 3:160
Eastern State; 908 KAR 3:100
Hazelwood; 908 KAR 3:080
"Means test"; 908 KAR 3:060
Oakwood; 908 KAR 3:180
Patient Liability Act per diem rate; 908 KAR 3:050
Patient's rights; 908 KAR 3:010
Penal institution inmates; 908 KAR 3:020
Western State; 908 KAR 3:120
Substance Abuse
Drug Abuse Treatment and Education
Administration, organization; 908 KAR 1:170
Client's rights; 908 KAR 1:200
Communication centers; 908 KAR 1:260
Definitions; 908 KAR 1:150
Educational information center; 908 KAR 1:250
General program operations; 908 KAR 1:220
Licensing procedures; 908 KAR 1:160
Nonresidential day care; 908 KAR 1:240
Personnel policies; 908 KAR 1:180
Program evaluation; 908 KAR 1:300
Quality assurance; 908 KAR 1:190
Residential rehabilitation; 908 KAR 1:230
DUI facilities, programs; 908 KAR 1:310 & E
Nonmedical Alcohol Treatment and Education
Administration, organization; 908 KAR 1:030
Client's rights; 908 KAR 1:060
Definitions; 908 KAR 1:010
Detoxification; 908 KAR 1:090
Education; 908 KAR 1:140
General program operations; 908 KAR 1:080
Intensive outpatient treatment; 908 KAR 1:130
Licensing procedures; 908 KAR 1:020
Outpatient treatment; 908 KAR 1:120
Personnel policies; 908 KAR 1:040
Quality assurance; 908 KAR 1:050
Residential transition; 908 KAR 1:110
Residential treatment; 908 KAR 1:100

MILITARY AFFAIRS
Disaster, Emergency Services
Emergency Response Commission
Fee system requirements; 106 KAR 1:081
Grant distribution formula; 106 KAR 1:121
Grant review committee; 106 KAR 1:111
Grant penalty assessment, hearings; 106 KAR 1:131
Local emergency planning committees; 106 KAR 1:092
State agencies; 106 KAR 1:101

MILK AND MILK PRODUCTS
(See Health Services)

MINES AND MINERALS
Oil and Gas
Deep wells; 805 KAR 1:130
Directional, horizontal wells; 805 KAR 1:140
Freshwater zone protection; 805 KAR 1:020
Surety bond requirements, cancellation; 805 KAR 1:050

MOBILE HOMES
(See Housing, Buildings and Construction)

MOTOR VEHICLE COMMISSION
Applications; 605 KAR 1:030
Business names; 605 KAR 1:090
Component manufacturers; 605 KAR 1:160
Dealer, salesman; 605 KAR 1:050
Meetings; 605 KAR 1:010
Procedures; 605 KAR 1:130

NATURAL RESOURCES, ENVIRONMENTAL PROTECTION
Environmental Protection
Air quality; 401 KAR Chapters 50-61
Hazardous substances; 400 KAR 1:070
Surface mining; 405 KAR Chapters 7-20
Waste management; 401 Chapters 31-48
Water; 401 KAR Chapters 5, 8

NURSING BOARD
Advanced registered nurse practitioner; 201 KAR 20:056

OCCUPATIONAL SAFETY, HEALTH
General industry standards; 803 KAR 2:015
29 CFR Part 1910; 803 KAR 2:307 to 803 KAR 2:320
29 CFR Part 1926; 803 KAR 2:403 to 803 KAR 2:423

OCCUPATIONS AND PROFESSIONS
Engineers, land surveyors; 201 KAR Chapter 18
Landscape architects; 201 KAR Chapter 10
Medical licensure; 201 KAR Chapter 9
Nursing; 201 KAR Chapter 20
Pharmacy; 201 KAR Chapter 2
Physical therapy; 201 KAR Chapter 22
Real estate appraisers; 201 KAR Chapter 30
Social work examiners; 201 KAR 23:070

PERSONNEL
Board
Probationary period; 101 KAR 1:325
Classified
Application, qualification, examination; 101 KAR 2:045
Compensation plan, pay incentive; 101 KAR 2:035 & E

PETROLEUM STORAGE TANK ENVIRONMENTAL ASSURANCE FUND COMMISSION
Reimbursement guidelines; 415 KAR 1:040 & E

PHARMACY
Complaint procedures; 201 KAR 2:061
Facsimile prescription orders; 201 KAR 2:167
Drug manufacturer, wholesalers; 201 KAR 2:105
Schools approved by board; 201 KAR 2:010

PHYSICAL THERAPY
Assistant certification; 201 KAR 22:101
Assistant renewal; 201 KAR 22:110
Code of standards; 201 KAR 22:053
Fees; 201 KAR 22:135
Foreign trained; 201 KAR 22:070
License application; 201 KAR 22:020
License renewal; 201 KAR 22:040

PLUMBING
(See Housing, Buildings & Protection)

PROPERTY, STATE
(See Finance, Administration Cabinet)

PROPRIETARY EDUCATION BOARD
Student protection fund; 783 KAR 1:030

PUBLIC PROTECTION, REGULATION
Alcoholic Beverage Control
Advertising distilled spirits, wine; 804 KAR Chapter 1
Financial Institutions
Securities; 808 KAR Chapter 10
Housing, Buildings & Construction
Boilers, pressure vessels; 815 KAR Chapter 15
Elevator safety; 815 KAR Chapter 4
Hazardous materials; 815 KAR Chapter 30
Kentucky Building Code; 815 KAR Chapter 7
Plumbing; 815 KAR Chapter 20
Standards of safety; 815 KAR Chapter 10
Volunteer fire department; 815 KAR Chapter 46
Insurance
Agents, consultants, solicitors, adjusters; 806 KAR Chapter 9
Authorization of insurers; 806 KAR Chapter 3
Credit life insurance, health insurance; 806 KAR Chapter 19
Fees, taxes; 806 KAR Chapter 4
Health insurance contracts; 806 KAR Chapter 17
Investments; 806 KAR Chapter 7
Mines, Minerals
Oil and gas; 805 KAR Chapter 1
Public Service Commission; 807 KAR Chapter 5

PUBLIC SERVICE COMMISSION
Gas operations, drug use control; 807 KAR 5:023
General rules; 807 KAR 5:006
Settlements; 807 KAR 5:005
Rules of procedure; 807 KAR 5:001
Water; 807 KAR 5:066

PUPIL TRANSPORTATION
(See District Support Services)

PURCHASING
(See Finance, Administration)

RACING
Thoroughbred racing; 810 KAR Chapter 1

RADIOLOGY
(See Health Services)

RADIATION OPERATORS CERTIFICATION
(See Health Services)

REAL ESTATE APPRAISERS
Classification, fees, education, experience, testing, application, renewal, reports, practices; 201 KAR 30:100
Education approval, fees; 201 KAR 30:130
Roster, transmission, fees, deletions, notification, hearing; 201 KAR 30:110
Temporary appraisal permits; 201 KAR 30:120

REAL ESTATE COMMISSION
Mandatory continuing education; 201 KAR 11:230

RECREATIONAL VEHICLES
(See Housing, Buildings and Construction)

REGISTRY OF ELECTION FINANCE
Practice and Procedure
Processing complaints, hearings; 801 KAR 2:010

RETIREMENT
KERS
Administrative hearing; 105 KAR 1:215
Agency participation; 105 KAR 1:120
Annual disability review; 105 KAR 1:220
Contribution reporting; 105 KAR 1:140
Death after retirement; 105 KAR 1:240
Death before retirement; 105 KAR 1:180
Disability procedures; 105 KAR 1:210

Hazardous duty coverage; 105 KAR 1:130
Installment purchase; 105 KAR 1:150
Membership form; 105 KAR 1:170
Military service credit; 105 KAR 1:070
Qualified domestic relations; 105 KAR 1:190
Reemployment after retirement; 105 KAR 1:230
Retirement procedures, forms; 105 KAR 1:200
Sick leave plans; 105 KAR 1:160

SANITATION
(See Health Services)

SOCIAL INSURANCE
Food Stamp Program
Additional provisions; 904 KAR 3:050
Application process; 904 KAR 3:030
Certification process; 904 KAR 3:035 & E
Coupon issuance; 904 KAR 3:045
Definitions; 904 KAR 3:010 & E
Fair hearings; 904 KAR 3:070
Financial requirements; 904 KAR 3:020 & E
Hearings, penalties; 904 KAR 3:060
Technical requirements; 904 KAR 3:025 & E
Public Assistance
AFDC standards; 904 KAR 2:016 & E
Aged, blind, disabled programs; 904 KAR 2:015&E
At-risk child program; 904 KAR 2:360
LIHEAP; 904 KAR 2:116
Refugee assistance; 904 KAR 2:110 & E
Technical requirements, AFDC; 904 KAR 2:006
Transitional child program; 904 KAR 2:360 & E

SOCIAL SERVICES
Aging Services
Adult day, Alzheimer's respite; 905 KAR 8:160
Boarding home registration; 905 KAR 8:150
General administration; 905 KAR 8:220
Homecare program; 905 KAR 8:180
Long-term care ombudsman program; 905 KAR 8:210
Nutrition program; 905 KAR 8:190
Personal care assistance; 905 KAR 8:090
Senior community service employment; 905 KAR 8:200
Supportive services; 905 KAR 8:170
Block Grants
Matching requirements; 905 KAR 3:030
Child Welfare
Application; 905 KAR 1:010
"Baby Doe" regulation; 905 KAR 1:150
Child abuse self-help; 905 KAR 1:170
Detention alternative; 905 KAR 1:210
Children's Residential Services
Facilities capacities; 905 KAR 7:060
Repealer; 905 KAR 7:091
Resident liaison; 905 KAR 7:100
Day Care
Services; 905 KAR 2:080 & E

SOCIAL WORK EXAMINERS
Specialty certification; 201 KAR 23:070

SOLID WASTE TRANSPORTATION
License application; 601 KAR 40:020
Vehicle identification; 601 KAR 40:010

SPECIAL INSTRUCTIONAL SERVICES (EDUCATION)
Facilities, Equipment
Repealer; 705 KAR 3:011

STEEPLECHASE RACING
(See Thoroughbred Racing)

SURFACE MINING RECLAMATION, ENFORCEMENT
Areas Unsuitable for Mining
Definitions; 405 KAR 24:001 & E
Bond, Insurance Requirements
Bond forfeiture; 405 KAR 10:050
Bond pool; 405 KAR 10:200
Definitions; 405 KAR 10:001 & E
General Provisions
Applicability; 405 KAR 7:030
Definitions; 405 KAR 7:001 & E
Exemptions; 405 KAR 7:035
Incorporated documents; 405 KAR 7:015
Repealer; 405 KAR 7:021 & E
Small operator assistance; 405 KAR 7:080
SURFACE MINING (cont'd)
Inspection, Enforcement
Definitions; 405 KAR 12:001 & E
Performance Standards, Surface Mining
Backfilling, grading; 405 KAR 16:190
Definitions; 405 KAR 16:001 & E
Environmental value protection; 405 KAR 16:180
Postmining land use; 405 KAR 16:210
Revegetation; 405 KAR 16:200
Performance Standards, Underground Mining
Backfilling, grading; 405 KAR 18:190
Definitions; 405 KAR 18:001 & E
Environmental value protection; 405 KAR 18:180
Postmining land use; 405 KAR 18:220
Revegetation; 405 KAR 18:200
Permits
Coal exploration; 405 KAR 8:020
Definitions; 405 KAR 8:001 & E
General provisions; 405 KAR 8:010 & E
Surface coal mining; 405 KAR 8:030
Underground coal mining; 405 KAR 8:040
Special Performance Standards
Coal exploration; 405 KAR 20:010
Definitions; 405 KAR 20:001 & E

THOROUGHBRED RACING
Authorized agents; 810 KAR 1:010
Backside improvement commission; 810 KAR 1:021
Claiming races; 810 KAR 1:015
Definitions; 810 KAR 1:001
Disciplinary measures; 810 KAR 1:019
Entries, subscriptions, declarations; 810 KAR 1:013
Health and welfare fund; 810 KAR 1:023
Hearings, reviews, appeals; 810 KAR 1:020
Horses; 810 KAR 1:012
Jockeys, apprentices; 810 KAR 1:009
Licensing; 810 KAR 1:003
Medication, testing; 810 KAR 1:018
Objections, complaints; 810 KAR 1:017
Owners; 810 KAR 1:007
Pari-mutuel wagering; 810 KAR 1:011
Racing associations; 810 KAR 1:006
Racing commission; 810 KAR 1:002
Racing officials; 810 KAR 1:005
Running of the race; 810 KAR 1:016
Steeplechase racing; 810 KAR 1:050
Stewards; 810 KAR 1:004
Trainers; 810 KAR 1:008
Weights; 810 KAR 1:014

TOURISM
Fish and Wildlife
Heritage land conservation fund; 301 KAR Chapter 10
Hunting, fishing; 301 KAR Chapter 3

TRANSPORTATION
Highways
Traffic; 603 KAR Chapter 5
Motor Vehicle Commission; 605 KAR Chapter 1
Solid waste transportation; 601 KAR Chapter 40
Vehicle Regulation
Administration; 601 KAR Chapter 2
Driver's license; 601 KAR Chapter 12
Motor carriers; 601 KAR Chapter 1
Motor vehicle tax; 601 KAR Chapter 9
Solid waste transportation; 601 KAR Chapter 40

UNIVERSITY OF LOUISVILLE
Board of Trustees
Affiliated corporations; 740 KAR 1:080
Annual audit; 740 KAR 1:020
Capital construction projects; 740 KAR 1:060; 740 KAR 1:050
Fund acquisition, disbursement; 740 KAR 1:010
Fund for excellence; 740 KAR 1:090
Issuance of bonds; 740 KAR 1:100
Property proceeds disposal; 740 KAR 1:040
Purchasing, inventories, etc.; 740 KAR 1:030

VEHICLE REGULATION
Administration
General procedures; 601 KAR 2:010
Driver's License
Hardship license; 601 KAR 12:060
Motor Carriers
Certificate filing application; 601 KAR 1:045
Definitions; 601 KAR 1:029
Hearing, no protest; 601 KAR 1:031
Hearings; 601 KAR 1:030
Operating authority application; 601 KAR 1:040
Repealer; 601 KAR 1:180
Restricted taxicab; 601 KAR 1:116
U-drive-it permit; 601 KAR 1:140
Motor Vehicle Tax
Apportioned registration; 601 KAR 9:135
Solid Waste Transportation
License application; 601 KAR 40:020
Vehicle identification; 601 KAR 40:010

WASTE MANAGEMENT
Hazardous Waste; Generator Standards
General provisions; 401 KAR 32:010
Manifest, instructions; 401 KAR 32:100
Hazardous Waste; Identification, Listing
Characteristics; 401 KAR 31:030
General provisions; 401 KAR 31:010
Lists; 401 KAR 31:040
Rulemaking petitions; 401 KAR 31:060
Toxicity characteristic leaching procedure; 401 KAR 31:110
Hazardous Waste; Owners, Operators
Landfills; 401 KAR 34:230
Hazardous Waste Storage, Treatment, Disposal Facilities; Interim Status Standards
Incinerators; 401 KAR 35:240
Land treatment; 401 KAR 35:220
Surface impoundments; 401 KAR 35:200
Land Disposal Restrictions
Treatment standards; 401 KAR 37:100
Solid Waste Facility Standards
Siting requirements; 401 KAR 48:050

WATER
Public Water Supply
Definitions; 401 KAR 8:010
Disinfection, filtration; 401 KAR 8:150
General provisions; 401 KAR 8:020
Microbiological, turbidity monitoring; 401 KAR 8:200
Public notification; 401 KAR 8:070
Water Quality
Surface water standards; 401 KAR 5:031

WESTERN KENTUCKY UNIVERSITY
Annual audit; 770 KAR 1:030
Bond issuance; 770 KAR 1:050
Financial management; 770 KAR 1:020
Fund for excellence; 770 KAR 1:060
Funds, accounting system, records, annual report; 770 KAR 1:010
Purchase, inventories, surplus property; 770 KAR 1:040

WORKERS' COMPENSATION BOARD
Procedure; 803 KAR 25:011
Repealer; 803 KAR 25:061

WORKFORCE DEVELOPMENT CABINET
Adult, Technical Education
Certified personnel; 780 KAR Chapter 3
Proprietary education; 783 KAR Chapter 1
Literacy commission; 784 KAR Chapter 1

WORKPLACE STANDARDS, WAGES AND HOURS
Executive, administrative, supervisory, professional employees,
salesmen; 803 KAR 1:070